

**Supplement to the  
Arizona Administrative Code**

The official compilation of Arizona Rules

**Arizona Secretary of State's Office**  
Public Services Division  
1700 W. Washington Street, Fl 7.  
Phoenix, AZ 85007

***Replacement Check List***

For rules filed within the  
3rd Calendar Quarter

July 1 - September 30, 2014

**Code Release Number: Supp. 14-3**

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Dear Subscriber:

Enclosed is Arizona Administrative Code supplement 14-3. Supplemental material is printed by full Chapter. Rules updated in this supplement were filed between July 1 through September 30, 2014.

This supplement contains all rules made, amended, repealed, renumbered, and recodified; or rules that have expired or were terminated due to an agency being eliminated under sunset law.

These rules were either certified by the Governor's Regulatory Review Council or the Attorney General's Office; or exempt from the rulemaking process, and filed with the Office of the Secretary of State.

Refer to the checklists at the beginning of the Titles to replace the Chapters. All superseded material should be retained in a separate binder for reference.

As you are aware we are behind in the printing of our Administrative Code supplements and again ask for your patience as we process orders. The Code is current online at [www.azsos.gov](http://www.azsos.gov).

This supplement contains:

Department of Economic Security - Child Support Enforcement, 06 A.A.C. 07  
Arizona Commerce Authority, 20 A.A.C. 01  
Arizona Health Care Cost Containment System - Administration, 09 A.A.C. 22  
Arizona Health Care Cost Containment System - Arizona Long-term Care System, 09 A.A.C. 28  
Arizona Medical Board, 04 A.A.C. 16  
Board of Chiropractic Examiners, 04 A.A.C. 07  
Board of Funeral Directors and Embalmers, 04 A.A.C. 12  
Board of Massage Therapy, 04 A.A.C. 15  
Board of Nursing, 04 A.A.C. 19  
Board of Osteopathic Examiners in Medicine and Surgery, 04 A.A.C. 22  
Board of Technical Registration, 04 A.A.C. 30  
Citizens Clean Elections Commission, 02 A.A.C. 20  
Department of Agriculture - Agricultural Councils and Commissions, 03 A.A.C. 09  
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Department of Environmental Quality - Solid Waste Management, 18 A.A.C. 13  
Department of Health Services - Health Care Institutions: Establishment; Modification, 09 A.A.C. 09  
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Department of Public Safety - School Buses, 13 A.A.C. 13  
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**Follow the instructions to replace the updated Chapters.**

**TITLE 02. Administration**

**Chapter 08. State Retirement System Board**

Sections, Parts, Exhibits, Tables or Appendices modified

R2-8-120

REMOVE Supp. 13-2

Pages: 1 - 33

REPLACE with Supp. 14-3

Pages: 1 - 34

**Chapter 19. Office of Administrative Hearings**

Sections, Parts, Exhibits, Tables or Appendices modified

R2-19-122

REMOVE Supp. 99-1

Pages: 1 - 4

REPLACE with Supp. 14-3

Pages: 1 - 4

**Chapter 20. Citizens Clean Elections Commission**

Sections, Parts, Exhibits, Tables or Appendices modified

R2-20-109

REMOVE Supp. 14-2

Pages: 1 - 25

REPLACE with Supp. 14-3

Pages: 1 - 25

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## State Retirement System Board

## TITLE 2. ADMINISTRATION

## CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

Authority: A.R.S. § 38-701 et seq.

**ARTICLE 1. RETIREMENT SYSTEM; DEFINED  
BENEFIT PLAN**

Section	
R2-8-101.	Repealed
R2-8-102.	Repealed
R2-8-103.	Repealed
R2-8-104.	Definitions
R2-8-105.	Repealed
R2-8-106.	Reserved
R2-8-107.	Reserved
R2-8-108.	Reserved
R2-8-109.	Reserved
R2-8-110.	Reserved
R2-8-111.	Reserved
R2-8-112.	Reserved
R2-8-113.	Emergency Expired
R2-8-114.	Emergency Expired
R2-8-115.	Return of Contributions Upon Termination of Membership by Separation from All ASRS Employment by Other Than Retirement or Death; Payment of Survivor Benefits Upon the Death of a Member
R2-8-116.	Expired
R2-8-117.	Repealed
R2-8-118.	Application of Interest Rates
R2-8-119.	Expired
R2-8-120.	Designating a Beneficiary; Spousal Consent to Designation
R2-8-121.	Repealed
R2-8-122.	Remittance of contributions
R2-8-123.	Expired
Table 1.	Expired
Table 2.	Expired
Table 3.	Repealed
Table 3A.	Expired
Table 3B.	Expired
Table 4.	Expired
Table 4A.	Repealed
Table 4B.	Repealed
Table 4C.	Repealed
Table 5.	Expired
Table 6.	Expired
Table 7.	Expired
R2-8-124.	Repealed
R2-8-125.	Repealed
R2-8-126.	Calculating Benefits
Table 1.	Repealed
Table 2.	Repealed
Table 3.	Repealed
Table 4.	Repealed
Table 5.	Repealed
Table 6.	Repealed
Table 7.	Repealed
Table 8.	Repealed
Table 9.	Repealed
Table 10.	Repealed
Table 11.	Repealed
Exhibit A.	Repealed
Exhibit B.	Repealed
Table 1.	Repealed
Table 2.	Repealed

Table 3.	Repealed
Exhibit C.	Repealed
Exhibit D.	Repealed
Table 1.	Repealed
Table 2.	Repealed
Table 3.	Repealed
Table 4.	Repealed
Table 5.	Repealed
Table 6.	Repealed
Exhibit E.	Repealed
Table 1.	Repealed
Table 2.	Repealed
Table 3.	Repealed
Table 4.	Repealed
Table 5.	Repealed
Table 6.	Repealed
Exhibit F.	Repealed
Table 1.	Repealed
Table 2.	Repealed
Table 3.	Repealed
Table 4.	Repealed
Table 5.	Repealed
Table 6.	Repealed
Exhibit G.	Repealed
Exhibit H.	Repealed
Exhibit I.	Repealed
Exhibit J.	Repealed
Exhibit K.	Repealed
Exhibit L.	Repealed
Table 1.	Repealed
Table 2.	Repealed
Table 3.	Repealed
Table 4.	Repealed
Table 5.	Repealed
Table 6.	Repealed
Table 7.	Repealed
Exhibit M.	Repealed
Table 1.	Repealed
Table 2.	Repealed
Table 3.	Repealed
Table 4.	Repealed
Table 5.	Repealed
Table 6.	Repealed

**ARTICLE 2. STATE RETIREMENT DEFINED  
CONTRIBUTION PROGRAM**

*Article 2, consisting of R2-8-201 through R2-8-207, made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2).*

Section	
R2-8-201.	Definitions
R2-8-202.	Expired
R2-8-203.	Expired
R2-8-204.	Expired
R2-8-205.	Expired
R2-8-206.	Expired
R2-8-207.	Return of Contributions

**ARTICLE 3. RESERVED**

**ARTICLE 4. PRACTICE AND PROCEDURE BEFORE THE BOARD**

*Article 4, consisting of R2-8-401 through R2-8-405, made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1).*

## Section

- R2-8-401. Definitions
- R2-8-402. General Procedures
- R2-8-403. Request for a Hearing of an Appealable Agency Action
- R2-8-404. Board Decisions on Hearings before the Office of Administrative Hearings
- R2-8-405. Rehearing; Review of a Final Decision

**ARTICLE 5. PURCHASING SERVICE CREDIT**

*Article 5, consisting of R2-8-501 through R2-8-521, made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2).*

- R2-8-501. Definitions
- R2-8-502. Request to Purchase Service Credit and Notification of Cost
- R2-8-503. Requirements Applicable to All Service Credit Purchases
- R2-8-504. Service Credit Calculation for Purchasing Service Credit
- R2-8-505. Restrictions on Purchasing Overlapping Service Credit; Transfers
- R2-8-506. Cost Calculation for Purchasing Service Credit
- R2-8-507. Required Documentation and Calculations for Forfeited Service Credit
- R2-8-508. Required Documentation and Calculations for Leave of Absence Service Credit
- R2-8-509. Required Documentation and Calculations for Military Service Credit
- R2-8-510. Required Documentation and Calculations for Presidential Call-up Service Credit
- R2-8-511. Required Documentation and Calculations for Other Public Service Credit
- R2-8-512. Purchasing Service Credit by Check, Cashier's Check, or Money Order
- R2-8-513. Purchasing Service Credit by Irrevocable Payroll Deduction Authorization
- R2-8-513.01. Irrevocable Payroll Deduction Authorization and Transfer of Employment to a Different ASRS Employer
- R2-8-513.02. Termination Date
- R2-8-514. Purchasing Service Credit by Direct Rollover
- R2-8-515. Purchasing Service Credit by Trustee-to-Trustee Transfer
- R2-8-516. Purchasing Service Credit by Indirect IRA Rollover
- R2-8-517. Purchasing Service Credit by Distributed Rollover Contribution
- R2-8-518. Repealed
- R2-8-519. Purchasing Service Credit by Termination Pay Distribution
- R2-8-520. Termination of Employment and Request Return of Retirement Contributions or Death of Member While Purchasing Service Credit by an Irrevocable Payroll Deduction Authorization
- R2-8-521. Adjustment of Errors

**ARTICLE 6. PUBLIC PARTICIPATION IN RULEMAKING**

*Article 6, consisting of R2-8-601 through R2-8-607, made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1).*

## Section

- R2-8-601. Definitions
- R2-8-602. Reviewing Agency Rulemaking Record and Directory of Substantive Policy Statements
- R2-8-603. Petition for Rulemaking
- R2-8-604. Review of a Rule, Agency Practice, or Substantive Policy Statement
- R2-8-605. Objection to Rule Based Upon Economic, Small Business, and Consumer Impact
- R2-8-606. Oral Proceedings
- R2-8-607. Petition for Delayed Effective Date

**ARTICLE 7. CONTRIBUTIONS NOT WITHHELD**

*Article 7, consisting of R2-8-701 through R2-8-709, made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4).*

## Section

- R2-8-701. Definitions
- R2-8-702. General Information
- R2-8-703. ASRS Employer's Discovery of Error
- R2-8-704. Member's Discovery of Error
- R2-8-705. ASRS' Discovery of Error
- R2-8-706. Determination of Contributions Not Withheld
- R2-8-707. Submission of Payment
- R2-8-708. Dispute of an ASRS Determination Regarding Contributions Not Withheld
- R2-8-709. Nonpayment of Contributions

**ARTICLE 1. RETIREMENT SYSTEM; DEFINED BENEFIT PLAN****R2-8-101. Repealed****Historical Note**

Former Rule, Social Security Regulation 1; Former Section R2-8-01 renumbered as Section R2-8-101 without change effective May 21, 1982 (Supp. 82-3). Amended subsections (A) and (C) effective April 12, 1984 (Supp. 84-2). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

**R2-8-102. Repealed****Historical Note**

Former Rule, Social Security Regulation 2; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-02 renumbered as Section R2-8-102 without change effective May 21, 1982 (Supp. 82-3). Amended as an emergency by adding subsection (E) effective January 1, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Emergency expired. Permanent rule, subsections (A), (B), and (D), amended effective April 12, 1984 (Supp. 84-2). Correction, subsection (B), as amended effective April 12, 1984 (Supp. 84-3). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

**R2-8-103. Repealed****Historical Note**

Former Rule, Social Security Regulation 3; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-03 renumbered as Section R2-8-103 without change

effective May 21, 1982 (Supp. 82-3). Amended as an emergency by adding subsection (E) effective January 1, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Emergency expired. Permanent rule, subsections (A) thru (C), amended effective April 12, 1984 (Supp. 84-2). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

#### **R2-8-104. Definitions**

- A.** Proprietary functions: Services performed in a single proprietary function for a political subdivision are those services normally carried on by private enterprises. These include, but are not limited to, municipal water departments, municipal transportation departments, municipal housing and airport authorities. For other political subdivisions such as school districts, these functions include cafeteria workers and bookstore employees. School district bus drivers engaged in transporting students without charge are not engaged in a proprietary function. Hospitals operated for the care of the indigent sick by political subdivisions constitute a governmental function, and the employees in such a hospital, therefore, are not performing services in proprietary functions.
- B.** Who are employees:
  - 1. Every individual is an employee if the political subdivision for which he performs services has the right to control and direct him not only as to what shall be done but how it shall be done. It is not necessary that the political subdivision actually control or direct the manner in which the services are performed; it is sufficient if the subdivision has the right to do so. The right to discharge strongly implies the right to control.
  - 2. Officers of a political subdivision are its employees. So are any individuals performing services under contract in the exercise of a governmental function. Individuals such as physicians, dentists, and lawyers, engaged in an independent profession in which they offer their services to the public, are employees if their services include the exercise of a governmental function. If not, they may or may not be employees depending upon the degree to which they are subject to control by the political subdivision.
  - 3. Whether the individual is an employee depends upon the actual facts of his relationship with the political subdivision. A juror is not an employee since he is not a public officer and is not subject to control as to how he votes on a verdict. A physician who contracts with a county Board of Supervisors to furnish medical services to the indigent sick is an employee when the duty of caring for indigent sick is by law placed in the Board.
- C.** Mandatory exclusion: Prior to the 1967 Social Security Amendments, the state had the option of excluding emergency services. Beginning January 1, 1968, services performed by an individual as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency are mandatorily excluded. This mandatory exclusion is applicable to services for groups already covered as well as to services for groups which may be covered in the future.
- D.** Elective positions: Elective positions as used in agreements excluding such positions from coverage means those positions filled by a vote of a legislative body, a board or committee, or by the qualified electorate at large for the subdivision or instrumentality covered by the agreement, which would constitute an election under the law of Arizona.
- E.** Class or classes of part-time positions: Services performed in a position which does not require more than 150 hours of service in a calendar quarter are services in a part-time position. If a position is established during a calendar quarter and if such position would require more than 150 hours of service if it had been in existence for the entire quarter, such position would not be a part-time position and services in such a position would not be excluded under the state's definition. The time requirements of the position itself, and not the number of hours worked by an individual, is the determinative factor. For example, an individual may be employed and compensated for only a few hours in only one day of a calendar quarter and such individual may be subject to coverage if the position is one which requires more than 150 hours of service.
- F.** Class or classes of positions the compensation for which is on a fee basis:
  - 1. Compensation is considered to be on a salary basis when the payments are made at regular and fixed intervals based on services for definite and regular periods of time; and on a fee basis when made for particular services rendered at irregular and uncertain periods. Persons performing personal services of a governmental nature for a political subdivision are employees regardless of whether compensation is on a salary or fee basis. The services of such a person may be excluded, however, if compensated on a fee rather than a salary basis and the agreement between the Arizona State Retirement System Board and the subdivision excludes positions on a fee basis.
  - 2. Individuals performing governmental services in the practice of their profession, such as doctors or lawyers, may be on either a fee or salary basis depending on the nature of their contract of employment with the political subdivision. For example, a city attorney working full time for a regular monthly salary is not on a fee basis. An attorney employed by the city for special services to be rendered at irregular and uncertain periods for a fixed amount (even though weekly, monthly or other partial advances may be made) is compensated on a fee basis. When, as with some justices of the peace or tax collectors, the compensation is derived in part from fees and part from salary, the position is to be considered as on a fee basis if fees constitute the primary source of compensation. The fees may be received from either the public or the political subdivision. If the fee-basis exclusion is taken and if the position is a fee-basis position, all fees and salary received for services in such a position are not to be reported. If the exclusion is not exercised, all fees received, whether from the political subdivision or other sources, are to be reported.
  - 3. Beginning January 1, 1968, services performed by state and local employees in positions compensated solely by fees, which are not covered under an agreement, are compulsorily covered as self-employment. However, an individual occupying such a fee-basis position in 1968 could elect not to have his fees covered as self-employment income, if he filed a certificate of election of exemption with the Internal Revenue Service on or before the due date of his 1968 federal income tax return.
  - 4. An entity may modify its agreement to extend coverage to services performed after 1967 in any class or classes of positions compensated solely by fees not covered under an agreement prior to 1968. However, the entity must specifically include such services where this coverage is desired. Such coverage shall be effective with respect to services in such fee-basis positions performed beginning with the first day of the year after the year in which the agreement is approved.
  - 5. An entity may at any time after 1967 modify its agreement to exclude services performed in any class or classes of positions compensated solely by fees. Such an

exclusion from coverage is effective the first day of the year following the year in which the agreement is approved. If any class or classes of positions are so excluded, the entity cannot at a later date modify its agreement to again cover the services.

**G. Exclusion by class or classes of positions:**

1. Basic classifications may be made within either elective, part-time, or fee-basis positions according to a class or classes of positions having common characteristics or attributes, and exclusions limited to such classes. A class of positions includes all of the positions in the coverage group which have these common characteristics. Services in one or more classes or combinations of classes may be excluded. Positions may be excluded in one class and covered in another. For example, in a coverage group there may be excluded services in all elective positions or the exclusion could be limited to services in all elective positions except elective judicial positions and except part-time elective positions.
2. Positions in a single organizational unit of the coverage group do not constitute a class of positions. Therefore, while all of the part-time maintenance workers of a county could be excluded under the part-time option, the exclusion could not be limited to all or any class or part-time maintenance workers in the Office of the County Clerk, which is an organizational unit of the county.

**H. Agricultural labor which would be excluded if performed for a private employer:**

1. Under the federal Social Security Act, when the agricultural exclusion has been taken, tests as to services which are excluded should be applied to all reports covering reporting quarters beginning on or after January 1, 1957. Cash remuneration paid to an employee for agricultural services should be reported only if:
  - a. Such remuneration paid the employee during a calendar year (even though part of it was for services performed in a previous calendar year) amounts to \$150 or more; or
  - b. The employee performs agricultural services for the employer on some part of a day on at least 20 days during a calendar year for cash remuneration computed on a time basis, as by the hour, day, or week; in which event the amount of cash remuneration is immaterial in determining if the services are covered.
2. Services performed by individuals lawfully admitted from any foreign country on a temporary basis to perform agricultural labor are excluded.

**I. Student service exclusion: Only those student services which would be mandatorily excluded if performed for a private employer fall within this exclusion. Where this exclusion is taken, the following services are not covered:**

1. Services performed by a student regularly enrolled and attending classes in the employ of his school, college, or university. This means the employing entity and not necessarily the individual institution. The exclusion applies only during periods of regular school attendance. Thus, the exclusion does not apply to work done during summer vacation unless the student is attending a summer session. This is true even though the student was enrolled and regularly attending classes in the school during the previous year and expects to return to school the following year. Services performed on holidays and weekends falling within the academic year when classes are not scheduled, on the other hand, are excluded.

2. Services performed as a student nurse in the employ of a hospital or nurses' training school by an individual who is enrolled and regularly attending classes in a nurses' training school chartered or approved pursuant to state law. It is not necessary that the nurses' training school in which the student nurse is enrolled and attending classes be located within the approving state as long as the school meets the educational standards established by state law for the approval of schools within the state.

**J. Services performed by election officials or election workers if remuneration paid in a calendar quarter is less than \$50:**

1. Prior to the 1967 amendments to the Social Security Act, there was no provision for a specific exclusion of the services of election officials or election workers. The exclusion of such services was possible, however, by exclusion of a class of services for which an exclusion was permitted, i.e., exclusion of election officials and election workers as a class of part-time or fee-basis positions.
2. This optional exclusion of services performed by election officials or election workers is dependent on the amount paid in a calendar quarter for such services, e.g., if the remuneration paid in the third calendar quarter of a year amounts to \$50 or more, the services are covered and must be reported regardless of the fact that the remuneration paid in any other calendar quarter for election officials' or election workers' services amount to \$49.99 or less and is not reportable.
3. These services may continue to be excluded as a class of part-time or fee-basis positions without regard to the amount paid for such services. These services would, of course, be excluded already if a part-time or fee-basis position exclusion in broad enough terms was previously exercised. The purpose of the optional exclusion of services performed by election officials or election workers if remuneration in a calendar quarter is less than \$50 is to permit the exclusion to be taken where one was not previously taken. The effective date of exclusion for these services may not be earlier than the last day of the calendar quarter in which the modification to state's Social Security agreement is mailed to the Secretary of Health and Human Services.
4. On or after January 1, 1978, a political entity can modify its agreement to specifically exclude the services of election officials or election workers if the remuneration paid in a calendar year is less than \$100. A change to \$100 in a year from \$50 in a calendar quarter requires the execution of a new modification. For modification executed after December 31, 1977, the \$100 in a year test must be used.

**K. "Wages" -- (A.R.S. § 38-701(8)) means all remuneration paid to employees whose services are covered under an agreement in a calendar year not in excess of the maximum reportable wages on which social security contributions are due.**

1. Wages include the cash value of remuneration paid to employees other than money, for example, the value of room and board. The valuation of room and board furnished an employee by a political entity shall be computed at the same valuation as computed by the Industrial Commission for payment of workmen's compensation premiums.
2. If, as a part of the employment, it is understood that the employee is entitled to meals and the employer is to furnish them, the value of such meals is wages and should be reported. If there is no understanding (either orally or in writing) that meals will be furnished the employee, but they are in fact provided, the value of the meals would be wages if it is substantial. The value of meals may be con-



sidered as not substantial if it is less than five percent of the cash pay.

3. The employer's report of wages paid for each calendar quarter to the Arizona State Retirement System Board shall include for each employee both the cash wages and the value of room and board as a lump sum for the quarter for which the report is made.
4. The employee tax shall be deducted from the wages paid in accordance with the method of including the value of remuneration paid in any medium other than cash in each pay period or in a single pay period in the calendar quarter.
5. The value of meals and lodging furnished by, or on behalf of an employer to an employee, the employee's spouse, or any of the employee's dependents is not wages for Social Security purposes if:
  - a. The meals or lodging are furnished on the business premises of the employer, and
  - b. The meals or lodging are furnished for the convenience of the employer, and
  - c. The employee is required to accept such lodging as a condition of employment.

#### Historical Note

Former Rule, Social Security Regulation 4; Former Section R2-8-04 renumbered as Section R2-8-104 without change effective May 21, 1982 (Supp. 82-3). Amended subsections (G), (J), and (K) effective April 12, 1984 (Supp. 84-2). Typographical error corrected in subsection (5)(c) "required" corrected to "required" (Supp. 97-1).

#### R2-8-105. Repealed

#### Historical Note

Former Rule, Social Security Regulation 5; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-05 renumbered as Section R2-8-105 without change effective May 21, 1982 (Supp. 82-3). Amended as an emergency by adding subsection (E) effective January 1, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Emergency expired. Permanent rule amended effective April 12, 1984 (Supp. 84-2). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

#### R2-8-106. Reserved

#### R2-8-107. Reserved

#### R2-8-108. Reserved

#### R2-8-109. Reserved

#### R2-8-110. Reserved

#### R2-8-111. Reserved

#### R2-8-112. Reserved

#### R2-8-113. Emergency Expired

#### Historical Note

New Section made by emergency rulemaking at 11 A.A.R. 579, effective January 4, 2005 (05-1). Emergency rule expired (Supp. 05-2).

#### R2-8-114. Emergency Expired

#### Historical Note

New Section made by emergency rulemaking at 11 A.A.R. 579, effective January 4, 2005 (05-1). Emergency rule expired (Supp. 05-2).

#### R2-8-115. Return of Contributions Upon Termination of Membership by Separation from All ASRS Employment by Other Than Retirement or Death; Payment of Survivor Benefits Upon the Death of a Member

- A. The following definitions apply to this Section unless otherwise specified:
1. "ASRS" means the same as in A.R.S. § 38-711.
  2. "ASRS employer" has the same meaning as "employer" in A.R.S. § 38-711.
  3. "Authorized employer representative" means an individual specified by the ASRS employer to provide the ASRS with information about a member who previously worked for the ASRS employer.
  4. "Beneficiary" means the individual specified by a member to receive the balance of the member's account or, if applicable, selected benefits upon the death of the member.
  5. "Contribution" means:
    - a. Amounts required by A.R.S. Title 38, Chapter 5, Article 2 to be paid to ASRS by a member or an employer on behalf of a member other than amounts attributed to the long-term disability program;
    - b. Any voluntary amounts paid by a System member to ASRS to be placed in the System member's account; and
    - c. Any amount credited to a non-retired System member's employer account or to a retired System member's non-guaranteed benefit as determined by Section 24(B) of Arizona Session Laws 1995, Chapter 32, Section 24, as amended by Arizona Session Laws 1999, Chapter 66, Section 1.
  6. "Court" means a superior, appellate, or the Supreme court of this state, a corresponding court of another state of the United States, or a federal court of the United States.
  7. "Designated beneficiary" has the same meaning as in A.R.S. § 38-762(H).
  8. "Domestic relations order" has the same meaning as in A.R.S. § 38-773(G).
  9. "Eligible retirement plan" has the same meaning as in A.R.S. § 38-770(C)(3).
  10. "Employer number" means a unique identifier the ASRS assigns to a member employer.
  11. "Employer plan" means the types of eligible retirement plans specified in A.R.S. § 38-770(C)(3)(c), (d), (e), and (f).
  12. "Fiscal year" means July 1 of one year to June 30 of the next year.
  13. "Individual retirement account" means the types of eligible retirement plans specified in A.R.S. § 38-770(C)(3)(a) and (b).
  14. "Lump-sum payment" means a member receives the total amount in the member's ASRS account to which the member is entitled by law.
  15. "Member" has the same meaning as in A.R.S. § 38-711.
  16. "Personal representative" means a person who is authorized by law to represent the estate of a deceased individual.
  17. "Process date" means the calendar day the ASRS generates contribution withdrawal documents to be sent to a member.
  18. "Service year" has the same meaning as in A.R.S. § 38-711.
  19. "System" means the same as "defined contribution plan" as defined in A.R.S. § 38-769, and which is administered by the ASRS.

20. "Terminate employment" means to end the employment relationship between a member and an ASRS employer with the intent that the member not return to employment with that ASRS employer.
  21. "Trustee" means an individual who holds monetary assets in an eligible retirement plan under the Internal Revenue Code for the benefit of the member.
  22. "United States" means the same as in A.R.S. § 1-215.
  23. "Warrant" means a voucher authorizing payment of funds due to a member.
- B.** A member who terminates from all ASRS employment by other than retirement or death and desires a return of the member's contributions, including amounts received for the purchase of service, any employer contributions authorized under A.R.S. § 38-740, and interest on the contributions, shall request from the ASRS, in writing or verbally, the documents necessary to apply for the withdrawal of the member's contributions.
- C.** Upon receipt of the request, the ASRS shall provide the member with:
1. An Application for Withdrawal of Contributions and Termination of Membership form,
  2. An Ending Payroll Verification – Withdrawal of Contribution and Termination of Membership form, and
  3. The process date.
- D.** The member shall complete and return to the ASRS the Application for Withdrawal of Contributions and Termination of Membership form that includes the following information:
1. The member's full name;
  2. The member's Social Security number;
  3. The member's current mailing address;
  4. The member's daytime telephone number, if applicable;
  5. The member's birth date;
  6. The date of termination;
  7. Dated signature of the member certifying that the member:
    - a. Is no longer employed by any ASRS employer;
    - b. Is neither under contract nor has any verbal or written agreement for future employment with an ASRS employer;
    - c. Is not currently in a leave of absence status with an ASRS employer;
    - d. Understands that each of the member's former ASRS employers' payroll departments will complete a payroll verification form if payroll transactions occurred with the ASRS employer within the six months before the process date;
    - e. Has read and understands the Special Tax Notice Regarding Plan Payments the member received with the application;
    - f. Understands that the member is forfeiting all future retirement rights and privileges of membership with the ASRS;
    - g. Understands that long-term disability benefits will be canceled if the member elects to withdraw contributions while receiving or electing to receive long-term disability benefits;
    - h. Understands that if the member elects to roll over all or any portion of the member's distribution to another employer plan, it is the member's responsibility to verify that the receiving employer plan will accept the rollover and, if applicable, agree to separately account for the pre-tax and post-tax amounts rolled over and the related subsequent earnings on the amounts;
  - i. Understands that if the member elects to roll over all or any portion of the member's distribution to an individual retirement account, it is the member's responsibility to separately account for pre-tax and post-tax amounts; and
  - j. Understands that if the member elects a rollover to another employer plan or individual retirement account, any portion of the distribution not designated for rollover will be paid directly to the member and any taxable amounts will be subject to 20% federal income tax withholding and 5% state tax withholding;
- 8.** Specify that:
- a. The entire amount of the distribution be paid directly to the member,
  - b. The entire amount of the distribution be transferred to an eligible retirement plan, or
  - c. An identified amount of the distribution be transferred to an eligible retirement plan and the remaining amount be paid directly to the member; and
- 9.** If the member selects all or a portion of the withdrawal be paid to an eligible retirement plan, specify:
- a. The type of eligible retirement plan;
  - b. The eligible retirement plan account number, if applicable; and
  - c. The name and mailing address of the eligible retirement plan.
- E.** If a payroll transaction for the member occurred with any ASRS employer within six months before the process date the member shall complete and return to the ASRS an Ending Payroll Verification – Withdrawal of Contributions and Termination of Membership form for each ASRS employer that includes the following information:
1. Filled out by the member:
    - a. The member's full name, and
    - b. The member's Social Security number; and
  2. Filled out by each ASRS employer:
    - a. The member's termination date,
    - b. The member's final pay period ending date;
    - c. The final amount of contributions, including any adjustments or corrections, but not including any long-term disability contributions,
    - d. The ASRS employer's name and telephone number;
    - e. The employer number;
    - f. The name and title of the authorized employer representative;
    - g. Certification by the authorized employer representative that:
      - i. The member terminated employment and is neither under contract nor bound by any verbal or written agreement for employment with the employer;
      - ii. There is no agreement to re-employ the member; and
      - iii. The authorized employer representative has the legal power to bind the employer in transactions with the ASRS; and
    - h. The signature of the authorized employer representative and date of signature.
- F.** If the member requests a return of contributions and a warrant is distributed during the fiscal year that the member began membership in the ASRS, no interest is paid to the account of the member.
- G.** If the member requests a return of contributions after the first fiscal year of membership, ASRS shall credit interest at the rate specified in Column 3 of the table in R2-8-118(B) to the

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account of the member as of June 30 of each year, on the basis of the balance in the account of the member as of the previous June 30. The ASRS shall credit interest for a partial fiscal year of membership in the ASRS on the previous June 30 balance based on the number of days of membership up to and including the day the ASRS issues the warrant divided by the total number days in the fiscal year. Contributions made after the previous June 30 are returned without interest.

- H.** Upon submitting to the ASRS the completed and accurate Application for Withdrawal of Contributions and Termination of Membership form and, if applicable, any Ending Payroll Verification – Withdrawal of Contributions and Termination of Membership forms, a member is entitled to payment of the amount due to the member as specified in subsection (F) or (G) unless a present or former spouse submits to the ASRS a domestic relations order that specifies entitlement to all or part of the return of contributions under A.R.S. § 38-773 before the ASRS returns the contributions as specified by the member.
- I.** Upon death of a member, the ASRS shall provide survivor benefits based on the deceased member's last dated, written designation of beneficiary that is on file with the ASRS before the date of the member's death.
- J.** If there is no designation of beneficiary or if the designated beneficiary predeceases the member, the survivor benefit is paid as specified in A.R.S. § 38-762(F). The designated beneficiary or other person specified in A.R.S. § 38-762(F) shall:
1. Provide a certified copy of a death certificate or a certified copy of a court order that establishes the member's death;
  2. Provide a certified copy of the court order of appointment as administrator, if applicable; and
  3. Except if the deceased member was retired and elected the joint and survivor option, complete and have notarized an application for survivor benefits, provided by the ASRS, that includes:
    - a. The deceased member's full name,
    - b. The deceased member's Social Security number,
    - c. The following, as it pertains to the designated beneficiary or other person specified in A.R.S. § 38-762(F):
      - i. Full name;
      - ii. Mailing address;

- iii. Contact telephone number;
- iv. Date of birth, if applicable; and
- v. Social Security number or Tax ID number, if applicable.

**Historical Note**

Former Rule, Social Security Regulation 1; Amended effective Dec. 20, 1979 (Supp. 79-6). Former Section R2-8-15 renumbered as Section R2-8-115 without change effective May 21, 1982 (Supp. 82-3). Amended by final rulemaking at 11 A.A.R. 1416, effective April 5, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 644, effective February 7, 2006 (Supp. 06-1).

**R2-8-116. Expired****Historical Note**

Former Rule, Retirement System Regulation 2; Former Section R2-8-16 renumbered as Section R2-8-116 without change effective May 21, 1982 (Supp. 82-3). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**R2-8-117. Repealed****Historical Note**

Former Rule, Retirement System Regulation 3; Former Section R2-8-17 renumbered as Section R2-8-117 without change effective May 21, 1982 (Supp. 82-3). Section repealed by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2).

**R2-8-118. Application of Interest Rates**

- A.** The following definitions apply to this Section unless otherwise specified:
1. "ASRS" means the same as in A.R.S. § 38-711.
  2. "Member" has the same meaning as in A.R.S. § 38-711.
  3. "Plan" means the same as "defined benefit plan" in A.R.S. § 38-769, and administered by the ASRS.
  4. "System" means the same as "defined contribution plan" as defined in A.R.S. § 38-769, and that is administered by the ASRS.
- B.** Application of interest from inception of the ASRS through the present is as follows:

Effective Date of Interest Rate Change	Assumed Actuarial Interest and Investment Yield Rate	Interest Rate Used to Determine Return of Contributions Upon Termination of Membership by Separation from Service by Other Than Retirement or Death		Interest Rate Used to Determine Survivor Benefits
7-1-1953	2.50%	2.50%		2.50%
7-1-1959	3.00%	3.00%		3.00%
7-1-1966	3.75%	3.75%		3.75%
7-1-1969	4.25%	4.25%		4.25%
7-1-1971	4.75%	4.75%		4.75%
7-1-1975	5.50%	5.50%		5.50%
7-1-1976	6.00%	5.50%		6.00%
7-1-1981	7.00%	5.50%		7.00%
7-1-1982	7.00%	7.00%		7.00%
7-1-1984	8.00%	8.00%		8.00%
7-1-2005	8.00%	4.00% for Plan Members	8.00% for System Members	8.00%
7-1-2013	8.00%	2.00% for Plan Members	8.00% for System Members	8.00%

- C. At the beginning of each fiscal year interest is credited to the retirement account of each member on the June 30 that marks the end of the fiscal year based on the balance in the member's account as of the previous June 30. The balance on which interest is credited includes:
1. Employer and employee contributions;
  2. Voluntary additional contributions made by System members, if applicable;
  3. Amounts credited by transfer under A.R.S. § 38-922;
  4. Amounts credited to a non-retired system member's employer account or to a retired System member's non-guaranteed benefit as determined by Article 2 of this Chapter; and
  5. Interest credited in previous years.

#### Historical Note

Former Rule, Retirement System Regulation 4; Amended effective July 1, 1975 (Supp. 75-1). Amended effective June 23, 1976 (Supp. 76-3). Former Section R2-8-18 renumbered and amended as Section R2-8-118 effective May 21, 1982 (Supp. 82-3). Amended by final rulemaking at 11 A.A.R. 1416, effective April 5, 2005 (Supp. 05-2). Amended by final rulemaking at 19 A.A.R. 764, effective June 1, 2013 (Supp. 13-2).

#### R2-8-119. Expired

#### Historical Note

Former Rule, Retirement System Regulation 5; Amended effective July 1, 1975 (Supp. 75-1). Amended effective June 23, 1976 (Supp. 76-3). Former Section R2-8-19 renumbered and amended as Section R2-8-119 effective May 21, 1982 (Supp. 82-3). Section R2-8-119 and Appendix A and B expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

#### R2-8-120. Designating a Beneficiary; Spousal Consent to Designation

- A. In addition to the definitions at A.R.S. § 38-711, the following apply to this Section unless otherwise specified:
1. "Beneficiary" means a person designated to receive money or other benefits when someone dies.
  2. "Contingent annuitant" means the person that a member designates to receive continued annuity payments after the member dies.
  3. "Joint and survivor annuity" means an optional form of retirement benefits described at A.R.S. § 38-760(B).
  4. "Period certain and life annuity" means an optional form of retirement benefits described at A.R.S. § 38-760(B).
  5. "QDRO" means qualified domestic relations order, which is a judgment, decree, or order directing a retirement plan to make payments to an alternative payee.
  6. "Spouse" means the individual to whom a member is married under Arizona law.
- B. Effective July 1, 2013, a married member:
1. Who is not retired shall name and maintain the member's current spouse as primary beneficiary of at least 50 percent of the member's retirement account unless:
    - a. Naming or maintaining the current spouse as beneficiary violates another law, existing contract, or court order; or
    - b. The spouse consents to an alternate beneficiary; and
  2. Who retires shall choose a joint and survivor annuity and name the member's current spouse as contingent annuitant of at least 50 percent of the member's retirement benefit unless the spouse consents to an alternative.
- C. Application of subsection (B).

1. The ASRS shall honor a beneficiary designation last made or a retirement election submitted before July 1, 2013, even if the beneficiary designation or retirement election fails to comply with subsection (B).
2. The ASRS shall not apply subsection (B) to a lump-sum retirement authorized under A.R.S. § 38-764.
3. The ASRS shall not apply subsection (B) if a member submits a letter to the ASRS in which the member affirms under penalty of perjury that spousal consent is not required because of one of the reasons specified in A.R.S. § 38-776(C).

#### D. Changing a beneficiary designation:

1. If a married member changes a beneficiary designation on or after July 1, 2013, the member shall ensure that the new beneficiary designation is consistent with the requirements specified in subsection (B);
2. If a married member who retired before July 1, 2013, and:
  - a. Chose a straight-life annuity wishes to change the member's beneficiary, the member shall ensure that the new beneficiary designation is consistent with subsection (B); or
  - b. Chose a period certain or joint and survivor annuity wishes to change either the annuity option or the contingent annuitant, the member shall ensure that the new beneficiary designation is consistent with subsection (B).

#### E. Re-retirement. A married member who re-retires, as described in A.R.S. § 38-766:

1. Within 60 months of the member's previous retirement date, shall elect the same annuity option and beneficiary as the member made at the time of the previous retirement; or
2. More than 60 months after the member's previous retirement date, shall comply with subsection (B).

#### F. Involuntary cancellation of retirement. If a married member retires on or after July 1, 2013, and is issued one or more estimate checks but fails to comply with subsection (B) within 30 days after the member's effective retirement date, the member shall submit a signed letter to ASRS stating that the member's spouse refuses to consent to the chosen alternative and asking that the retirement be cancelled. The member may submit another retirement application that complies with subsection (B). The member's new effective retirement date is the date ASRS receives the new application. ASRS shall not issue additional estimate checks to a member whose retirement was involuntarily cancelled.

#### G. Survivor benefits:

1. If a married member last made a beneficiary designation before July 1, 2013, the ASRS shall, at the time of the member's death, honor the beneficiary designation even if the beneficiary designation is not consistent with the requirements specified in subsection (B); and
2. If a married member made a beneficiary designation on or after July 1, 2013, that is not consistent with the requirements specified in subsection (B), the ASRS shall, at the time of the member's death:
  - a. Notify both the spouse and designated beneficiary and:
    - i. Provide the spouse with an opportunity to waive the right under subsection (B); and
    - ii. Provide the designated beneficiary with an opportunity to provide documentation that revokes the spouse's right under subsection (B); and
  - b. Designate 50 percent of the member's retirement benefit to the spouse if neither the spouse nor design-

nated beneficiary respond under subsection (G)(2)(a) within 30 days after notification.

- H. Effect of legal documents. In general, a legal document such as a QDRO or prenuptial agreement will supersede the requirements in subsection (B). The ASRS shall ask the Office of the Attorney General to review the legal document before the ASRS decides how to disburse the retirement benefit.
- I. Spousal waiver and consent; consent revocation
  1. The current spouse of a member has a right to:
    - a. Be designated as primary beneficiary of at least 50 percent of the member's retirement account, and
    - b. Have the member choose a joint and survivor annuity with the spouse as contingent annuitant of at least 50 percent of the retirement benefit.
  2. To waive the right described in subsection (I)(1) and consent to an alternative, the current spouse shall complete and have notarized a spousal consent form, which is available from the ASRS. If the current spouse is not capable of completing the spousal consent form because of a documented incapacitating mental or physical condition, a person with power of attorney or a conservator may complete the spousal consent form on behalf of the current spouse.
  3. A spouse may revoke a waiver and consent by sending written notice to ASRS and ensuring the written notice is received no later than the earlier of one day before the member dies or ASRS disburses a retirement benefit to the member.

**Historical Note**

Former Rule, Social Security Regulation 6; Amended effective June 19, 1975 (Supp. 75-1). Amended effective July 13, 1979 (Supp. 79-4). Former Section R2-8-20 renumbered and amended as Section R2-8-120 effective May 21, 1982 (Supp. 82-3). Repealed effective July 24, 1985 (Supp. 85-4). New Section made by final rulemaking at 20 A.A.R. 2236, effective October 4, 2014 (Supp. 14-3).

**R2-8-121. Repealed**

**Historical Note**

Former Rule, Retirement System Regulation 7; Amended effective April 15, 1980 (Supp. 80-2). Former Section R2-8-21 renumbered as Section R2-8-121 without change effective May 21, 1982 (Supp. 82-3). Amended subsection (A) effective May 30, 1985 (Supp. 85-3). Section repealed by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (05-1).

**R2-8-122. Remittance of contributions**

- A. Remittance of employee member contributions: Each state department and employer member of the Arizona State Retirement System, including, without limitation, any county, municipality or political subdivision, shall certify on each payroll the amount to be contributed by each one of their employee members of the Arizona State Retirement System and shall remit the amount of employee member contributions to the Arizona State Retirement System, together with such detailed report as may be required by the System to identify the individual owner of each such member contribution, not later than 14 calendar days after the last day of each payroll period. Payments of employee member contributions not received in the offices of the Arizona State Retirement System by the 14th calendar day after the last day of the applicable payroll period shall become delinquent after that date and shall be increased, by interest at the rate of eight percent per annum

from and after the date of delinquency until payment is received by the Arizona State Retirement System.

- B. Remittance of employer contributions: Each state department and employer member of the Arizona State Retirement System, including, without limitation, any county, municipality or political subdivision, shall remit the amount of employer contributions to the Arizona State Retirement System not later than 14 calendar days after the last day of each payroll period. Payments of employer contributions not received in the offices of the Arizona State Retirement System by the 14th calendar day after the last day of the applicable payroll period shall become delinquent after that date and shall be increased, by interest at the rate of eight percent per annum from and after the date of delinquency until payment is received by the Arizona State Retirement System.

**Historical Note**

Former Rule, Retirement System Regulation 8; Amended effective Dec. 8, 1978 (Supp. 78-6). Former Section R2-8-22 renumbered as Section R2-8-122 without change effective May 21, 1982 (Supp. 82-3).

**R2-8-123. Expired**

**Historical Note**

Adopted effective July 1, 1975 (Supp. 75-1). Amended effective June 23, 1976 (Supp. 76-3). Amended effective December 20, 1977 (Supp. 77-6). Former Section R2-8-23 renumbered and amended as Section R2-8-123 effective May 21, 1982 (Supp. 82-3). Emergency amendments effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency amendments adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent amendments adopted effective December 22, 1993 (Supp. 93-4). Emergency amendments adopted effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Permanent amendments adopted effective September 12, 1997 (Supp. 97-3). Amended by emergency rulemaking under A.R.S. § 41-1026 at 9 A.A.R. 1006, effective February 24, 2003 for a period of 180 days (Supp. 03-1). Emergency rulemaking renewed at 9 A.A.R. 3963, effective August 21, 2003 for a period of 180 days (Supp. 03-3). Amended by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Amended by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 1. Expired**

**Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Emergency amendments to Table 1 adopted effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Permanent amendments adopted effective September 12, 1997 (Supp. 97-3). Amended by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2,

2004 for 180 days (Supp. 04-2). Amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 2. Expired****Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Emergency amendments to Table 2 adopted effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Permanent amendments adopted effective September 12, 1997 (Supp. 97-3). Amended by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 3. Repealed****Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Emergency amendments to Table 3 adopted effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Permanent amendments adopted effective September 12, 1997 (Supp. 97-3). Table 3 repealed; new Table 3 renumbered from Table 4 by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Table 3A. Expired****Historical Note**

New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). New Table made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 3B. Expired****Historical Note**

New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). New Table made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 4. Expired****Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table 4 renumbered as Table 3 by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). New Table made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 4A. Repealed****Historical Note**

New Table made by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Table 4B. Repealed****Historical Note**

New Table made by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Table 4C. Repealed****Historical Note**

New Table made by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Table 5. Expired****Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table 5 repealed, new Table 5 adopted by emergency action effective January 30, 1997, pursuant to A.R.S. § 41-1026 for a maximum of 180 days (Supp. 97-1). Emergency expired. Table 5 repealed, new Table 5 adopted by regular rulemaking action effective September 12, 1997 (Supp. 97-3). Table 5 repealed; new Table 5 renumbered from Table 6 and amended by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed; new Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Former Table 5 renumbered to Table 6; new Table 5 made by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table

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expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 6. Expired****Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table repealed, new Table adopted effective September 12, 1997 (Supp. 97-3). Former Table 6 renumbered to Table 5; new Table 6 renumbered from Table 7 and amended by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). Table repealed; new Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Former Table 6 renumbered to Table 7; new Table 6 renumbered from Table 5 and amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**Table 7. Expired****Historical Note**

Emergency adoption effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Table repealed, new Table adopted effective September 12, 1997 (Supp. 97-3). Renumbered to Table 6 by final rulemaking at 9 A.A.R. 4614, effective December 6, 2003 (Supp. 03-4). New Table made by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Table 7 renumbered from Table 6 and amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Table expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**R2-8-124. Repealed****Historical Note**

Adopted as an emergency effective August 25, 1975 (Supp. 75-1). Former Section R2-8-24 renumbered as Section R2-8-124 without change effective May 21, 1982 (Supp. 82-3). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

**R2-8-125. Repealed****Historical Note**

Adopted as an emergency effective July 30, 1975 (Supp. 75-1). Former Section R2-8-25 renumbered as Section R2-8-125 without change effective May 21, 1982 (Supp. 82-3). Section repealed by final rulemaking at 10 A.A.R. 669, effective February 3, 2004 (Supp. 04-1).

**R2-8-126. Calculating Benefits**

A. The following definitions apply to this Section unless otherwise specified:

1. "Contingent annuitant" has the same meaning as in A.R.S. § 38-711.
2. "Life annuity" has the same meaning as in A.R.S. § 38-711.

3. "Member" has the same meaning as in A.R.S. § 38-711.
  4. "Plan" means a "defined benefit plan" under A.R.S. § 38-769 that is administered by the ASRS.
  5. "Prior service" has the same meaning as in A.R.S. § 38-772.
  6. "System" means a "defined contribution plan" as defined under A.R.S. § 38-769 that is administered by the ASRS.
- B. An individual who is 104 years of age or older at the time of retirement and who elects a life annuity is not eligible to select the option of income for five years certain and for life thereafter.
- C. An individual who is 93 years of age or older at the time of retirement and who elects a life annuity is not eligible to select the option of income for ten years certain and for life thereafter.
- D. An individual who is 85 years of age or older at the time of retirement and who elects a life annuity is not eligible to select the option of income for 15 years certain and for life thereafter.
- E. As authorized under A.R.S. § 38-764(F), if the life annuity of any Plan member is less than a monthly amount determined by the Board, the ASRS shall not pay the annuity. Instead, the ASRS shall make a lump sum payment in the amount determined by using appropriate actuarial assumptions.
- F. The ASRS shall calculate a member's or beneficiary's benefits, based on the attained age of the member or beneficiary, determined in years and full months, as of the effective date of the benefit payment.
- G. The ASRS shall add any prior service benefit that is payable to a member to the life annuity of the member before the ASRS applies any optional payment plan calculation provided for in A.R.S. § 38-760.
- H. A member who is ten or more years older than the member's non-spousal contingent annuitant is not eligible to participate in a 100% joint-and-survivor option. A member who is 24 or more years older than the member's non-spousal contingent annuitant is not eligible to participate in a 66 2/3% joint-and-survivor option.

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Amended effective July 13, 1979 (Supp. 79-4). Former Section R2-8-26 renumbered and amended as Section R2-8-126 effective May 21, 1982 (Supp. 82-3). Amended subsections (A) through (D) effective October 18, 1984 (Supp. 84-5). Amended subsections (A) through (D) effective July 24, 1985 (Supp. 85-4). Amended by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency amendments adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Amended by emergency rulemaking at 7 A.A.R. 1621, effective March 21, 2001 (Supp. 01-1). Amended by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Amended by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3). Amended by final rulemaking at 19 A.A.R. 332, effective April 6, 2013 (Supp. 13-1).

**Table 1. Repealed****Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 1 repealed, new Table 1 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency

effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 2. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 2 repealed, new Table 2 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 3. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 3 repealed, new Table 3 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 4. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 4 repealed, new Table 4 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 5. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 5 repealed, new Table 5 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 6. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 6 repealed, new Table 6 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 7. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 7 repealed, new Table 7 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency

effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 8. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 8 repealed, new Table 8 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 9. Repealed**

**Historical Note**

Adopted effective September 12, 1977 (Supp. 77-5). Table 9 repealed, new Table 9 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 10. Repealed**

**Historical Note**

Adopted effective October 18, 1984 (Supp. 84-5). Table 10 repealed, new Table 10 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Table 11. Repealed**

**Historical Note**

Adopted effective October 18, 1984 (Supp. 84-5). Table 11 repealed, new Table 11 adopted effective July 24, 1985 (Supp. 85-4). Repealed by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed again by emergency effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Repealed effective December 22, 1993 (Supp. 93-4).

**Exhibit A. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit B, Table 1. Repealed**

**Historical Note**

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29,



days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit D, Table 3. Repealed**

### Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

## Exhibit D, Table 4. Repealed

### Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit D, Table 5. Repealed**

### Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

## Exhibit D, Table 6. Repealed

### Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective December 22, 1993 (Supp. 93-4). Repealed by emergency rulemaking under A.R.S. § 41-1026 at 10 A.A.R. 2496, effective August 2, 2004 for 180 days (Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

**Exhibit E, Table 1. Repealed**

### Historical Note

Adopted by emergency effective July 6, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency rule adopted again effective September 29, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Permanent rule adopted effective







(Supp. 04-2). Repealed by final rulemaking at 10 A.A.R. 4012, effective November 13, 2004 (Supp. 04-3).

## ARTICLE 2. STATE RETIREMENT DEFINED CONTRIBUTION PROGRAM

*Article 2, consisting of R2-8-201 through R2-8-207, made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2).*

### R2-8-201. Definitions

The following definitions apply to this Article unless otherwise specified:

1. "13th check" means the aggregated amount of the annual annuities awarded to a retired System member as the member's pro rata share of the excess surplus allocated by the Board for an increase in retirement benefits and distributed once a year to a retired System member or, upon election by the retired System member, to the retired System member's surviving beneficiary.
2. "14th check" means the aggregated amount of the annual annuities awarded to a retired System member as the retired System member's pro rata share of the excess surplus due to changes in the interest rate assumption and life expectancy table assumption, allocated by the Board for an increase in retirement benefits distributed once a year to the retired System member or, upon election by the retired System member, to the retired System member's beneficiary.
3. "Actuary" means an individual who is a Fellow of the Society of Actuaries, and is hired and directed by the Board to make actuarial calculations, determinations, valuations, experience studies, recommendations, and other actions directed by the Board.
4. "ASRS" means the same as in A.R.S. § 38-711.
5. "Beneficiary longevity reserve account" means the account established under Laws of 1953 and continued in Section 24 (B) of the Implementing Statute that is used to maintain benefits payable to retired System members and System members' beneficiaries.
6. "Board" means the same as in A.R.S. § 38-711.
7. "Employer" means the same as in A.R.S. § 38-711.
8. "Employer account" means that portion of a non-retired member's System retirement account that contains employer contributions, supplemental credits, and accumulated interest on employer contributions and supplemental credits.
9. "Employer contributions" means the same as in A.R.S. § 38-711.
10. "Excess surplus" means the funds in the beneficiary longevity reserve account that exceed the funded status range and that are subject to allocation by the Board as provided in R2-8-203(A)(3).
11. "Fiscal year" means the same as in A.R.S. § 38-711.
12. "Funded status" means the ratio, expressed as a percentage, of the actuarial value of assets for System members to the total liabilities of the System for future benefits.
13. "Guaranteed account balance" means all System member and employer contributions in a System member's retirement account, not including supplemental adjustments, plus the interest credited annually on those contributions.
14. "Guaranteed benefit" means the portion of a retired system member's or the retired System member's beneficiary's monthly benefit derived from the guaranteed account balance and calculated at the time of retirement.
15. "Implementing Statute" means Arizona Session Laws 1995, Chapter 32, Section 24, as amended by Arizona Session Laws 1999, Chapter 66, Section 1.
16. "Interest" means the assumed actuarial investment earnings rate approved by the Board.
17. "Market value" means an estimated monetary worth of an asset, based on the current demand for the asset and the amount of that type of asset that is available for sale.
18. "Member" means the same as in A.R.S. § 38-711.
19. "Member contributions" means the same as in A.R.S. § 38-711.
20. "Monthly benefit" means the annuitized payment of a retired System member's guaranteed and non-guaranteed account balances.
21. "Non-guaranteed account balance" means the sum of all supplemental adjustments and interest credited on those adjustments.
22. "Non-guaranteed benefit" means:
  - a. The portion of the monthly benefit derived from all supplemental adjustments and interest credited on those adjustments,
  - b. The 13th check, and
  - c. The 14th check
23. "Plan" means the same as "defined benefit plan" in A.R.S. § 38-769, and administered by the ASRS.
24. "Retirement account" means the same as in A.R.S. § 38-771.
25. "Supplemental adjustment" means the amount credited or debited to a non-retired system member's employer account or to a retired System member's non-guaranteed benefit as determined by Section 24 (B) of the Implementing Statute.
26. "System" means the same as "defined contribution plan" as defined in A.R.S. § 38-769, and which is administered by the ASRS.
27. "Total liabilities" means the amount needed to pay all System benefits.

### Historical Note

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2).

### R2-8-202. Expired

### Historical Note

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Amended by emergency rulemaking at 10 A.A.R. 4259, effective September 30, 2004 (Supp. 04-3). Amended by final rulemaking at 10 A.A.R. 4346, effective October 5, 2004 (Supp. 04-3). Section amended and Table 1 repealed by final rulemaking at 13 A.A.R. 4581, effective February 2, 2008 (Supp. 07-4). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

### R2-8-203. Expired

### Historical Note

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

### R2-8-204. Expired

### Historical Note

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**R2-8-205. Expired****Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**R2-8-206. Expired****Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 1765, effective July 14, 2010 (Supp. 10-3).

**R2-8-207. Return of Contributions**

- A.** A System member who elects to receive a return of contributions under A.R.S. § 38-740 is paid as follows:
1. The ASRS shall pay the guaranteed portion of the account balance no sooner than 30 days after the member separates from service, unless earlier payment is otherwise authorized by law;
  2. The ASRS shall pay the non-guaranteed portion of the account balance upon completion of the actuarial valuation for the fiscal year end immediately before the date the member separates from service; and
  3. The ASRS shall pay the entire account balance no later than 90 days after the member separates from service.
- B.** A non-retired member's beneficiary who qualifies for and elects a lump-sum payout under A.R.S. § 38-762, is paid as follows:
1. The ASRS shall pay the guaranteed portion of the account balance upon verification of the member's death and determination of the deceased member's guaranteed portion of the account balance,
  2. The ASRS shall pay the non-guaranteed portion of the account balance upon completion of the actuarial valuation for the fiscal year end immediately before the date of the member's death, and
  3. The ASRS shall pay the entire account balance no later than 90 days after the beneficiary requests the lump-sum payout.
- C.** If the ASRS pays a partial lump sum to a System member at retirement, the proportion of the guaranteed to non-guaranteed funds the ASRS pays to the System member is equal to the proportion of guaranteed to non-guaranteed funds in the System member's entire account.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1962, effective May 4, 2004 (Supp. 04-2).

**ARTICLE 3. RESERVED****ARTICLE 4. PRACTICE AND PROCEDURE BEFORE THE BOARD****R2-8-401. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "Appealable agency action" has the same meaning as in A.R.S. § 41-1092.
2. "Board" has the same meaning as in A.R.S. § 38-711.
3. "Director" means the Director appointed by the Board as provided in A.R.S. § 38-715.
4. "Party" has the same meaning as in A.R.S. § 41-1001.
5. "Person" has the same meaning as in A.R.S. § 41-1001.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1).

**R2-8-402. General Procedures**

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

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1).

**R2-8-403. Request for a Hearing of an Appealable Agency Action**

- A.** A person who is not satisfied with a decision by the Director that is an appealable agency action may file a Request for a Hearing, in writing, with the Director. The request shall include the following:
1. The name and mailing address of the member, employer, or other person filing the request;
  2. The name and mailing address of the attorney for the person filing the request, if applicable;
  3. A concise statement of the reasons for the appeal.
- B.** The person requesting a hearing shall file the Request for a Hearing with the ASRS Office of the Director within 30 days after receiving a decision of the Director and a Notice of an Appealable Agency Action. The date the request is filed is established by the Director's date stamp on the face of the first page of the request.
- C.** Upon receipt of the Request for a Hearing, the ASRS shall notify the Office of Administrative Hearings as required in A.R.S. § 41-1092.03.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1).

**R2-8-404. Board Decisions on Hearings before the Office of Administrative Hearings**

A recommended decision from the Office of Administrative Hearings that is sent to ASRS at least 30 days before the Board's next regular monthly meeting, shall be reviewed by the Board at that monthly meeting. At the monthly meeting, the Board shall render a decision to accept, reject, or modify the findings of fact, conclusions of law and recommendations in whole or in part. If the Board modifies or rejects a recommended decision, the Board shall state the reasons for the modification or rejection. The Board shall deliver the Board's final decision to the Office of Administrative Hearings within five days after the monthly meeting at which the Board made the final decision.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1).

**R2-8-405. Rehearing; Review of a Final Decision**

- A.** Except as provided in subsection (H), any party in an appealable agency action aggrieved by a final decision may file with the Board a written motion for rehearing or review of the final decision specifying the particular grounds not later than 30 days after service of the decision.
- B.** A party may amend a motion for rehearing or review at any time before the Board rules on the motion. A party may file a response within 15 days after the motion or amended motion is filed. The Board may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.

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- C. The Board may grant a rehearing or review of a decision for any of the following causes materially affecting the moving party's rights:
1. Irregularity in the administrative proceedings of the agency or the hearing officer, or any order or abuse of discretion that deprives the moving party of a fair hearing;
  2. Misconduct of the Board, the hearing officer, 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 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; or
  7. That the decision is not justified by the evidence or is contrary to law.
- D. The Board may affirm or modify the decision or grant a rehearing or review to all or any of the parties on all or part of the issues for any of the reasons in subsection (C). An order granting a rehearing or review shall specify with particularity the grounds for the order.
- E. Not later than 10 days after the decision, the Board may, after giving each party notice and an opportunity to be heard, 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 the matter, the Board may grant a motion for rehearing or review for a reason not stated in the motion. In either case, the order granting a rehearing or review shall specify the grounds on which it is granted.
- F. When a motion for rehearing or review is based upon an affidavit, the affidavit shall be filed with the motion. An opposing party may, within 15 days after filing, file an opposing affidavit. The Board may extend the period for filing an opposing affidavit for not more than 20 days for good cause shown or by written stipulation of the parties. The Board may permit a reply affidavit.
- G. The Board shall rule on the motion within 15 days after the response to the motion is filed or if a response is not filed, within five days of the expiration of the response period.
- H. If the Board makes a specific finding that the immediate effectiveness of a particular decision is necessary for the preservation of the public peace, health, and 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 may be made within the time limits permitted for applications for judicial review of the Board's final decisions.
- Historical Note**  
New Section made by final rulemaking at 11 A.A.R. 444, effective January 4, 2005 (Supp. 05-1).
- ARTICLE 5. PURCHASING SERVICE CREDIT**
- R2-8-501. Definitions**  
The following definitions apply to this Article unless otherwise specified:
1. "Active duty" has the same meaning as in 32 U.S.C. 101.
  2. "Active duty termination date" means the day a member:
    - a. Separates from active military duty;
    - b. Is released from active duty-related hospitalization or one year after initiation of active duty-related hospitalization, whichever date is earlier; or
    - c. Dies as a result of active military duty.
  3. "Active member" means the same as in A.R.S. § 38-711.
  4. "Active reserve duty" means participating in required meetings and annual training in a Reserve or National Guard branch of the United States uniformed service.
  5. "Actuarial present value" means an amount in today's dollars of a member's future retirement benefit calculated using appropriate actuarial assumptions and the:
    - a. Member's current years of credited service to the nearest month;
    - b. Member's age to the nearest day;
    - c. Amount of service credit the member wishes to purchase to the nearest month, except for the calculation in R2-8-506(A)(2); and
    - d. Member's current annual compensation.
  6. "ASRS" means the same as in A.R.S. § 38-711.
  7. "ASRS employer" means the same as "employer" in A.R.S. § 38-711.
  8. "Authorized employer representative" means an individual who has been delegated the authority to act on behalf of an ASRS employer to provide the ASRS with information.
  9. "Authorized representative" means an individual who has been delegated the authority to act on behalf of a custodian, trustee, plan administrator, or, if applicable, a member.
  10. "Compensation" means the same as in A.R.S. § 38-769.
  11. "Credited service" means the same as in A.R.S. § 38-711.
  12. "Current annual compensation" means the greater of:
    - a. *Annualized compensation of the full pay period immediately before the date of a request to ASRS to purchase credited service pursuant to section 38-743 or 38-745.*
    - b. *Annualized compensation of the partial year if the member has less than twelve months total credited service on the date of a request to purchase credited service pursuant to section 38-743 or 38-745.*
    - c. *The sum of the twelve months of compensation immediately before the date of a request to ASRS to purchase credited service pursuant to section 38-743 or 38-745.*
    - d. *The sum of the thirty-six months of compensation immediately before the date of a request to ASRS to purchase credited service pursuant to section 38-743 or 38-745 divided by three.*
    - e. *If the member has retired one or more times from ASRS, the average monthly compensation that was used for calculating the member's last pension benefit times twelve. A.R.S. § 38-711(10).*
  13. "Current years of credited service" means the amount of credited service a member has earned or purchased, and the amount of service credit for which an Irrevocable Payroll Deduction Authorization is in effect for which the member has not yet completed payment, but does not include any current requests to purchase service credit for which the member has not yet paid.
  14. "Custodian" means a financial institution that holds financial assets for guaranteed safekeeping.
  15. "Day" means a calendar day, and excludes the:
    - a. Day of the act or event from which a designated period of time begins to run; and
    - b. Last day of the period if a Saturday, Sunday, or official state holiday.

16. "Direct rollover" means distribution of eligible funds made payable to the ASRS as a contribution for the benefit of an eligible member from a retirement plan listed in A.R.S. § 38-747(H)(2) or (H)(3).
17. "Eligible funds" means payments listed in A.R.S. § 38-747(H)(2) and (3).
18. "Eligible member" means an active member of the Plan or a Plan member who is receiving benefits under the Long Term Disability Program established by A.R.S. Title 38, Chapter 5, Article 2.1.
19. "Error" means a typographical mistake, incorrect information, or other inaccuracy, whether intentional or unintentional.
20. "Forms of payment" means check, cashier's check, money order, Irrevocable Payroll Deduction Authorization, direct rollover, trustee-to-trustee transfer, IRA rollover and termination pay distribution.
21. "Forfeited service" means credited service for which the ASRS has returned retirement contributions to the member under A.R.S. § 38-740.
22. "Immediate family member" means:
  - a. A member's spouse or life partner;
  - b. A member's natural, step, or adopted sibling;
  - c. A member's natural, step, or adopted child;
  - d. A member's natural, step, or adoptive parent; or
  - e. An individual for whom the member has legal guardianship.
23. "Indirect IRA rollover" means funds already distributed to the eligible member from a retirement plan listed in A.R.S. § 38-747(H)(3) that are then paid by the eligible member to the ASRS as a contribution for the benefit of the eligible member.
24. "IRA" means an Individual Retirement Account or Annuity under IRC § 408.
25. "IRC" means the Internal Revenue Code.
26. "Irrevocable payroll deduction authorization" means an irrevocable contract between an eligible member, an ASRS employer, and the ASRS that requires the ASRS employer to withhold payments from a member's pay for a specified amount and for a specified number of payments, as provided in A.R.S. § 38-747.
27. "Leave of absence" means the same as in A.R.S. § 38-711.
28. "Life partner" means an individual who lives with a member as a spouse, but without being legally married.
29. "Member" means the same as in A.R.S. § 38-711.
30. "Military service" means active duty or active reserve duty with any branch of the United States uniformed services.
31. "Military service record" means a United States uniformed services document that provides proof of active duty or active reserve duty time, including a military form DD-214 or other military form that provides the following information:
  - a. The member's full name;
  - b. The member's Social Security number;
  - c. Type of discharge the member received;
  - d. Active duty dates, if applicable; and
  - e. Active reserve duty dates, if applicable.
32. "Other public service" means previous employment listed in A.R.S. § 38-743(A).
33. "PDA pay-off letter" means written correspondence from the ASRS to a member that specifies the amount necessary to be paid by the member to complete an Irrevocable Payroll Deduction Authorization and receive the credited service specified in the Irrevocable Payroll Deduction Authorization.
34. "Person" means the same as in A.R.S. § 1-215.
35. "Plan" means the same as "defined benefit plan" in A.R.S. § 38-769, and administered by the ASRS.
36. "Plan Administrator" means the person authorized to represent a specific eligible plan as addressed in IRC § 414(g).
37. "Political subdivision" means the same as in A.R.S. § 38-711.
38. "Political subdivision entity" means the same as in A.R.S. § 38-711.
39. "Presidential Call-up" means a directive from the President of the United States, Cabinet Secretary, or Secretary of any United States uniformed service, initiating active duty for personnel of active military, or active or inactive National Guard and Reserve branches of the United States uniformed services.
40. "Public employer" means the United States government, a state of the United States, a political subdivision of a state of the United States, or a political subdivision entity.
41. "Rollover" means a contribution to the ASRS by an eligible member of an eligible rollover distribution from one or more of the retirement plans listed in A.R.S. § 38-747(H)(2) and (3).
42. "Service credit" means forfeited service under A.R.S. § 38-742, leave of absence under A.R.S. § 38-744, military service and Presidential Call-up service under A.R.S. § 38-745, and other public service under A.R.S. § 38-743 that an eligible member may purchase.
43. "SP invoice" means a written correspondence from the ASRS informing an eligible member of the amount of money required to purchase a specified amount of service credit.
44. "Terminate employment" means to end the employment relationship between a member and an ASRS employer with the intent that the member not return to employment with that ASRS employer.
45. "Termination pay distribution" means an ASRS employer's payment to the ASRS of an eligible member's termination pay to purchase service credit as specified in § 38-747(B)(2).
46. "Three full calendar months" means the first day of the first full month through the last day of the third full month.
47. "Transfer employment" means to terminate employment with one ASRS employer with which a member has an Irrevocable Payroll Deduction Authorization:
  - a. After accepting an offer to work for a new ASRS employer, or
  - b. While working as an active member for a different ASRS employer.
48. "Trustee-to-trustee transfer" means a transfer of assets to the ASRS as authorized in A.R.S. § 38-747(I), from a retirement program listed in R2-8-515(A) from which, at the time of the transfer, a member is not eligible to receive a distribution.
49. "Uniformed services" means the United States Army, Army Reserve, Army National Guard, Navy, Navy Reserve, Air Force, Air Force Reserve, Air Force National Guard, Marine Corps, Marine Corps Reserve, Coast Guard, Coast Guard Reserves, the National Oceanic and Atmospheric Administration, and the Public Health Service.
50. "United States" means the same as in A.R.S. § 1-215.



51. "Window credit" means overpayments made on previously purchased service credit by eligible members of the ASRS as provided by Laws 1997, Ch. 280, § 21, and Laws 2003, Ch. 164, § 3.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4). Amended by final rulemaking at 19 A.A.R. 764, effective June 1, 2013 (Supp. 13-2).

#### **R2-8-502. Request to Purchase Service Credit and Notification of Cost**

- A. An eligible member may request to purchase service credit verbally, in writing, or electronically. The eligible member shall provide the eligible member's mailing address and designate which category of service credit the eligible member is requesting to purchase.
- B. The ASRS shall send a letter acknowledging the request to purchase service credit to the mailing address provided by the eligible member. The ASRS shall provide, with the acknowledgment letter, any form specified in this Article that corresponds to the category of service credit the eligible member requests to purchase and indicate in the acknowledgment letter the deadline for providing supporting documentation of service credit to the ASRS.
- C. Except as provided in R2-8-519(A), the eligible member shall provide documentation of service credit as required by this Article within 90 days of the eligible member's request to purchase service credit. If the ASRS has not received complete and correct documents within 90 days of the request to purchase service credit, the ASRS shall cancel the eligible member's request to purchase service credit. The eligible member may make a new request to purchase service credit.
- D. Upon receipt of the documentation required by this Article from the eligible member and if the eligible member's request to purchase service credit meets the requirements of this Article, the ASRS shall provide the following to the eligible member:
  1. A SP invoice stating the cost to purchase the amount of service credit the member is eligible to purchase and the date payment is due;
  2. A Service Purchase Payment Request form requesting the following information:
    - a. The member's name;
    - b. The member's Social Security number;
    - c. The member's mailing address;
    - d. The member's daytime telephone number;
    - e. ID number listed on the SP invoice;
    - f. Either the number of years or partial years of service credit the member wishes to purchase or the cost for the number of years or partial years of service the member wishes to purchase, not exceeding the years or partial years and cost specified on the SP Invoice;
    - g. If the member elects to pay for the service credit by trustee-to-trustee transfer, IRA rollover, distributed rollover contribution, or direct rollover, the anticipated number of rollovers or transfers;
    - h. If the member elects to pay by Irrevocable Payroll Deduction Authorization, the amount of money the member wishes to pay per pay period;
    - i. If the member elects to pay for the service credit by check, the check number and amount of the check;

- j. If the member elects to pay any cost remaining at retirement or termination of employment with a termination pay distribution, the retirement date or last date of work;
  - k. The member's signature and date of the signature; and
3. Other forms the member may need to complete the request for service credit purchase.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4).

#### **R2-8-503. Requirements Applicable to All Service Credit Purchases**

- A. To purchase service credit at the amount provided in an SP invoice, an eligible member shall purchase the service credit by check or money order, or request an Irrevocable Payroll Deduction Authorization, rollover, transfer or termination pay distribution as specified in this Article, by the due date specified on the SP invoice.
- B. An eligible member may purchase all of the service credit or a portion of the service credit. If the eligible member wishes to purchase only a portion of the service credit, the eligible member shall specify, on the Service Purchase Payment Request form identified in R2-8-502(D)(2):
  1. The dollar amount the eligible member wishes to purchase, up to the amount specified on the SP invoice, or
  2. The number of years or partial years the eligible member wishes to purchase, not exceeding the years or partial years specified on the SP invoice.
- C. If the eligible member elects to purchase only a portion of the service credit, the cost and amount of service credit the eligible member identifies on the Service Purchase Payment Request form is only an estimate and may be more or less than the actual cost or amount of service credit purchased by the eligible member.
- D. The eligible member shall not request to purchase additional service credit based on the SP invoice until the member has completed the purchase of the previously requested portion of service credit or cancel the request as specified in subsection (F).
- E. ASRS shall not consider more than one active request at a time from a member to purchase service credit in a single category. The categories are:
  1. Leave of absence,
  2. Military service,
  3. Presidential Call-up service,
  4. Forfeited service, and
  5. Other public service.
- F. An eligible member may cancel an active request to purchase a specific category of service credit verbally or in writing, and submit a new request in the same category of service credit for a different amount of service credit.
- G. If an eligible member is entitled to a window credit, the eligible member may apply the window credit to purchase service credit. To apply a window credit to a purchase of service credit, the eligible member shall make a request to the ASRS in writing by the due date specified on the SP invoice and include the following information:
  1. The amount the member wants to apply,
  2. The member's signature, and
  3. The date of the member's signature.

- H.** The amount of service credit an eligible member may purchase and the benefits an eligible member may receive are subject to the limitations prescribed in A.R.S. § 38-747(E).
- I.** On or before the due date specified on the SP Invoice, ASRS shall extend the time for an eligible member to respond to an SP invoice as follows:
1. If the member notifies the ASRS of an ASRS error, the time is extended 30 days after the date the ASRS sends notification to the eligible member that the ASRS has corrected the error;
  2. If an ASRS internal review is made of the member's service credit purchase request, the time is extended 30 days after the date ASRS sends notification to the member that the review is completed;
  3. If the member appeals an issue regarding the SP invoice under Article 4 of this Chapter, the time is extended 30 days after the date ASRS sends notification to the member that a decision on the appeal has been made; or
  4. If an unforeseeable event occurs that is outside of the member's control, such as an incapacitating illness of the member or death of an immediate family member, and the member notifies the ASRS of the event, the ASRS shall extend the time by up to six months, after a review of the unforeseeable event to determine the length of the extension.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4).

**R2-8-504. Service Credit Calculation for Purchasing Service Credit**

An eligible member who purchases service credit shall receive one month of credited service for one or more days of service in a calendar month.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2).

**R2-8-505. Restrictions on Purchasing Overlapping Service Credit; Transfers**

- A.** The ASRS shall not permit an eligible member to purchase service credit that, when added to credited service earned in any plan year, results in more than:
1. One year of credited service in any plan year, or
  2. One month of credited service in any one calendar month.
- B.** The restrictions in subsection (A) do not apply to service credit that an eligible member transfers from another retirement system to the ASRS as authorized in A.R.S. § 38-730 or A.R.S. Title 38, Chapter 5, Article 7, whether the eligible member requests the transfer before or after purchasing other service credit.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2).

**R2-8-506. Cost Calculation for Purchasing Service Credit**

- A.** For leave of absence service credit, military service credit, and other public service credit, the ASRS shall calculate, as of the date of the request to purchase service credit:
1. The actuarial present value of the future retirement benefit for the member including the service credit that the eligible member requests to purchase, and

2. The actuarial present value of the future retirement benefit for the member without the service credit that the eligible member requests to purchase.
- B.** The cost for purchasing the service credit that the member requests to purchase is the difference between the actuarial present value in subsection (A)(1) and the actuarial present value in subsection (A)(2).

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2).

**R2-8-507. Required Documentation and Calculations for Forfeited Service Credit**

- A.** An eligible member who requests to purchase service credit for forfeited service under A.R.S. § 38-742 shall provide to the ASRS:
1. The eligible member's:
    - a. Full name and, if applicable, other names used while working for an ASRS employer for which the eligible member is requesting to purchase service credit;
    - b. Mailing address;
    - c. Telephone number, if applicable;
    - d. Social Security number;
  2. The name of each ASRS employer, if known, for which the eligible member is requesting to purchase service credit for forfeited service;
  3. The year the eligible member began working for each ASRS employer and the year the eligible member left each employment, if known; and
  4. The year the eligible member believes the ASRS returned retirement contributions to the member.
- B.** The amount the eligible member shall pay to purchase service credit for previously forfeited service is the amount of retirement contributions that the ASRS returned to the eligible member, plus interest on that amount from the date on the return of retirement contributions check to the date of redeposit at the interest rate determined by the Board as specified in A.R.S. § 38-742.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4).

**R2-8-508. Required Documentation and Calculations for Leave of Absence Service Credit**

- A.** An eligible member may request to purchase service credit for an approved leave of absence from an ASRS employer under A.R.S. § 38-744. To request to purchase service credit for an approved leave of absence the eligible member shall provide to the ASRS:
1. An Approved Leave of Absence form that includes:
    - a. The following information completed by the eligible member:
      - i. The eligible member's full name and, if applicable, other names used while working for the ASRS employer;
      - ii. The eligible member's Social Security number;
      - iii. The eligible member's mailing address;
      - iv. The eligible member's daytime telephone number;
      - v. A statement that the eligible member understands that up to one year of leave of absence service credit may be purchased for each approved leave of absence, if the eligible member returns to work for the employer that

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- approved the leave of absence unless employment could not be resumed because of disability or nonavailability of a position;
- vi. A statement that the eligible member understands that the ASRS uses the actuarial present value calculation method to determine the cost of the service purchase request;
- vii. A statement that the eligible member authorizes the ASRS employer to provide any necessary personal information to ASRS in order to process this request; and
- viii. The member's dated signature; and
- b. The following information completed by the ASRS employer;
  - i. The beginning date and ending date of the approved leave of absence;
  - ii. The date the eligible member returned to work or a statement of why employment was not resumed;
  - iii. Name of the employer;
  - iv. The authorized employer representative's name;
  - v. The authorized employer representative's telephone number and, if applicable, fax number; and
  - vi. The authorized employer representative's dated signature verifying that the approved leave of absence benefited or was in the best interest of the employer; and

2. A copy of the guidelines referenced in A.R.S. § 38-744, if applicable.

- B. The amount the member shall pay to purchase service credit for leave of absence is determined as provided in R2-8-506.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4).

**R2-8-509. Required Documentation and Calculations for Military Service Credit**

- A. An eligible member may request to purchase military service credit under A.R.S. § 38-745(A) and (B). To request to purchase military service credit, the eligible member shall provide to the ASRS:
  - 1. The items listed in R2-8-507(A)(1);
  - 2. A copy of the eligible member's military service record; and
  - 3. A completed, signed, dated, and notarized Affidavit of Military Service form that contains:
    - a. The member's full name;
    - b. The member's Social Security number;
    - c. The branch of the uniformed services the member was in;
    - d. Whether the member was active duty or active reserve duty;
    - e. The years and months by fiscal year that the member was in active duty or active reserve duty for which the member wishes to purchase service credit;
    - f. Acknowledgement that the member has attached:
      - i. Proof of honorable discharge for each type of military service listed on the form; and
      - ii. The member's military service record that supports all of the service listed on the affidavit;
    - g. The following statements of understanding initialed by the member:

- i. I understand that any person who knowingly makes any false statement or who falsifies or permits to be falsified any record of the retirement plan with an intent to defraud the plan is guilty of a class 6 felony per Arizona Revised Statutes Section 38-793;
- ii. I understand this transaction is subject to audit and if any errors or misrepresentations are discovered as a result of this audit, my total credited service with the ASRS will be adjusted as necessary and if I am retired, my retirement benefit will also be adjusted;
- iii. I understand that the service listed on this affidavit does not include time that I either volunteered or was ordered into active duty military service as part of a Presidential Call-up. This service is purchased under Presidential Call-up and requires a Presidential Call-up form to be completed by your employer; and
- iv. I understand that any time I have listed on this affidavit for Reserve or National Guard time reflects the months that I attended at least one drill or assembly for each month listed.

- B. The amount the eligible member pays to purchase military service credit is determined as provided in R2-8-506.

- C. ASRS determines the amount of service credit an eligible member receives for active duty and active reserve duty time by the time listed on the Affidavit of Military Service form, if the service listed is supported by the information contained in the member's military service record.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4).

**R2-8-510. Required Documentation and Calculations for Presidential Call-up Service Credit**

- A. An eligible member or the eligible member's beneficiary who meets the requirements under A.R.S. § 38-745(C) shall receive up to 60 months of Presidential Call-up service under A.R.S. § 38-745(C) through (I). In order to determine the amount of contributions the ASRS employer owes to purchase service credit for Presidential Call-up service, the eligible member's ASRS employer shall provide to the ASRS a copy of the eligible member's military service record and a completed Military Call-up form that includes the following:
  - 1. The member's full name;
  - 2. The member's Social Security number;
  - 3. The start date of Presidential Call-up Service;
  - 4. The end date of Presidential Call-up Service;
  - 5. Whether the member received paid leave while on Presidential Call-up;
  - 6. The date the member returned to work for the ASRS employer;
  - 7. The salary for each fiscal year while the member is on Presidential Call-up, including any salary increases the eligible member would have received had the member not left employment due to Presidential Call-up, if applicable;
  - 8. The ASRS employer's name and address;
  - 9. The name of a contact individual for the ASRS employer, and that individual's business and fax telephone numbers;
  - 10. The contact individual's signature and date of signature;
  - 11. If applicable, the earlier of:

- a. The date that the member was released from the hospital for injuries sustained as a result of participating in a Presidential Call-up; or
  - b. The date that the member was hospitalized for one year for injuries sustained as a result of participating in a Presidential Call-up; and
- 12. A copy of the member's death certificate, if applicable.
- B.** An ASRS employer shall make the request to purchase service credit for Presidential Call-up service within 30 days after the member's active duty termination date.
- C.** The ASRS calculates the amount the ASRS employer pays to purchase Presidential Call-up service by multiplying the eligible member's salary at the time active duty commences, by the contribution rate in effect for the period of active duty, and by the years or partial years of service elapsing from the active duty commencement date through the active duty termination date. Included in the calculation are any salary increases the member would have received if the member had not left work to participate in a Presidential Call-up.
- D.** The ASRS shall send the ASRS employer a statement of cost for purchase of the Presidential Call-up service credit, based on the calculation in subsection (B). Within 90 days from the date on the ASRS statement of cost, the ASRS employer shall pay to the ASRS the amount on the statement. If the ASRS employer fails to make full payment within the 90 days, interest shall accrue on the unpaid balance at the assumed actuarial investment earnings rate approved by the Board in effect on the date of the statement of cost.
- E.** If an ASRS employer deducts retirement and long-term disability contributions from an eligible member's pay while the eligible member is on Presidential Call-up service, the ASRS shall return the contributions to the ASRS employer after the ASRS receives the information in subsection (A).
- F.** If an ASRS employer deducts retirement contributions from an eligible member's pay while the eligible member is on Presidential Call-up service, and the eligible member does not return to the ASRS employer after separation from active military service, the ASRS shall apply the retirement contributions to the member's credited service.
- 8. If the other public service employer was a non-ASRS employer, a statement of whether the member participated in the non-ASRS employer's retirement plan;
- 9. If the member participated in a non-ASRS public service employer's retirement plan, the name of the retirement plan, identifying whichever one of the following applies:
  - a. The approximate date the member took a return of retirement contributions;
  - b. The plan is non-contributory and the member is not eligible for benefits from the plan; or
  - c. That, if not using all of the retirement contributions as a pre-tax rollover, the member will request a return of retirement contributions and forfeit all rights to any benefits from the plan and provide the ASRS with documentation that the member has forfeited all rights to benefits from the plan no later than the due date specified on the SP invoice; and
- 10. Acknowledgement that:
  - a. Knowingly making a false statement or falsifying or permitting falsification of any record of the ASRS with an intent to defraud ASRS is a Class 6 felony, pursuant to A.R.S. § 38-793;
  - b. The service purchase transaction is subject to audit and if any errors are discovered, the ASRS shall adjust a member's total credited service with the ASRS, or if the member is already retired, adjustments to the member's credited service will affect the member's retirement benefit; and
  - c. If an audit determines that the member is eligible for a benefit from the other public service employer's retirement plan, the member is required to take necessary steps to forfeit the benefit, and if the forfeiture is not completed within 90 days of being notified of the audit results, the service credit purchase listed on this application will be revoked and any funds paid to purchase the service credit will be refunded to the member.
- B.** The amount the member shall pay to purchase other public service credit is determined as provided in R2-8-506.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4).

#### R2-8-511. Required Documentation and Calculations for Other Public Service Credit

- A.** An eligible member who requests to purchase other public service credit under A.R.S. § 38-743 shall provide to the ASRS a completed Affidavit of Other Public Service form, signed and dated by the member, and notarized, that includes the following:
  - 1. The member's full name;
  - 2. The member's Social Security number;
  - 3. Other names used by the member during employment with the other public service employer, if applicable;
  - 4. The name and mailing address of the other public service employer;
  - 5. The position the member held while working for the other public service employer;
  - 6. A contact name and telephone number of an individual in the other public service employer's human resources department who can verify employment, if known;
  - 7. The years and months by fiscal year of other public service the member worked and wishes to purchase;

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4).

#### R2-8-512. Purchasing Service Credit by Check, Cashier's Check, or Money Order

- A.** An eligible member may purchase service credit by check, cashier's check, or money order.
- B.** Within 30 days of the issue date on the SP invoice or PDA payoff letter, the member shall ensure that the ASRS receives the completed Service Purchase Payment Request form with the information specified in R2-8-502(D)(2) and a check, cashier's check, or money order made to the order of the Arizona State Retirement System in the amount to purchase the requested service credit.
- C.** If an eligible member purchases service credit by check, cashier's check, or money order in conjunction with one or more rollovers, trustee-to-trustee transfers, or termination pay, the member shall make payment within 30 days after the date the ASRS sends written confirmation that the ASRS received the final rollover, trustee-to-trustee transfer, or termination pay payment.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by

final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4).

**R2-8-513. Purchasing Service Credit by Irrevocable Payroll Deduction Authorization**

- A.** An eligible member may purchase service credit by Irrevocable Payroll Deduction Authorization.
- B.** By the due date specified on the SP invoice, the member shall ensure that the ASRS receives the completed Service Purchase Payment Request form with the information specified in R2-8-502(D)(2).
- C.** If the eligible member elects to pay for service credit by Irrevocable Payroll Deduction Authorization, ASRS shall prepare an Irrevocable Payroll Deduction Authorization and send it to the eligible member for signature. The member shall ensure that the ASRS receives the signed Irrevocable Payroll Deduction Authorization within 30 days after the date on the Irrevocable Payroll Deduction Authorization. The signed Irrevocable Payroll Deduction Authorization becomes irrevocable upon receipt by the ASRS.
- D.** At the time the eligible member signs the Irrevocable Payroll Deduction Authorization the eligible member may elect to use termination pay towards the balance of the Irrevocable Payroll Deduction Authorization if the eligible member terminates employment. If the eligible member chooses this option, the eligible member shall complete the Termination Pay Addendum to the Irrevocable Payroll Deduction Authorization and return it to the ASRS along with the remainder of the Irrevocable Payroll Deduction Authorization that includes the following:
  - 1.** A statement that the member:
    - a.** Understands and agrees that the member must continue working at least three full calendar months after the date of submission of the form before termination pay may be used on a pre-tax basis;
    - b.** Understands that if the termination payment exceeds the balance owed on the Irrevocable Payroll Deduction Authorization, the overage will be returned to the ASRS employer to be distributed to the member; and
    - c.** Elects to irrevocably agree to have termination pay that may be payable to the member upon termination of employment sent to the ASRS on a pre-tax basis and used toward any remaining balance of the Irrevocable Payroll Deduction Authorization if all scheduled payroll deductions have not been completed upon termination of service; and
  - 2.** A statement that either all termination pay or a specified amount of termination pay is to be applied to the balance of the Irrevocable Payroll Deduction Authorization.
- E.** The ASRS shall:
  - 1.** Charge interest on the unpaid balance at the assumed actuarial investment earnings rate approved by the Board in effect at the time the authorization was entered into;
  - 2.** Limit the payroll deduction time period to a maximum of 20 years; and
  - 3.** Require a minimum payment of \$10.00 per payroll period, or payment in an amount to purchase at least .001 year of service credit per payroll period, whichever is greater.
- F.** The ASRS shall transmit the Irrevocable Payroll Deduction Authorization to the active member's ASRS employer, and the ASRS employer shall implement the deduction on the first pay period after receiving the Irrevocable Payroll Deduction Authorization.
- G.** If a deduction is not made under an Irrevocable Payroll Deduction Authorization within six months after the member signs the authorization, the authorization lapses and the member may make another request, which is recalculated based on the new request date unless the failure to begin deductions is due to an ASRS error.
- H.** A period of leave of absence, long-term disability, or Presidential Call-up shall not cancel the Irrevocable Payroll Deduction Authorization. The ASRS employer shall resume deductions immediately upon the member's return to that employment. The period during which the member is on leave of absence, on long-term disability, or leaves work because of a Presidential Call-up is not included in the 20-year payment time limitation under subsection (E)(2). If the member does not return to active working status, whether due to termination of employment or retirement, the member may elect to purchase the balance of unpaid service under the Irrevocable Payroll Deduction Authorization at the time of termination or retirement as specified in this Section.
- I.** Deductions made pursuant to an Irrevocable Payroll Deduction Authorization continue until the:
  - 1.** Irrevocable Payroll Deduction Authorization is completed;
  - 2.** Member retires, whether or not the member continues employment as allowed in A.R.S. §§ 38-766.01 and 38-764(J); or
  - 3.** Member terminates all ASRS employment without transferring employment.
- J.** If a member retires or terminates employment from all ASRS employers without transferring employment as stated in R2-8-513.01 before all deductions are made as authorized by the Irrevocable Payroll Deduction Authorization, the member's purchase of service credit is canceled unless the member notifies the ASRS in writing during the period 14 days before to 14 days after retirement or termination from all ASRS employment of the intent to purchase the remaining amount due in a lump sum.
- K.** When the member notifies ASRS of retirement or termination from all ASRS employment and requests to pay off the Irrevocable Payroll Deduction Authorization, the ASRS shall send the member a PDA pay-off letter to the mailing address given by the member. The ASRS shall calculate the amount owed by the member and reduce the amount owed by any excess interest that the member has paid.
- L.** Within 30 days of the date of the PDA pay-off letter, the member shall ensure that the ASRS receives the completed SP Payment Request form with the information specified in R2-8-502(D)(2). The member may purchase the remaining service credit by one or more of the following methods:
  - 1.** By check, cashier's check, or money order made out to the ASRS under R2-8-512;
  - 2.** By making a request to the ASRS for a rollover or transfer under R2-8-514 and completing the rollover or transfer within 90 days of the date of the PDA pay-off letter; or
  - 3.** By termination pay distribution under R2-8-519, if the member authorized this option at the time the member signed the Irrevocable Payroll Deduction Authorization.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4).

**R2-8-513.01. Irrevocable Payroll Deduction Authorization and Transfer of Employment to a Different ASRS Employer**

- A.** An Irrevocable Payroll Deduction Authorization continues if a member transfers employment.

- B.** An Irrevocable Payroll Deduction Authorization ends if a member terminates employment without having accepted an offer to work for a new ASRS employer, and the member is not already an active member working for a different ASRS employer. The member shall then pay off the Irrevocable Payroll Deduction Authorization as specified in R2-8-513(J).
- C.** If a retirement contribution is due from the new ASRS employer within 120 days from the member's termination date with the previous employer, there is a rebuttable presumption that there is a transfer of employment. If a retirement contribution is not received within 120 days, the Irrevocable Payroll Deduction Authorization terminates.

#### Historical Note

New Section made by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4).

#### R2-8-513.02 Termination Date

For the purpose of an Irrevocable Payroll Deduction Authorization, the date a member is considered terminated from an ASRS employer is:

1. For a member terminating employment, the member's last pay period end date with that ASRS employer;
2. For a member on Presidential Call-up who does not return to the same ASRS employer:
  - a. Ninety days from the date of separation from Presidential Call-up service;
  - b. Ninety days from the date released from the hospital, if injured while on Presidential Call-up service;
  - c. The date the member has been hospitalized for one year for injuries sustained as a result of participating in a Presidential Call-up; or
  - d. The date of the member's death as a result of participating in a Presidential Call-up;
3. For a member on leave of absence without pay who does not return to the same ASRS employer, the date the ASRS employer required the member to return to work;
4. For a member who is unable to work because of a disability, the later of:
  - a. The date the member's request for long-term disability benefits are denied;
  - b. The date the member no longer has sick leave and annual leave; or
  - c. For a member on long-term disability who does not return to the same ASRS employer or transfer employment, the date long-term disability benefits are terminated.

#### Historical Note

New Section made by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4).

#### R2-8-514. Purchasing Service Credit by Direct Rollover

- A.** An eligible member may purchase service credit or pay off an Irrevocable Payroll Deduction Authorization by direct rollover at retirement or termination of employment without transferring employment.
- B.** By the due date specified on the SP invoice, the member shall ensure that the ASRS receives the completed Service Purchase Payment Request form with the information specified in R2-8-502(D)(2).
- C.** Upon receipt of the completed Service Purchase Payment Request form, the ASRS shall provide a Direct Rollover/Transfer Certification to Purchase Service Credit form, if the ASRS has not already provided the member with the form.
- D.** The member shall ensure that the ASRS receives the Direct Rollover/Transfer Certification to Purchase Service Credit

form completed by the member and the plan making the distribution within 90 days after the issue date of the SP Invoice.

- E.** The information requested on the Direct Rollover/Transfer Certification to Purchase Service Credit form includes:
1. Member's full name;
  2. Member's Social Security number;
  3. Member's mailing address;
  4. Member's daytime telephone number;
  5. The amount of each rollover or transfer, if applicable;
  6. The account number of each plan, if applicable;
  7. The member's signature certifying that the member understands the requirements, limitations, and entitlements for the rollover/transfer that is being used to purchase service credit, and has read and understands the Direct Rollover/Transfer Certification to Purchase Service Credit form and any accompanying instructions and information sheets;
  8. The date the member signs the form;
  9. The authorized representative's name and title;
  10. The authorized representative's address;
  11. The authorized representative's telephone number;
  12. Certification by the authorized representative that:
    - a. The plan is either:
      - i. A qualified pension, profit sharing, or 401(k) plan described in IRC § 401(a), or a qualified annuity plan described in IRC § 403(a);
      - ii. A deferred compensation plan described in IRC § 457(b) maintained by a state of the United States, a political subdivision of a state of the United States, or an agency or instrumentality of a state of the United States;
      - iii. An annuity contract described in IRC § 403(b); or
      - iv. An IRA described in A.R.S. § 38-747(H)(3);
    - b. The rollover/transfer specified on the form from which the pre-tax funds are being rolled over or transferred is intended to satisfy the requirements of the applicable section of the Internal Revenue Code;
    - c. The authorized representative is not aware of any plan provision or any other reason that would cause the plan/IRA not to satisfy the applicable section of the Code; and
    - d. The funds will be sent to the ASRS as a direct plan rollover, IRA rollover, or a trustee-to-trustee transfer; and
  13. The date and signature of the authorized representative.
- F.** The ASRS shall provide the member with written notification regarding the eligibility of the rollover.
- G.** The member shall contact the plan administrator to have the funds distributed and transferred to the ASRS. Except as provided in subsection (H), unless the ASRS receives a check for the correct amount from the plan within 90 days of the issue date on the SP invoice, the ASRS shall cancel the request to purchase service credit as specified in R2-8-502(C).
- H.** At the written request of the member, the ASRS shall provide an extension of 60 days in which the check may be received by the ASRS from the plan at the written request of the member, if:
1. The member has followed the procedure in this Article for requesting to purchase service credit,
  2. The member has responded to the ASRS correspondence within the time-frame set forth in this Article,
  3. The eligible plan has not provided to the ASRS the check to pay for the requested service credit purchase within 90 days of the date of the SP invoice, and

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4. The member makes the written request for extension before expiration of the 90 days.
- I. The member shall ensure that the ASRS receives a check from the plan, made payable to the ASRS, for an amount that does not exceed the amount specified on the SP Invoice.
- J. If the payment from the eligible plan exceeds the amount specified on the SP Invoice, the ASRS shall return the entire payment to the member.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4).

**R2-8-515. Purchasing Service Credit by Trustee-to-Trustee Transfer**

- A. An eligible member may purchase service credit or pay off an Irrevocable Payroll Deduction Authorization at retirement or termination of employment without transferring employment by a trustee-to-trustee transfer if the member participates in:
  1. A deferred compensation plan described in IRC § 457 that is maintained by:
    - a. The state of Arizona;
    - b. A political subdivision, agency, or instrumentality of the state of Arizona; or
    - c. A political subdivision entity of the state of Arizona;
  2. An annuity contract described in IRC § 403(b); or
  3. A retirement program qualified under IRC § 401(a) or 403(a).
- B. By the due date specified on the SP invoice, the ASRS shall receive from the member the completed Service Purchase Payment Request form described in R2-8-502(D)(2).
- C. Upon receipt of the completed Service Purchase Payment Request form, the ASRS shall provide a Direct Rollover/Transfer Certification to Purchase Service Credit form, if the ASRS has not already provided the member with the form.
- D. The member shall ensure that the member and the plan administrator complete the Direct Rollover/Transfer Certification to Purchase Service Credit form, containing all of the applicable information identified in R2-8-514(E), and ensure that the ASRS receives the form within 90 days after the issue date on the SP Invoice.
- E. The ASRS shall provide the member with written notification regarding the eligibility of the transfer.
- F. The member shall contact the plan administrator to have the funds transferred to the ASRS. Except as provided in subsection (G), unless the ASRS receives the check for the correct amount from the plan within 90 days of the issue date on the SP invoice, the ASRS shall cancel the request to purchase service credit as specified in R2-8-502(C).
- G. The ASRS shall provide an extension of 60 days in which the check may be received by the ASRS from the plan at the written request of the member, if:
  1. The member has followed the procedure under this Article for requesting to purchase service credit,
  2. The member has responded to the ASRS correspondence within the time-frame set forth in this Article,
  3. The eligible plan has not provided to the ASRS the check to pay for the requested service credit purchase within 90 days of the date of the SP invoice, and
  4. The member makes the written request for extension before expiration of the 90 days.
- H. The member shall ensure that the ASRS receives a check from the plan, made payable to the ASRS, for an amount that does not exceed the amount specified on the SP Invoice.

- I. If the payment from the eligible plan exceeds the amount specified on the SP Invoice, the ASRS shall return the entire payment to the member and notify the member of the correct amount due.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4).

**R2-8-516. Purchasing Service Credit by Indirect IRA Rollover**

- A. An eligible member may purchase service credit, or pay off an Irrevocable Payroll Deduction Authorization at retirement or termination of employment without transferring employment, by an indirect IRA rollover if the rollover purchase is completed within 60 days of the date of distribution of funds from the IRA account, as required by IRC § 408(d)(3)(A). The 60-day time limitation is exclusive of any other time limitations prescribed in this Article and the ASRS shall not extend the 60-day period.
- B. By the due date specified on the SP invoice, the member shall ensure that the ASRS receives the completed Service Purchase Payment Request form described in R2-8-502(D)(2).
- C. Upon the receipt of the completed Service Purchase Payment Request form and upon the member's request, the ASRS shall provide to the member an Indirect IRA Rollover Contribution form. The member shall complete the Indirect IRA Rollover Contribution form and ensure that the ASRS receives the form within 90 days after the issue date on the SP Invoice, along with:
  1. A copy of the distribution statement or check stub identifying it as an IRA distribution, showing the date of distribution and amount distributed; or
  2. The distribution check endorsed by the member made payable to the ASRS with documentation that it is an IRA distribution.
- D. The information requested on the Indirect IRA Rollover Contribution form includes:
  1. The member's full name,
  2. The member's Social Security number,
  3. The member's mailing address,
  4. The member's daytime telephone number,
  5. The member's signature certifying that the member understands the statements on the form regarding the distribution the member has received from the IRA and the requirements for an IRA rollover to the ASRS and agrees to the statements, and
  6. The date the member signs the form.
- E. The ASRS shall provide the member with written notification regarding the eligibility of the rollover contribution.
- F. After receiving notice from the ASRS that the rollover is an eligible rollover contribution, if the member has not sent payment for the purchase of service credit, the member shall submit payment for the service credit purchase. The member shall make payment by:
  1. The distribution check from the IRA made payable to the member and endorsed by the member to make it payable to the ASRS; or
  2. Direct payment by the member by check or money order to the ASRS, after the IRA distribution is deposited to the member's account.
- G. Except as provided in subsection (H), unless the ASRS receives payment from the member within 90 days of the issue date on the SP invoice, the ASRS shall cancel the request to purchase service credit as specified in R2-8-502(C).

- H.** The ASRS shall provide an extension of 60 days in which the check may be received by the ASRS under subsection (G) at the written request of the member, if:
1. The member has followed the procedure under this Article for requesting to purchase service credit,
  2. The member has responded to the ASRS correspondence within the time-frame set forth in this Article,
  3. The eligible plan has not provided the member with the check to pay for the requested service credit purchase within 90 days of the date of the SP invoice, and
  4. The member makes the written request for extension before expiration of the 90 days.
- I.** The member shall ensure that the ASRS receives a check made payable to the ASRS for an amount that does not exceed the amount specified on the SP Invoice.
- J.** If the payment exceeds the amount specified on the SP Invoice, the ASRS shall return the entire payment to the member.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4).

#### **R2-8-517. Purchasing Service Credit by Distributed Rollover Contribution**

- A.** An eligible member may purchase service credit with a distribution from a prior employer's eligible plan that has already been distributed to the member if the rollover purchase is completed within 60 days of the date of distribution to the member, as required by IRC §§ 402(c)(3)(A), 403(b)(8)(B), and 457(e)(16)(B). The 60-day time limitation is exclusive of any other time limitations prescribed in this Article, and the ASRS shall not extend the 60-day period. Eligible plans are:
1. A pension, profit sharing, or other qualified plan described in IRC § 401(a) and (k);
  2. A qualified annuity plan described in IRC § 403(a);
  3. A deferred compensation plan described in IRC § 457 and maintained by a state of the United States, or a political subdivision, agency, or instrumentality of a state of the United States; and
  4. A tax deferred annuity described in IRC § 403(b).
- B.** By the due date specified on the SP invoice, the member shall ensure that the ASRS receives the completed Service Purchase Payment Request form described in R2-8-502(D)(2).
- C.** When the ASRS receives the completed Service Purchase Payment Request form and upon the member's request, the ASRS shall provide a Certification by Eligible Plan Rollover Contribution form and Rollover Contribution form.
- D.** The information requested on the Certification by Eligible Plan Rollover Contribution form includes:
1. The member's dated signature;
  2. Member's full name;
  3. Member's Social Security number;
  4. Member's mailing address;
  5. Certification by the plan administrator that the plan is one of the plans described in subsection (A);
  6. Certification by the plan administrator that:
    - a. If the plan is described in either IRC § 401(a) or 403(a), the plan has received a determination letter from the Internal Revenue Service indicating that the plan is qualified under either IRC § 401(a) or 403(a);
    - b. If the plan is described in either IRC § 401(a) or 403(a), but has not received a determination letter from the Internal Revenue Service, the plan satisfies the requirements of IRC § 401(a) or 403(a) or is intended to satisfy the requirements of IRC § 401(a) or 403(a) and the plan administrator is not aware of any plan provision or any other reason that would disqualify the plan; or
- E.** The information requested on the Rollover Contribution form includes:
1. The member's Social Security number;
  2. The member's full name;
  3. The member's mailing address;
  4. The member's daytime telephone number;
  5. The member's signature certifying that:
    - a. The member has read the statements on the Rollover Contribution form regarding requirements for a rollover contribution, understands all the statements, and believes the statements, certifications, and any documents attached to the form to be true and correct to the best of the member's knowledge and belief; and
    - b. The member understands that:
      - i. The ASRS assumes no responsibility for ensuring that the member makes a timely rollover contribution to the ASRS or that the amount rolled over constitutes a valid rollover contribution;
      - ii. The member accepts full responsibility for ensuring that the rollover contribution is an eligible rollover contribution before making the contribution to the ASRS;
      - iii. If the ASRS accepts the rollover contribution and it is later determined that the contribution was an invalid rollover contribution, the ASRS will distribute the invalid contribution directly to the member; and
      - iv. Any invalid rollover contributions returned to the member may decrease the member's benefits and the Internal Revenue Service and state taxing authorities may require the member to pay taxes, penalties, and interest on the returned contributions; and
  6. The date the member signed the form.
- F.** The member shall ensure that the ASRS receives the Certification by Eligible Plan Rollover Contribution form signed and dated by the plan administrator, the Rollover Contribution form signed and dated by the member, and a copy of the distribution statement showing the:
1. Date of the distribution;
  2. Amount of the distribution; and
  3. Amount of taxes withheld, if any.



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- G.** The ASRS shall provide the member with written notification regarding the eligibility of the rollover.
- H.** The member shall make payment by:
1. The distribution check from the eligible plan made payable to the member and endorsed by the member to make it payable to the ASRS; or
  2. Direct payment by the member by check or money order to the ASRS, after the eligible plan distribution is deposited to the member's personal financial account.
- I.** Except as provided in subsection (J), unless the ASRS receives the check from the plan within 90 days of the issue date on the SP invoice, the ASRS shall cancel the request to purchase service credit as specified in R2-8-502(C).
- J.** At the written request of the member, the ASRS shall provide an extension of 60 days in which the check may be received by the ASRS from the plan under subsection (I), if:
1. The member has followed the procedure under this Article for requesting to purchase service credit,
  2. The member has responded to the ASRS correspondence within the time-frame set forth in this Article,
  3. The eligible plan has not provided to the member with the check to pay for the requested service credit purchase within 90 days of the date of the SP invoice, and
  4. The member makes the written request for extension before expiration of the 90 days.
- K.** The member shall ensure that the ASRS receives a check, made payable to the ASRS, for an amount that does not exceed the amount specified in the written notification identified in subsection (G).
- L.** If the payment from the eligible plan exceeds the amount specified in the written notification identified in subsection (G) the ASRS shall return the entire payment to the member.
- Historical Note**
- New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4).
- R2-8-518. Repealed**
- Historical Note**
- New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4). Repealed by final rulemaking at 18 A.A.R. 3130, effective January 6, 2013 (Supp. 12-4).
- R2-8-519. Purchasing Service Credit by Termination Pay Distribution**
- A.** To purchase service credit using termination pay distribution, an eligible member shall, no more than six months before the date the eligible member plans to retire or terminate employment, request to purchase service credit as specified in R2-8-502 and specify that the member wants to use termination pay distribution to pay for the service credit. Upon receipt of the acknowledgement letter identified in R2-8-502, the eligible member shall provide documentation for service credit as required by this Article, within 30 days of the eligible member's request to purchase service credit.
- B.** Upon receipt of the documentation required by this Article from the eligible member and if the eligible member's request to purchase service credit meets the requirements of this Article, the ASRS shall provide a:
1. SP invoice stating the cost to purchase the requested amount of service credit and the date the payment is due, and
  2. Service Purchase Payment Request form as described in R2-8-502(D)(2).
- C.** By the due date specified on the SP invoice, the member shall ensure that the ASRS receives the completed Service Purchase Payment Request form.
- D.** Upon receipt of the Service Purchase Request form, if the member indicates the member wishes to purchase service credit by termination pay distribution, the ASRS shall send the member a Termination Pay Authorization for the Purchase of Service Credit form to complete and return within the time limitation specified in subsection (E) that includes:
1. Member's full name,
  2. Member's Social Security number,
  3. Member's daytime telephone number,
  4. The Request ID number listed on the SP invoice,
  5. Name of ASRS employer,
  6. Whether the member elects to use all termination pay or a specific amount of termination pay to purchase service credit,
  7. Signature of the member, certifying that the member understands that:
    - a. The member is required to continue working at least three full calendar months after the date the member submits the Termination Pay Authorization for the Purchase of Service Credit form before termination pay may be used on a pre-tax basis;
    - b. If the member terminates employment more than six months after the date on the SP invoice, the member may purchase the service credit at a newly calculated rate and possibly at a higher cost;
    - c. The Termination Pay Authorization for the Purchase of Service Credit form is binding and irrevocable;
    - d. The member's employer is required to make payment directly to the ASRS after mandatory deductions are made, and the member does not have the option of receiving the funds directly from the employer;
    - e. The ASRS shall apply service credit to the member's account upon the receipt of payments authorized by the member by the Termination Pay Authorization for the Purchase of Service Credit form;
    - f. If the member elects to purchase with termination pay only a portion of the service credit that the member is entitled to purchase, the member may be eligible to use other forms of payment to purchase additional service credit. However, using other forms of payment to purchase additional service credit does not alter, amend, or revoke the terms of the Termination Pay Authorization for the Purchase of Service Credit form;
    - g. It is the member's responsibility to ensure that the member's employer properly deducts termination pay, as provided the Termination Pay Authorization for the Purchase of Service Credit form; and
    - h. The amount of termination pay the member is allowed to apply to purchase service credit is subject to federal laws.
- E.** In addition to the other time limitations in this Section, to apply termination pay to a service purchase the eligible member shall complete and sign the Termination Pay Authorization for the Purchase of Service Credit form, and the member shall ensure that the ASRS receives the Termination Pay Authorization for the Purchase of Service Credit form at least three full calendar months before the member retires or terminates employment.

- F. The ASRS shall not apply a termination pay distribution to a service credit purchase covered by an Irrevocable Payroll Deduction Authorization in effect at the time of termination unless the eligible member signed a Termination Pay Addendum to the Irrevocable Payroll Deduction Authorization specified in R2-8-513(D) at the time the member signed the Irrevocable Payroll Deduction Authorization.
- G. If a member elects to use all of the member's available termination pay to purchase service credit, ASRS shall not apply any other form of payment to the service credit purchase until the ASRS receives the termination pay.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4).

#### R2-8-520. Termination of Employment and Request Return of Retirement Contributions or Death of Member While Purchasing Service Credit by an Irrevocable Payroll Deduction Authorization

- A. If a member terminates employment without transferring employment as specified in R2-8-513.01 while purchasing service credit by an Irrevocable Payroll Deduction Authorization and requests return of retirement contributions, the ASRS shall return any payments made for the purchase of service credit including interest earned on those payments as determined by the Board.
- B. If a member dies while purchasing service credit, the ASRS shall credit the member's account with:
1. The service credit for which the ASRS received payment before the member's death,
  2. Interest earned on payment through the date of distribution at the valuation rate established by the Board, and
  3. All service purchase payments.
- C. If a member dies while purchasing service credit, the ASRS shall not permit the survivor to purchase the remaining balance.
- D. The ASRS shall not refund interest charged as part of an Irrevocable Payroll Deduction Authorization as specified in R2-8-513(E)(1).

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 4667, effective December 5, 2006 (Supp. 06-4).

#### R2-8-521. Adjustment of Errors

- A. If the ASRS determines an error has been made in the information provided by the member or in the calculations made by the ASRS, the ASRS shall make an adjustment, including, but limited to, increasing or decreasing a member's total credited service with the ASRS and increasing or decreasing the payment amount.
- B. If the ASRS determines that a member is receiving or is eligible to receive retirement benefits from another public employee retirement system that makes the member ineligible to purchase service credit for the same period, the ASRS shall revoke that purchase of service credit, and return any payments made, less any interest payments made, if applicable.
- C. The ASRS shall notify the member in writing of any adjustments.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 2640, effective June 30, 2005 (Supp. 05-2).

## ARTICLE 6. PUBLIC PARTICIPATION IN RULEMAKING

### R2-8-601. Definitions

The following definitions apply to this Article unless otherwise specified:

1. "ASRS" has the same meaning as in A.R.S. § 38-711.
2. "Day" means a calendar day, and excludes the:
  - a. Day of the act or event from which a designated period of time begins to run; and
  - b. Last day of the period if a Saturday, Sunday, or official state holiday.
3. "Rulemaking record" means a file the ASRS maintains as specified in A.R.S. § 41-1029.
4. "Oral proceeding" means a public gathering the ASRS holds for the purpose of receiving comment and answering questions about a proposed rule as specified in A.R.S. § 41-1023.
5. "Presiding officer" means an individual selected by the ASRS Director to oversee oral proceedings.
6. "Substantive policy statement" has the same meaning as in A.R.S. § 41-1001.

#### Historical Note

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1).

### R2-8-602. Reviewing Agency Rulemaking Record and Directory of Substantive Policy Statements

Except on a state holiday, an individual may review a rulemaking record or the directory of substantive policy statements at the Phoenix office of the ASRS, Monday through Friday, from 8:00 a.m. until 5:00 p.m.

#### Historical Note

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1).

### R2-8-603. Petition for Rulemaking

- A. An individual submitting a petition to the ASRS to make or amend a rule under A.R.S. § 41-1033 shall include the following in the petition:
1. The name and current address of the individual submitting the petition;
  2. An identification of the rule to be made or amended;
  3. The suggested language of the rule;
  4. The reason why a new rule should be made or a current rule should be amended with supporting information, including:
    - a. An identification of the persons who would be affected by the rule and how the persons would be affected; and
    - b. If applicable, statistical data with references to attached exhibits;
  5. The signature of the individual submitting the petition; and
  6. The date the individual signs the petition.
- B. The ASRS shall send a written notice of the ASRS's decision regarding the Petition for Rulemaking to the individual within 30 days of receipt of the petition.

#### Historical Note

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1).

### R2-8-604. Review of a Rule, Agency Practice, or Substantive Policy Statement

- A. An individual submitting a petition to the ASRS under A.R.S. § 41-1033 requesting that the ASRS review an agency practice or substantive policy statement that the individual alleges constitutes a rule shall include the following in the petition:

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1. The name and current address of the individual submitting the petition;
  2. The reason the individual alleges that the agency practice or substantive policy statement constitutes a rule;
  3. The signature of the individual submitting the petition, and
  4. The date the individual signs the petition.
- B.** The individual who submits a petition under subsection (A) shall attach a copy of the substantive policy statement or a description of the agency practice to the petition.
- C.** The ASRS shall send a written notice of the ASRS's decision regarding the petition to the individual within 30 days of receipt of the petition.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1).

**R2-8-605. Objection to Rule Based Upon Economic, Small Business and Consumer Impact**

- A.** An individual submitting an objection to a rule based upon the economic, small business and consumer impact under A.R.S. § 41-1056.01 shall include the following in the objection:
1. The name and current address of the individual submitting the objection;
  2. Identification of the rule;
  3. Either evidence that the actual economic, small business and consumer impact:
    - a. Significantly exceeded the impact estimated in the economic, small business and consumer impact statement submitted during the making of the rule with supporting information attached as exhibits; or
    - b. Was not estimated in the economic, small business and consumer impact statement submitted during the making of the rule and that actual impact imposes a significant burden on persons subject to the rule with supporting information attached as exhibits;
  4. The signature of the individual submitting the objection; and
  5. The date the individual signs the objection.
- B.** The ASRS shall respond to the objection as specified in A.R.S. § 41-1056.01(C).

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1).

**R2-8-606. Oral Proceedings**

- A.** An individual requesting an oral proceeding under A.R.S. § 41-1023(C) shall submit a written request to the ASRS that includes:
1. The name and current address of the individual making the request;
  2. If applicable, the name of the public or private organization, partnership, corporation or association, or the name of the governmental entity the individual represents; and
  3. Reference to the proposed rule including, if known, the date and issue of the Arizona Administrative Register in which the Notice of Proposed Rulemaking was published.
- B.** The ASRS shall record an oral proceeding by either electronic or stenographic means and any CDs, cassette tapes, transcripts, lists, speaker slips, and written comments received shall become part of the official record.
- C.** A presiding officer shall perform the following acts on behalf of the ASRS when conducting an oral proceeding as prescribed under A.R.S. § 41-1023:

1. Provide a method for individuals who attend the oral proceeding to voluntarily note their attendance;
  2. Provide a speaker slip that includes space for:
    - a. An individual's name,
    - b. The person the individual represents, if applicable,
    - c. The rule the individual wishes to comment on or has a question about, and
    - d. The approximate length of time the individual wishes to speak;
  3. Open the proceeding by identifying the rules to be considered, the location, date, time, purpose of the proceeding, and the agenda;
  4. Explain the background and general content of the proposed rulemaking;
  5. Provide for public comment as specified in A.R.S. § 41-1023(D); and
  6. Close the oral proceeding by announcing the location where written public comments are to be sent and specifying the close of record date and time.
- D.** A presiding officer may limit comments to a reasonable time period, as determined by the presiding officer. Oral comments may be limited to prevent undue repetition.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1).

**R2-8-607. Petition for Delayed Effective Date**

- A.** An individual who wishes to delay the effective date of a rule under A.R.S. § 41-1032 shall file a petition with the ASRS prior to the proposed rule's close of record date identified in the Notice of Proposed Rulemaking. The petition shall contain the:
1. Name and current address of the individual submitting the petition;
  2. Identification of the proposed rule;
  3. Need for the delay, specifying the undue hardship or other adverse impact that may result if the request for a delayed effective date is not granted;
  4. Reason why the public interest will not be harmed by the delayed effective date;
  5. Signature of the individual submitting the petition; and
  6. Date the individual signs the petition.
- B.** The ASRS shall send a written notice of the ASRS's decision to the individual within 30 days of receipt of the Petition for Delayed Effective Date.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 964, effective March 7, 2006 (Supp. 06-1).

**ARTICLE 7. CONTRIBUTIONS NOT WITHHELD****R2-8-701. Definitions**

The following definitions apply to this Article unless otherwise specified:

1. "218 agreement" means a written agreement between the state, political subdivision, or political subdivision entity and the Social Security Administration, under the provisions of § 218 of the Social Security Act, to provide Social Security and Medicare or Medicare-only coverage to employees of the state, political subdivision, or political subdivision entity.
2. "Active member" has the same meaning as in A.R.S. § 38-711.
3. "ASRS" has the same meaning as in A.R.S. § 38-711.
4. "ASRS employer" means this state, a political subdivision, or a political subdivision entity that has:
  - a. Signed a 218 agreement,

- b. Applied to become a member of ASRS, and
- c. Been approved for membership by the Board.
- 5. "Authorized employer representative" means an individual who has legal power to bind the ASRS employer in its transactions with the ASRS.
- 6. "Board" has the same meaning as in A.R.S. § 38-711.
- 7. "Director" means the Director appointed by the Board as provided in A.R.S. § 38-715.
- 8. "Documentation" means a pay stub, completed W-2 form, completed Verification of Contributions Not Withheld form, employer letter or spreadsheet, completed State Personnel Action Form, Social Security Earnings Report, employment contract, payroll record, timesheet, or other ASRS employer-provided form that includes:
  - a. Whether the employee was covered under the ASRS employer's 218 agreement,
  - b. The number of hours worked or length of time the member was employed by the ASRS employer, or
  - c. The compensation paid to the member by the ASRS employer.
- 9. "Eligible service" means employment with an ASRS employer:
  - a. That is no more than 15 years before the date the ASRS receives written credible evidence that less than the correct amount of contributions were paid into the ASRS or the ASRS otherwise determines that less than the correct amount of contributions were made as specified in A.R.S. § 38-738(C); and
  - b. In which the member:
    - i. Until 6/30/92, worked a minimum of 20 hours per week for at least five months in a fiscal year for any one or more ASRS employers;
    - ii. From 7/1/92 to 7/1/99, worked a minimum of 20 hours per week for at least 20 weeks in a fiscal year for any one or more ASRS employers; or
    - iii. From 7/1/99 to the present, worked a minimum of 20 hours per week for at least 20 weeks in a service year for at least one ASRS employer.
- 10. "Fiscal year" means from July 1 of one year through June 30 of the next year.
- 11. "Member" has the same meaning as in A.R.S. § 38-711.
- 12. "Person" has the same meaning as in A.R.S. § 1-215.
- 13. "Political subdivision" has the same meaning as in A.R.S. § 38-711.
- 14. "Political subdivision entity" has the same meaning as in A.R.S. § 38-711.
- 15. "Service year" has the same meaning as in A.R.S. § 38-711.

#### Historical Note

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4).

#### R2-8-702. General Information

- A. Verified eligible service that occurred more than 15 years before the date ASRS receives the information identified in R2-8-704(A)(1) is considered public service credit as provided in A.R.S. § 38-738(D), and is not applied under this Article.
- B. The ASRS employer shall pay the ASRS employer's portion of the contributions the ASRS determines is owed under R2-8-706 whether or not:
  - 1. The member has withdrawn contributions as specified in R2-8-115; or
  - 2. The member pays the member's portion of the contributions.

- C. The person who initiates the claim that contributions were not withheld for eligible service has the burden to prove a contribution error was made.
- D. ASRS shall not waive payment of contributions or interest owed under this Article.
- E. If a member is not able to establish eligibility for service credit for which contributions were not withheld, but is able to establish a period of employment by an ASRS employer the member may request to purchase service credit for that period under A.R.S. § 38-743 and Article 5 of this Chapter.

#### Historical Note

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4).

#### R2-8-703. ASRS Employer's Discovery of Error

If an ASRS employer determines that contributions have not been withheld for a member for a period of eligible service, the ASRS employer shall notify ASRS in writing, and shall provide ASRS with the member's full name, Social Security number, months, years, and hours per week worked, the compensation each fiscal year for the time periods worked, and the member's position title and status at the time contributions should have been withheld.

#### Historical Note

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4).

#### R2-8-704. Member's Discovery of Error

- A. If a member believes that an ASRS employer has not withheld contributions for the member for a period of eligible service, the member shall:
  - 1. Provide the ASRS employer with documentation of the member's claim and request that the ASRS employer provide a letter that includes the information in the Verification of Contributions Not Withheld form or complete a Verification of Contributions Not Withheld form that includes:
    - a. The member's full name;
    - b. Other names used by the member;
    - c. The member's Social Security number;
    - d. Whether the position was covered under the ASRS employer's 218 agreement;
    - e. The position title the member held at the time the contributions should have been withheld;
    - f. The eligibility of the member at the time the contributions should have been withheld;
    - g. The following statements of understanding and agreements to be initialed by the authorized employer representative filling out the form:
      - i. I understand it is my responsibility to verify the accuracy of the information I am providing on this form. I understand any individual who knowingly makes a false statement, or who falsifies or permits to be falsified any record of the ASRS with an intent to defraud the ASRS, is guilty of a Class 6 felony pursuant to A.R.S. § 38-793; and
      - ii. I understand that, based on the information provided on this form, the ASRS may determine that contributions are owed on behalf of the member listed on this form, and the ASRS employer may incur a substantial financial obligation;
    - h. The months worked, the hours per week worked, and the compensation earned by the member, by fiscal year;
    - i. The name of the ASRS employer;

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- j. The printed name and signature of the authorized employer representative;
  - k. The daytime telephone number of the authorized employer representative;
  - l. The title of the authorized employer representative; and
  - m. The date the authorized employer representative signed the form;
2. Provide the ASRS with the completed Verification of Contributions Not Withheld form; and
  3. If the ASRS employer refuses to fill out the Verification of Contributions Not Withheld form, or if the member disputes the information the ASRS employer completes on the form, provide the ASRS with the documentation the member believes supports the allegation that contributions should have been withheld, that includes proof:
    - a. That the employee was covered under the ASRS employer's 218 agreement,
    - b. Of the number of hours worked,
    - c. Of the length of time the member was employed by the ASRS employer, and
    - d. Of the compensation paid to the member by the ASRS employer.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4).

**R2-8-705. ASRS' Discovery of Error**

If the ASRS determines, as specified in A.R.S. § 38-738(B)(7), that contributions have not been withheld for a member for a period of eligible service, the ASRS shall notify the member and the ASRS employer in writing and shall request the following information:

1. The months, years and hours per week worked;
2. The compensation earned by the member each fiscal year for the time periods worked; and
3. The member's position title at the time contributions should have been withheld.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4).

**R2-8-706. Determination of Contributions Not Withheld**

- A. Upon receipt of the information listed in R2-8-703, R2-8-704, or R2-8-705, the ASRS shall review the information to determine whether or not member contributions should have been withheld by the ASRS employer, the length of time those contributions should have been withheld, and the amount of contributions that should have been withheld.
- B. Except for returning to work under A.R.S. § 38-766.01, the presence of a contract between a member and the ASRS employer does not alter the contribution requirements of A.R.S. §§ 38-736 and 38-737.
- C. If there is any discrepancy between the documentation provided by the ASRS employer and the documentation provided by the member, a document used in the usual course of business prepared at the time in question is controlling.
- D. The ASRS shall provide to the ASRS employer and the member a written statement that includes:
  1. The dates of eligible service for which contributions were not withheld,
  2. The dollar amount of contributions that should have been made,
  3. The dollar amount of the contributions to be paid by the ASRS employer,
  4. The interest on the ASRS employer contributions and member contributions to be paid by the ASRS employer,

5. The dollar amount of contributions to be paid by the member, and
6. To the member, the various payment options that may apply, as specified in R2-8-512 through R2-8-519.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4).

**R2-8-707. Submission of Payment**

- A. Within 90 calendar days after the ASRS notifies the ASRS employer in writing of the amount due, the ASRS employer shall pay all ASRS employer contributions, including accrued interest on both the ASRS employer and member contributions, from the date the contributions were due to the date the ASRS notifies the ASRS employer of the amount due. An ASRS employer who makes payment under A.R.S. § 38-738(B)(3) is not liable for additional interest that may accrue as a result of a member's failure to remit payment required by A.R.S. § 38-738(B)(1). If the ASRS does not receive full payment of the ASRS employer's amount due within 90 calendar days after the ASRS notifies the ASRS employer of the amount due, interest on the amount not paid, as provided in A.R.S. § 38-738(B)(3), will accrue from the 91st day until the ASRS employer pays the full amount.
- B. An ASRS employer may pay the amount the ASRS employer believes may be due at any time before ASRS's notification of the amount due in order to prevent the accrual of interest after the date of the payment. Any amount the ASRS employer pays that the ASRS determines is not owed shall be refunded to the ASRS employer.
- C. A member may purchase eligible service for which contributions were not withheld in accordance with the requirements of Article 5 of this Chapter for purchase of service credit. If the ASRS does not receive full payment of the ASRS employee's amount due within 90 calendar days after the ASRS notifies the member that the ASRS received the ASRS employer's full payment, interest on the amount not paid, as provided in A.R.S. § 38-738(B)(1), will accrue from the 91st day until the member pays the full amount.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4).

**R2-8-708. Dispute of an ASRS Determination Regarding Contributions Not Withheld**

- A. If a member or the ASRS employer disputes an ASRS determination regarding contributions not withheld, that party may request in writing that the Director review the ASRS determination. Within 30 calendar days of receiving the request for the review of the ASRS determination, the Director shall review and either approve or amend the ASRS determination, and send to the member and the ASRS employer written notice of the Director's decision.
- B. If the member or the ASRS employer disputes the Director's decision, that party may obtain a hearing by filing a Request for a Hearing with the Board, in accordance with Article 4 of this Chapter, within 30 calendar days after receiving notice of the Director's determination. The party filing the request shall provide the name of the other party.
- C. The burden of producing evidence is on the party challenging the determination.
- D. If the ASRS Board determines that the service is eligible, the ASRS shall send both the ASRS employer and the member a written statement, as specified in R2-8-706(D), and the:
  1. Decision of the Board;

2. Correct amount due as determined by the Board, if applicable;
  3. Additional amount of interest due from the losing party, from the 91st day after the initial notification of the amount due to the date of the decision; and
  4. Notification that interest shall continue to accrue on the total amount due at the rate specified in A.R.S. § 38-738(B) until the date payment is received by the ASRS.
- E.** If the ASRS Board determines that the service is not eligible, ASRS shall send both the ASRS employer and the member the decision of the Board.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4).

**R2-8-709. Nonpayment of Contributions**

- A.** A member receives service credit only for the portion of service the ASRS has determined is eligible and that the member has paid for.
- B.** A member does not receive service credit until both the ASRS employer and member portions of the contributions have been paid.
- C.** If the ASRS employer does not pay, the ASRS shall take any steps legally authorized to collect payment. Any steps the ASRS may take to collect payment are separate from any action a member may elect to take against the ASRS employer.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4793, effective December 5, 2006 (Supp. 06-4).

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## Office of Administrative Hearings

## TITLE 2. ADMINISTRATION

## CHAPTER 19. OFFICE OF ADMINISTRATIVE HEARINGS

## ARTICLE 1. PREHEARING AND HEARING PROCEDURES

## Section

- R2-19-101. Definitions
- R2-19-102. Applicability
- R2-19-103. Request for Hearing
- R2-19-104. Assignment of Administrative Law Judge; Setting the Hearing
- R2-19-105. Ex Parte Communications
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- R2-19-109. Consolidation or Severance of Matters
- R2-19-110. Continuing or Expediting a Hearing; Reconvening a Hearing
- R2-19-111. Vacating a Hearing
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## ARTICLE 1. PREHEARING AND HEARING PROCEDURES

**R2-19-101. Definitions**

The following definitions apply unless otherwise stated:

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

**Historical Note**

Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

**R2-19-102. Applicability**

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

**Historical Note**

Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

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

- A. An agency requesting the Office schedule an administrative hearing shall provide the following information on a form provided by the Office:
  1. Caption of the matter, including the names of the parties;
  2. Agency matter number;
  3. Identification of the matter as a contested case or appealable agency action;

4. In an appealable agency action, the date the party appealed the agency action;
5. Estimated time for the hearing;
6. Proposed hearing dates;
7. Any request to expedite or consolidate the matter; and
8. Any agreement of the parties to waive applicable time limits to set the hearing.

- B. The Office may require the agency to supply information regarding the nature of the proceeding, including the specific allegations.

**Historical Note**

Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

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

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

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

**Historical Note**

Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

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

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

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

**Historical Note**

Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

**R2-19-106. Motions**

- A. Purpose. A party requesting a ruling from an administrative law judge shall file a motion. Motions may be made for rulings such as:
  1. Consolidation or severance of matters pursuant to R2-19-109;
  2. Continuing or expediting a hearing pursuant to R2-19-110;
  3. Vacating a hearing pursuant to R2-19-111;
  4. Prehearing conference pursuant to R2-19-112;
  5. Quashing a subpoena pursuant to R2-19-113;
  6. Telephonic testimony pursuant to R2-19-114; and
  7. Reconsideration of a previous order pursuant to R2-19-115.
- B. Form. Unless made during a prehearing conference or hearing, motions shall be made in writing and shall conform to the requirements of R2-19-108. All motions, whether written or oral, shall state the factual and legal grounds supporting the motion, and the requested action.
- C. Time Limits. Absent good cause, or unless otherwise provided by law or these rules, written motions shall be filed with the Office at least 15 days before the hearing. A party demonstrates good cause by showing that the grounds for the motion could not have been known in time, using reasonable diligence and:

1. A ruling on the motion will further administrative convenience, expedition or economy; or
  2. A ruling on the motion will avoid undue prejudice to any party.
- D. Response to Motion.** A party shall file a written response stating any objection to the motion within 5 days of service, or as directed by the administrative law judge.
- E. Oral Argument.** A party may request oral argument when filing a motion or response. The administrative law judge may grant oral argument if it is necessary to develop a complete record.
- F. Rulings.** Rulings on motions, other than those made during a prehearing conference or the hearing, shall be in writing and served on all parties.

**Historical Note**

Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

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

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

**Historical Note**

Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

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

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

**Historical Note**

Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

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

- A. Standards for consolidation.** An administrative law judge may order consolidation of pending matters, if:
1. There are substantially similar factual or legal issues, or
  2. All parties are the same.

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

**Historical Note**

Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

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

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

**Historical Note**

Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

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

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

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

**Historical Note**

Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

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

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

**Historical Note**

Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

**R2-19-113. Subpoenas**

- A. Form. A party shall request a subpoena in writing from the administrative law judge and shall include:
1. The caption and docket number of the matter;
  2. A list or description of any documents sought;
  3. The full name and home or business address of the custodian of the documents sought or all persons to be subpoenaed;
  4. The date, time, and place to appear or to produce documents pursuant to the subpoena; and
  5. The name, address, and telephone number of the party, or the party's attorney, requesting the subpoena.
- B. An Administrative Law Judge may require a brief statement of the relevance of testimony or documents.
- C. Service of subpoena. Any person who is not a party and is at least 18 years of age may serve a subpoena. The person shall serve the subpoena by delivering a copy to the person to be served. The person serving the subpoena shall provide proof of service by filing with the office a certified statement of the date and manner of service and the names of the persons served.
- D. Objection to subpoena. A party, or the person served with a subpoena who objects to the subpoena, or any portion of it, may file an objection with the administrative law judge. The objection shall be filed within 5 days after service of the subpoena, or at the outset of the hearing if the subpoena is served fewer than 5 days before the hearing.
- E. Quashing, modifying subpoenas. The administrative law judge shall quash or modify the subpoena if:
1. It is unreasonable or oppressive, or
  2. The desired testimony or evidence may be obtained by an alternative method.

**Historical Note**

Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

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

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

1. Personal attendance by a party or witness at the hearing will present an undue hardship for the party or witness;
2. Telephonic testimony will not cause undue prejudice to any party; and
3. The proponent of the telephonic testimony pays for any cost of obtaining the testimony telephonically.

**Historical Note**

Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

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

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

requesting the administrative law judge to reconsider the order.

**Historical Note**

Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

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

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

**Historical Note**

Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

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

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

**Historical Note**

Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

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

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

**Historical Note**

Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

**R2-19-119. Proof**

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

**Historical Note**

Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

**R2-19-120. Disruptions**

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

**Historical Note**

Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

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

- A. Maintenance. The Office shall maintain the official record of a matter.
- B. Transfer of record. Before an agency takes final action, the agency may request that the record be available for its review

or duplication. Any party requesting a copy of the record or any portion of the record shall make a request to the Office and shall pay the reasonable costs of duplication.

**C. Release of exhibits. Exhibits shall be released:**

- 1. Upon the order of a court of competent jurisdiction; or
- 2. Upon motion of the party who submitted the exhibits if the time for judicial appeal has expired and no appeal is pending.

**Historical Note**

Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1).

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

- A. Notification to the Office. Within 10 days of filing a notice of appeal of an agency action resulting from an administrative hearing before the Office, the party shall file a copy of the notice of appeal with the Office. The Office shall then transmit the record to the Superior Court.
- B. Transcript. A party requesting a transcript of an administrative hearing before the Office shall arrange for transcription at the party's expense. The Office shall make a copy of its audio taped record available to the transcriber. The party arranging for transcription shall deliver the transcript, certified by the transcriber under oath to be a true and accurate transcription of the audio taped record, to the Office, together with one unbound copy.

**Historical Note**

Section adopted by final rulemaking at 5 A.A.R. 563, effective February 3, 1999 (Supp. 99-1). Section amended by final rulemaking at 20 A.A.R. 1947, effective September 8, 2014 (Supp. 14-3).

# Chapter Divider Page

# Chapter Divider Page

**TITLE 2. ADMINISTRATION****CHAPTER 20. CITIZENS CLEAN ELECTIONS COMMISSION**

*Editor's Note: The Office of the Secretary of State publishes all Code Chapters on white paper (Supp. 02-1).*

*Editor's Note: This Chapter contains rules that were adopted under an exemption from the rulemaking provisions of the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 16-956(D). Exemption from A.R.S. Title 41, Chapter 6 means that these rules were not certified by the Attorney General or the Governor's Regulatory Review Council. Because this Chapter contains rules that are exempt from the regular rulemaking process, the Chapter is printed on blue paper. The rules affected by this exemption appear throughout this Chapter.*

**ARTICLE 1. GENERAL PROVISIONS**

*Article 1, consisting of Sections R2-20-101 through R2-20-113, repealed by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001; new Article 1, consisting of Sections R2-20-101 through R2-20-112, made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1).*

*Article 1, consisting of Sections R2-20-101 through R2-20-113, adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2).*

## Section

R2-20-101.	Definitions
R2-20-102.	Repealed
R2-20-103.	Communications: Time and Method
R2-20-104.	Certification as a Participating Candidate
R2-20-105.	Certification for Funding
R2-20-106.	Distribution of Funds to Certified Candidates
R2-20-107.	Candidate Debates
R2-20-108.	Termination of Participating Candidate Status
R2-20-109.	Reporting Requirements
R2-20-110.	Campaign Accounts
R2-20-111.	Books and Records Requirements
R2-20-112.	Political Party Exceptions
R2-20-113.	Repealed

**ARTICLE 2. COMPLIANCE AND ENFORCEMENT PROCEDURES**

*Article 2, consisting of Sections R2-20-201 through R2-20-231, made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1).*

## Section

R2-20-201.	Scope
R2-20-202.	Initiation of Compliance Matters
R2-20-203.	Complaints
R2-20-204.	Initial Complaint Processing; Notification
R2-20-205.	Opportunity for No Action on Complaint-generated Matters
R2-20-206.	Executive Director's Recommendation on Complaint-generated Matters
R2-20-207.	Internally Generated Matters; Referrals
R2-20-208.	Complaint Processing; Notification
R2-20-209.	Investigation
R2-20-210.	Written Questions Under Order
R2-20-211.	Subpoenas and Subpoenas Duces Tecum; Depositions
R2-20-212.	Repealed
R2-20-213.	Motions to Quash or Modify a Subpoena
R2-20-214.	The Probable Cause to Believe Recommendation; Briefing Procedures
R2-20-215.	Probable Cause to Believe Finding
R2-20-216.	Conciliation
R2-20-217.	Enforcement Proceedings
R2-20-218.	Repealed
R2-20-219.	Repealed
R2-20-220.	Ex Parte Communications
R2-20-221.	Representation by Counsel; Notification

R2-20-222.	Civil Penalties
R2-20-223.	Notice of Appealable Agency Action
R2-20-224.	Request for an Administrative Hearing
R2-20-225.	Informal Settlement Conference
R2-20-226.	Administrative Hearing
R2-20-227.	Review of Administrative Decision by Commission
R2-20-228.	Judicial Review
R2-20-229.	Repealed
R2-20-230.	Repealed
R2-20-231.	Repealed

**ARTICLE 3. STANDARD OF CONDUCT FOR COMMISSIONERS AND EMPLOYEES**

*Article 3, consisting of Sections R2-20-301 through R2-20-312, made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).*

## Section

R2-20-301.	Purpose and Applicability
R2-20-302.	Definitions
R2-20-303.	Notification to Commissioners and Employees
R2-20-304.	Interpretation and Advisory Service
R2-20-305.	Reporting Suspected Violations
R2-20-306.	Disciplinary and Other Remedial Action
R2-20-307.	General Prohibited Conduct
R2-20-308.	Outside Employment or Activities
R2-20-309.	Financial Interests
R2-20-310.	Political and Organization Activity
R2-20-311.	Membership in Associations
R2-20-312.	Use of State Property

**ARTICLE 4. AUDITS**

*Article 4, consisting of Sections R2-20-401 through R2-20-406, made by exempt rulemaking at 11 A.A.R. 4518, effective May 18, 2005 (Supp. 05-4).*

## Section

R2-20-401.	Purpose and Scope
R2-20-402.	General
R2-20-402.01.	Random Audits
R2-20-403.	Conduct of Fieldwork
R2-20-404.	Preliminary Audit Report
R2-20-405.	Final Audit Report
R2-20-406.	Release of Audit Report

**ARTICLE 5. RULEMAKING**

*Article 5, consisting of Sections R2-20-501 through R2-20-506, made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).*

## Section

R2-20-501.	Purpose and Scope
R2-20-502.	Procedural Requirements
R2-20-503.	Processing of Petitions
R2-20-504.	Disposition of Petitions
R2-20-505.	Commission Considerations
R2-20-506.	Administrative Record

**ARTICLE 6. EX PARTE COMMUNICATIONS**

*Article 6, consisting of Sections R2-20-601 through R2-20-604, made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).*

## Section

- R2-20-601. Purpose and Scope
- R2-20-602. Definitions
- R2-20-603. Audits, Investigations, and Litigation
- R2-20-604. Sanctions

**ARTICLE 7. USE OF FUNDS AND REPAYMENT**

*Article 7, consisting of Sections R2-20-701 through R2-20-710, made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).*

## Section

- R2-20-701. Purpose and Scope
- R2-20-702. Use of Campaign Funds
- R2-20-702.01. Use of Assets
- R2-20-703. Documentation for Direct Campaign Expenditures
- R2-20-704. Repayment
- R2-20-705. Additional Audits or Repayment Determinations
- R2-20-706. Repealed
- R2-20-707. Repealed
- R2-20-708. Repealed
- R2-20-709. Repealed
- R2-20-710. Repealed

**ARTICLE 1. GENERAL PROVISIONS****R2-20-101. Definitions**

In addition to the definitions provided in A.R.S. §§ 16-901 and 16-961, the following shall apply to the Chapter, unless the context otherwise requires:

1. "Act" means the Citizens Clean Elections Act set forth in the Arizona Revised Statutes, Title 16, Chapter 6, Article 2.
2. "Audit" means a written report pertaining to an examination of a candidate's campaign finances that is reviewed by the Commission in accordance with A.A.C. Title 2, Chapter 20, Article 4.
3. "Campaign account" means an account designated by a political committee that is used solely for political campaign purposes as required in A.R.S. § 16-902(C).
4. "Candidate" means a natural person who receives or gives consent for receipt of a contribution for the person's nomination for or election to any office in this state, and includes the person's campaign committee, the political committee designated and authorized by the person, or any agents or personnel of the person. When not otherwise specified by statute or these rules, "Candidate" includes a Candidate for Statewide Office or a Legislative Candidate.
5. "Candidate for Statewide Office" means: A natural person seeking the office of governor, attorney general, secretary of state, treasurer, superintendent of public instruction, or mine inspector.
6. "Current campaign account" means a campaign account used solely for election campaign purposes in the present election cycle.
7. "Direct campaign purpose" includes, but is not limited to, materials, communications, transportation, supplies and expenses used toward the election of a candidate. This does not include the candidate's personal appearance, support, or support of a candidate's family member.
8. "Early contributions" means private contributions that are permitted pursuant to A.R.S. § 16-945.
9. "Examination" means an inspection by the Commission or agent of the Commission of a candidate's books, records, accounts, receipts, disbursements, debts and obligations, bank account records, and campaign finance reports related to the candidate's campaign, which may include fieldwork, or a visit to the campaign headquarters, to ensure compliance with campaign finance laws and rules.
10. "Executive Director" means the highest ranking Commission staff member, who is appointed pursuant to A.R.S. § 16-955(J) and is responsible for directing the day-to-day operations of the Commission.
11. "Expressly advocates" means:
  - a. Conveying a communication containing a phrase such as "vote for," "elect," "re-elect," "support," "endorse," "cast your ballot for," "(name of candidate) in (year)," "(name of candidate) for (office)," "vote against," "defeat," "reject," or a campaign slogan or words that in context can have no reasonable meaning other than to advocate the election or defeat of one or more clearly identified candidates.
  - b. Making a general public communication, such as in broadcast medium, newspaper, magazine, billboard, or direct mailer referring to one or more clearly identified candidates and targeted to the electorate of that candidate(s) that in context can have no reasonable meaning other than to advocate the election or defeat of the candidate(s), as evidenced by factors such as the presentation of the candidate(s) in a favorable or unfavorable light, the targeting, placement, or timing of the communication, or the inclusion of statements of the candidate(s) or opponents.
  - c. A communication within the scope of subsection (10)(b) shall not be considered as one that "expressly advocates" merely because it presents information about the voting record or position on a campaign issue of three or more candidates, so long as it is not made in coordination with a candidate, political party, agent of the candidate or party, or a person who is coordinating with a candidate or candidate's agent.
12. "Extension of credit" means the delivery of goods or services or the promise to deliver goods or services to a candidate in exchange for a promise from the candidate to pay for such goods or services at a later date.
13. "Family member" means parent, grandparent, spouse, child, or sibling of the candidate or a parent or spouse of any of those persons.
14. "Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts.
15. "Fixed Asset" means tangible property usable in a capacity that will benefit the candidate for a period of more than one year from the date of acquisition.
16. "Fund" means the Citizens Clean Elections Fund established pursuant to A.R.S. § 16-949(D).
17. "Future campaign account" means a campaign account that is used solely for campaign election purposes in an election that does not include the present or prior primary or general elections.
18. "Independent candidate" means a candidate who is registered as an independent or with no party preference or who is registered with a political party that is not eligible for recognition on the ballot.



19. "Legislative Candidate" means: A natural person seeking the office of state senator or state representative.
20. "Officeholder" means a person who has been elected to a statewide office or the legislature in the most recent election, as certified by the Secretary of State, or who is appointed to or otherwise fills a vacancy in such office.
21. "Person," unless stated otherwise, or having context requiring otherwise, means: A corporation, company, partnership, firm, association or society, as well as a natural person.
22. "Prior campaign account" means a campaign account used solely for campaign election purposes in a prior election.
23. "Public funds" includes all funds deposited into the Citizens Clean Elections Fund and all funds disbursed by the Commission to a participating candidate.
24. "Solicitor" means a person who is eligible to be registered to vote in this state and seeks qualifying contributions from qualified electors of this state.
25. "Unopposed" means in reference to state senate candidates and statewide candidates other than Corporation Commission, that the candidate is opposed by no candidates who will appear on the ballot. In reference to candidates for the House of Representatives and Corporation Commission, "unopposed" means that no more candidates will appear on the ballot than the number of seats available for the office sought.
  - a. For purposes of funding pursuant to A.R.S. § 16-951, "unopposed means that the candidate is unopposed for both the primary election and the general election.
  - b. For purposes of equal funding allocations pursuant to A.R.S. § 16-952(A), "unopposed" means that the candidate is unopposed in the party primary.
  - c. For purposes of equal funding allocations pursuant to A.R.S. § 16-952(B), "unopposed" means that the candidate is unopposed in the general election.

**Historical Note**

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 13 A.A.R. 2434, effective August 27, 2007 (Supp. 07-2). Amended by exempt rulemaking at 15 A.A.R. 1156, effective August 31, 2009 (Supp. 09-2). Amended by exempt rulemaking at 19 A.A.R. 3515, effective September 27, 2013 (Supp. 13-4).

**R2-20-102. Repealed**

**Historical Note**

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Repealed by exempt rulemaking at 19 A.A.R. 3518, effective September 27, 2013 (Supp. 13-4).

**R2-20-103. Communications: Time and Method**

- A. General rule: in computing any period of time prescribed or allowed by the Act or these rules, unless otherwise specified, days are calculated by calendar days, and the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period

so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday. The term "legal holiday" includes New Year's Day, Martin Luther King Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday for employees of the state.

- B. Special rule for periods less than seven days: when the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.
- C. Whenever the Commission or any person has the right or is required to do some act within a prescribed period after the service of any paper by or upon the Commission by regular mail, three calendar days shall be added to the prescribed period.
- D. Whenever the Commission or any person is required to do some act within a prescribed period after the service of paper by or upon the Commission by overnight delivery, the time period shall begin on the date the recipient signs for the overnight delivery.
- E. The Commission shall use the address of the candidate that is provided on the application for certification filed pursuant to A.R.S. § 16-947. A candidate may designate in writing for the Commission to send written correspondence to a person other than the candidate.
- F. If possible, the Commission shall furnish a copy of all communications electronically.
- G. Delivery of subpoenas, orders and notifications to a natural person may be made by handing a copy to the person, or leaving a copy at his or her office with the person in charge thereof, by leaving a copy at his or her dwelling place or usual place of abode with a person of suitable age and discretion residing therein, by mailing a copy by overnight delivery to his or her last known address, or by any other method whereby actual notice is given.
- H. When the person to be served is not an individual, delivery of subpoenas, orders and notifications may be made by mailing a copy by overnight delivery to the person at its place of business or by handing a copy to a registered agent for service, or to any officer, director, or agent in charge of any office of such person, or by mailing a copy by overnight delivery to such representative at his or her last known address, or by any other method whereby actual notice is given.

**Historical Note**

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 12 A.A.R. 758, effective February 15, 2006 (Supp. 06-1). Amended by exempt rulemaking at 13 A.A.R. 2434, effective August 27, 2007 (Supp. 07-2).

**R2-20-104. Certification as a Participating Candidate**

- A. A nonparticipating candidate who accepts contributions up to the limits authorized by A.R.S. § 16-905, but later chooses to run as a participating candidate, shall:
  1. Make the change to participating candidate status during the exploratory and qualifying periods only;
  2. Return the amount of each contribution in excess of the individual contribution limit for participating candidates;
  3. Return all Political Action Committee (PAC) monies received;

4. Not have spent contributions exceeding the early contribution limit, or any part of a contribution exceeding the early contribution limit;
  5. Comply with all provisions of A.R.S. § 16-941 and Commission rules.
- B.** Money from prior election. If a nonparticipating candidate has a cash balance remaining in the campaign account from the prior election cycle, the candidate may seek certification as a participating candidate in the current election after:
1. Transferring money from the prior campaign account to the candidate's current election campaign account. The amount transferred shall not exceed the permitted personal monies, early contributions, and debt-retirement contributions, as defined in A.R.S. § 16-945(C);
  2. Spending the money lawfully prior to April 30 of an election year in a way that does not constitute a direct campaign purpose and does not meet the definition of "expenditure" under A.R.S. § 16-901(8); and the event or item purchased is completed or otherwise used and depleted prior to April 30 of an election year;
  3. Remitting the money to the Fund;
  4. Disposing of the money in accordance with A.R.S. § 16-915.01; or
  5. Holding the money in the prior election campaign account, not to be used during the current election, except as provided pursuant to this Section.
- C.** Application for certification as a participating candidate. Pursuant to A.R.S. § 16-947, a candidate seeking certification shall file with the Secretary of State a Commission-approved application and a campaign finance report reflecting all campaign activity to date, in accordance with A.R.S. § 16-915. In the application, a candidate shall certify under oath that the candidate:
1. Agrees to use all Clean Elections funding for direct campaign purposes only;
  2. Has filed a campaign finance report, showing all campaign activity to date in the current election cycle;
  3. Will comply with all requirements of the Act and Commission rules;
  4. Is subject to all enforcement actions by the Commission as authorized by the Act and Commission rules;
  5. Has the burden of proving that expenditures made by or on behalf of the candidate are for direct campaign purposes;
  6. Will keep and furnish to the Commission all documentation relating to expenditures, receipts, funding, books, records (including bank records for all accounts), and supporting documentation and other information that the Commission may request;
  7. Will permit an audit or examination by the Commission of all receipts and expenditures including those made by the candidate. The candidate shall also provide any material required in connection with an audit, investigation, or examination conducted by the Commission. The candidate shall facilitate the audit by making available in one central location, such as the Commission's office space, records and such personnel as are necessary to conduct the audit or examination, and shall pay any amounts required to be repaid;
  8. Will submit the name and mailing address of the person who is entitled to receive primary and general election funding on behalf of the candidate and the name and address of the campaign depository designated by the candidate. Changes in the information required by this subsection shall not be effective until submitted to the Commission in a letter signed or submitted electronically, by the candidate or the committee treasurer;
9. Will pay any civil penalties included in a conciliation agreement or otherwise imposed against the candidate;
  10. Will timely file all campaign finance reports with the Secretary of State in an electronic format; and
  11. Will file an amended application for certification reporting any change in the information prescribed in the application for certification within five days after the change.
- D.** If certified as a participating candidate, the candidate shall:
1. Only accept early contributions from individuals during the exploratory and qualifying periods in accordance with A.R.S. § 16-945. No contributions may be accepted from political action committees, political parties or corporations;
  2. Not accept any private contributions, other than early contributions and a limited number of \$5 qualifying contributions;
  3. Make expenditures of personal monies of no more than the amounts prescribed in A.R.S. § 16-941(A)(2) for legislative candidates and for statewide office candidates;
  4. Conduct all campaign activity through a single campaign account. A participating candidate shall only deposit early contributions, qualifying contributions and Clean Elections funds into the candidate's current campaign account. The campaign account shall not be used for any non-direct campaign purpose as provided in Article 7 of these rules;
  5. Attend a Commission sponsored candidate training class within 60 days of being certified or within 60 days of the beginning of the qualifying period if the candidate is certified before the beginning of the qualifying period. If the candidate is unable to attend a training class, the candidate shall:
    - a. Notify the Commission that the candidate is unable to attend a training class. The Commission then will send that person the Commission training materials; and
    - b. The candidate shall sign and send to the Commission a statement certifying that he or she has received and reviewed the Commission training materials; and
  6. Limit campaign expenditures. Prior to qualifying for Clean Elections funding, a candidate shall not incur debt, or make an expenditure in excess of the amount of cash on hand. Upon approval for funding by the Secretary of State, a candidate may incur debt, or make expenditures, not to exceed the sum of the cash on hand and the applicable spending limit.
- E.** Personal loans. A participating candidate may loan his or her campaign committee personal monies during the exploratory and qualifying periods only. The total sum of personal funds and loans shall not exceed the personal monies expenditure limits set forth in A.R.S. § 16-941(A)(2). If the loan is to be repaid, the loans shall be repaid promptly upon receipt of Clean Elections funds if the participating candidate qualifies for Clean Elections funding. Loans from a bank, or other institution listed in A.R.S. § 16-901(5)(b)(vii) to a candidate shall be considered personal monies and shall not exceed the personal monies expenditure limits set forth in A.R.S. § 16-941(A)(2).
- F.** A participating candidate may raise early contributions for election to one office and choose to run for election to another office.

- G.** Contributions to officeholder expense accounts are subject to the restrictions of A.R.S. § 41-1234.01, contributions prohibited during session; exceptions.

#### Historical Note

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Amended by exempt rulemaking at 9 A.A.R. 3506, effective April 2, 2002 (Supp. 03-3). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 12 A.A.R. 758, effective February 15, 2006 (Supp. 06-1). Amended by exempt rulemaking at 13 A.A.R. 3597, effective January 1, 2008 (Supp. 07-4). Amended by exempt rulemaking at 15 A.A.R. 1156, effective August 31, 2009 (Supp. 09-2). Amended by exempt rulemaking at 15 A.A.R. 1420, effective April 30, 2010 (Supp. 09-3). Subsection R2-20-104(C)(8) amended by exempt rulemaking at 19 A.A.R. 1685, effective October 6, 2011; Subsection R2-20-104(D)(5) amended by exempt rulemaking at 19 A.A.R. 1685, effective May 23, 2013 (Supp. 13-2).

#### R2-20-105. Certification for Funding

- A.** After a candidate is certified as a participating candidate, pursuant to A.R.S. § 16-947, in accordance with the procedure set forth in R2-20-104, that candidate may collect qualifying contributions only during the qualifying period.
- B.** A participating candidate must submit to the Secretary of State, a list of names of persons who made qualifying contributions, an application for funding prescribed by the Secretary of State, the minimum number of original reporting slips, and an amount equal to the sum of the qualifying contributions collected pursuant to A.R.S. § 16-950 no later than one week after the end of the qualifying period. Any and all expenses associated with obtaining the qualifying contributions, including credit card processing fees must be paid for from the candidate's early contributions or personal monies. A candidate may develop his or her own three-part reporting slip for qualifying contributions, or one that is photocopied or computer reproduced, if the form substantially complies with the form prescribed by the Commission. The candidate must comply with the Act and ensure that the original qualifying slip is tendered to the Secretary of State, a copy remains with the candidate, and that a copy is given to the contributor.
- C.** A candidate may accept electronic \$5 qualifying contributions up to a maximum of 50 percent of the minimum number required to qualify for funding for the elected office sought by the candidate. The Secretary of State's secured internet portal must be used to collect electronic \$5 qualifying. A \$5 contribution must accompany every \$5 qualifying contribution form and must be submitted via the Secretary of State's portal using a private electronic payment service, specified by the Secretary of State's Office, bank account, credit or debit card. A non-refundable transaction fee may be assessed on electronic \$5 qualifying contribution transactions. The transaction fee is not a contribution to the candidate's campaign and is paid by the contributor. If excess funds are accumulated by the candidate's campaign based on the transaction fee then all excess funds must be given to the Commission and must be entered into the candidate's campaign finance report as interest/dividend/other income in accordance with A.R.S. § 16-915(3)(e).
- D.** A solicitor who seeks signatures and qualifying contributions on behalf of a participating candidate shall provide his or her residential address, typed or printed name and signature on each reporting slip. The solicitor shall also sign a sworn statement on the contribution slip avowing that the contributor signed the slip, that the contributor contributed the \$5, that based on information and belief, the contributor's name and address are correctly stated and that each contributor is a qualified elector of this state. If a contribution is received unsolicited, the candidate or contributor may sign the qualifying contribution form as the solicitor and is accountable for all of the responsibilities of a solicitor. Nothing in this rule shall prohibit the use of direct mail or the internet to obtain qualifying contributions as long as an original signature is provided on the qualifying contribution form. The candidate may sign the qualifying contribution form as the solicitor and is accountable for all of the responsibilities of a solicitor. For qualifying contributions received in accordance with subsection (C) of this Section, the residential address and signature of the solicitor is not required.
- E.** The Secretary of State has the authority to approve or deny a candidate for Clean Elections funding, pursuant to A.R.S. § 16-950(C) based upon the verification of the qualifying contribution forms by the appropriate county recorder. The county recorder shall disqualify any qualifying contribution forms that are:
1. Unsigned by the contributor;
  2. Undated; or
  3. That the recorder is unable to verify as matching signature of a person who is registered to vote, on the date specified inside the electoral district the candidate is seeking.
- F.** The Secretary of State will notify the candidate and the Commission regarding the approval or denial of Clean Elections funds. A candidate who is denied Clean Elections funding after all of the slips are verified is eligible to submit supplemental qualifying contribution forms for one additional opportunity to be approved for funding pursuant to subsection (G) of this rule.
- G.** The amount equal to the sum of the qualifying contributions collected and tendered to the Secretary of State pursuant to A.R.S. § 16-950(B) will be deposited into the fund, and the amount tendered will not be returned to a candidate if a candidate is denied Clean Elections funding.
- H.** In accordance with the procedure set forth at A.R.S. § 16-950(C), if the Secretary of State determines that the result of the five percent random sample is less than 110 percent of the slips needed to qualify for funding, then the Secretary of State shall send all of the slips for verification. If the county recorder has verified all of the candidate's signature slips and there is an insufficient number of valid qualifying contribution slips to qualify the candidate for funding, the candidate may make only one supplemental filing of additional qualifying contribution slips and qualifying contributions to the Secretary of State if all of the following apply:
1. The candidate files at least the minimum number of additional slips needed to qualify for funding;
  2. The slips are not receipts for duplicate contributions from individuals who have previously contributed to that candidate; and
  3. The period for filing qualifying contributions slips has not expired.
- I.** The Secretary of State shall forward facsimiles of all of the supplemental qualifying contribution slips to the appropriate county recorders for the county of the contributors' addresses as shown on the contribution slips. The county recorder shall verify all of the supplemental slips within 10 business days after receipt of the facsimiles and shall provide a report to the Secretary of State identifying as disqualified any slips that are

unsigned by the contributor or undated or that the recorder is unable to verify as matching the signature of a person who is registered to vote, on the date specified on the slip, inside the electoral district of the office the candidate is seeking. On receipt of the report of the county recorder on all supplemental slips, the Secretary of State shall calculate the candidate's total number of valid qualifying contribution slips and shall approve or deny the candidate for funds.

- J.** Pursuant to A.R.S. § 16-956(F), the minimum number of qualifying contributions shall be as follows:
1. Legislature: 250
  2. Mine Inspector: 650
  3. Corporation Commissioner: 1,700
  4. Superintendent of Public Instruction: 1,700
  5. Treasurer: 1,700
  6. Attorney General: 2,800
  7. Secretary of State: 2,800
  8. Governor: 4,500

#### Historical Note

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Amended by exempt rulemaking at 9 A.A.R. 3506, effective April 30, 2002 (Supp. 03-3). Amended by exempt rulemaking at 13 A.A.R. 2434, effective August 27, 2007 (Supp. 07-2). Amended by exempt rulemaking at 16 A.A.R. 1200, effective February 28, 2008 (Supp. 10-2). Subsection R2-20-105(C) amended by exempt rulemaking at 19 A.A.R. 1688, effective October 6, 2011; Subsection R2-20-105(J) amended by exempt rulemaking at 19 A.A.R. 1688, effective May 23, 2013 (Supp. 13-2).

#### R2-20-106. Distribution of Funds to Certified Candidates

- A.** Before the initial disbursement of funds, the Commission shall review the candidate's funding application and all relevant facts and circumstances and:
1. Verify that the number of signatures on the candidate's nominating petitions equals or exceeds the number required pursuant to A.R.S. § 16-322 as follows:
    - a. If the application is submitted before the March 1 voter registration list is determined, the Commission shall verify that the number of signatures on the candidate's nominating petitions equals or exceeds 115 percent of the number required pursuant to A.R.S. § 16-322 based on the prior election voter registration list as determined by the Secretary of State; or
    - b. If the application is submitted after the current year March 1 voter registration list is determined, the Commission shall verify that the number of signatures on the candidate's nominating petitions is equal to or greater than the number required pursuant to A.R.S. § 16-322.
  2. Determine that the required number of qualifying contributions have been received and paid to the Secretary of State for deposit in the Fund; and
  3. Determine whether the candidate is opposed in the election.
- B.** In making the determinations described in subsection (A)(3), the Commission shall consider all relevant facts and circumstances, and it shall not be bound by election formalities such as the filing of nominating petitions by others in determining whether an applicant is opposed. Among other evidence the Commission may consider is the existence of exploratory committees or filings made to organize campaign committees of opponents and other like indicia.

- C.** The Commission may review and affirm or change its determination that the candidate is or is not opposed until the ballot for the election is established.
- D.** Within seven days after a primary election and before the Secretary of State completes the canvass, the Commission shall disburse funds for general election campaigns to the participating candidates who received the greatest number of votes at each primary election, provided that the candidate with the highest number of votes out of the total number of votes, has at least two percentage points greater than the candidate with the next highest votes based on the unofficial results as of that date. In a legislative race for the Arizona House of Representatives, the Commission shall disburse funds for general election campaigns to participating candidates with the highest or second highest number of votes cast, provided such candidate received votes totaling at least two percentage points, of the total ballots cast, larger than the vote total cast for the candidate with the third highest vote total.
- E.** Promptly after the Secretary of State completes the canvass, the Commission shall disburse funds for general election campaigns to all eligible participating candidates to whom payment has not been made. If a participating candidate has received funds from the Commission pursuant to subsection (D) and the canvass or recount determines that the candidate is not eligible to appear on the general election ballot, the participating candidate shall return all unused funds to the Fund within 10 days after such determination is made. That candidate shall make no expenditures from general election funds from the date of the canvass.
- F.** The Commission may refuse to distribute funds to participating candidates in cases in which the Commission finds evidence of fraud or illegal activity committed by the participating candidate.
- G.** Pursuant to A.R.S. § 16-953(A), a participating candidate shall return to the Fund all of his or her primary election funds not committed to expenditures (1) during the primary election period; and (2) for goods or services directed to the primary election. A candidate shall not be deemed to have violated A.R.S. § 16-953(A) or this subsection on account of failure to use all materials purchased with primary election funds prior to the primary election, provided such candidate exercises good faith and diligent efforts to comply with the requirement that goods and services purchased with primary election funds be directed to the primary election. Subject to A.R.S. § 16-953(A) and this subsection, a candidate may continue to use goods purchased with primary election funds during the general election period.

#### Historical Note

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Amended by exempt rulemaking at 13 A.A.R. 2434, effective August 27, 2007 (Supp. 07-2).

#### R2-20-107. Candidate Debates

- A.** The Commission shall sponsor debates among statewide and legislative office candidates prior to the primary and general elections. Except as set forth in the subsection below, the Commission shall not be required to sponsor a debate if there is no participating candidate in the election for a particular office.
- B.** In the primary election period, the Commission shall sponsor political party primary election debates for every office in which:

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1. There are at least two candidates of the political party's nomination, and
  2. At least one of the candidates is a participating candidate.
- C.** The following candidates will not be invited to participate in debates as follows:
1. In the primary election, write-in candidates for the primary election, independent candidates, no party affiliation or unrecognized party candidates.
  2. In the general election, write-in candidates.
- D.** In the event that there is no participating candidate in a primary or general election but there is an election involving candidates subject to invitation pursuant to this rule, the following apply:
1. **Primary Election.** In the event that there is no participating candidate in a primary election, but the election includes two candidates who are subject to invitation pursuant to this rule, a candidate subject to invitation may request that the Commission sponsor a debate pursuant to this rule. If the requesting candidate is the sole participant in the debate the format shall be as prescribed in R2-20-107(K).
  2. **General Election.** In the event that there is no participating candidate in a general election, but the election includes two candidates who are subject to invitation pursuant to this rule, a candidate subject to invitation may request that the Commission sponsor a debate pursuant to this rule. If the requesting candidate is the sole participant in the debate the format shall be as prescribed in R2-20-107(K).
  3. A nonparticipating candidate who requests a debate pursuant to this rule shall complete a form prescribed by the Commission, file it with the Commission and deliver a copy to all opponents of the requesting candidate at least 80 days before the primary election for a primary election debate, or 70 days before the general election for a general election debate. If an invited candidate agrees to participate he or she shall sign the commission form and return it to the Commission form within 10 days of the form's delivery agreeing to participate. In the event the candidate agrees to participate he or she shall execute a form prescribed by the Commission which shall be returned to the Commission within 10 days of notice.
  4. If a candidate requests that the Commission sponsor a debate and fails or refuses to attend the debate, or a candidate agrees to participate in a debate and subsequently fails or refuses to attend the debate sponsored by the Commission, each candidate who fails or refuses to attend the debate shall reimburse the Commission for the cost of debate preparations not to exceed \$10,000 for a non-participating candidate for the legislature and \$25,000 for a non-participating candidate for statewide office. In the event that a candidate requests a general election debate or agrees to participate in a general election debate but does not advance to the general election, the candidate shall not be liable for the reimbursement.
- E.** Pursuant to A.R.S. § 16-956(A)(2), all participating candidates certified pursuant to A.R.S. § 16-947 shall attend and participate in the debates sponsored by the Commission. No proxies or representatives are permitted to participate for any candidate and no statements may be read on behalf of an absent candidate.
- F.** Unless exempted, if a participating candidate fails to participate in any Commission-sponsored debate, the participating candidate shall be fined \$500.00. For purposes of this Section, each primary or general election shall be considered a separate election.
- G.** A participating candidate may request to be exempt from participating in a required debate by doing the following:
1. Submit a written request to the Commission at least one week prior to the scheduled debate, and
  2. State the reasons and circumstances justifying the request for exemption.
- H.** After examining the request to be exempt, the Commission will exempt a candidate from participating in a debate if at least three Commissioners determine that the circumstances are:
1. Beyond the control of the candidate;
  2. Of such nature that a reasonable person would find the failure to attend justifiable or excusable; or
  3. Good cause, as defined in A.R.S. § 16-918(E).
- I.** A participating candidate who fails to participate in a required debate may submit a request for excused absence to the Commission.
1. The candidate's request for excused absence shall:
    - a. State the reason the candidate failed to participate in the debate, and
    - b. State the reason the candidate failed to request an exemption in advance, and
    - c. Be submitted to the Commission no later than five business days after the date of the debate the candidate failed to attend.
  2. After examining the request for excused absence, the Commission may excuse a candidate from the penalties imposed if at least three Commissioners determine that the circumstances were:
    - a. Beyond the control of the candidate;
    - b. Of such nature that a reasonable person would find the failure to attend justifiable or excusable; or
    - c. Good cause, as defined in A.R.S. § 16-918(E).
- J.** When a participating candidate is not opposed in the general election, the candidate shall be exempt from participating in a Commission-sponsored debate for the general election.
- K.** In the event that a participating candidate is opposed in the primary election or general election but is the only candidate taking part in a primary election period or general election period debate, as applicable, the debate will be held and will consist of a 30-minute question and answer session for the single participating candidate. If more than one candidate takes part in the debate, regardless of participation status, the debate will be held in accordance with the procedures established by the Commission staff.

**Historical Note**

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). New Section made by exempt rulemaking at 12 A.A.R. 758, effective February 15, 2006 (Supp. 06-1). Amended by exempt rulemaking at 13 A.A.R. 2434, effective August 27, 2007 (Supp. 07-2). Amended by exempt rulemaking at 15 A.A.R. 1156, effective August 31, 2009 (Supp. 09-2). Amended by exempt rulemaking at 19 A.A.R. 1690, effective October 6, 2011 (Supp. 13-2). Amended by exempt rulemaking at 19 A.A.R. 4213, effective November 21, 2013 (Supp. 13-4).

**R2-20-108. Termination of Participating Candidate Status**

- A.** A candidate may voluntarily request termination of his or her participating candidate status at any time prior to notification by the Commission that such candidate has qualified for Clean

Elections funding. To withdraw from participating candidate status, a candidate shall send a letter to the Commission stating the candidate's intent to withdraw and the reason for the withdrawal. The candidate shall not accept any private monies until the withdrawal is approved by the Commission. The Commission shall act on the withdrawal request within seven days. If the Commission takes no action within the seven-day time period, the withdrawal is automatic.

- B. A candidate's participating candidate status shall automatically terminate if:
  - 1. The candidate fails to make such submissions to the Secretary of State as prescribed in R2-20-105(B) within seven days after the end of the qualifying period, or
  - 2. The candidate is denied Clean Elections funding by the Secretary of State and the candidate is ineligible to make a supplemental filing with the Secretary of State in accordance with R2-20-105(G).
- C. A candidate whose participating candidate status has been terminated in accordance with this Section shall be ineligible to receive Clean Elections funding for that election cycle unless he/she reapplies for certification and is in compliance with R2-20-104(A) and (C).
- D. In the event that a candidate who has collected qualifying contributions decides not to seek certification as a participating candidate, the candidate shall return all qualifying contributions received from contributors who have not given written permission to use their qualify contributions as campaign contributions. Written permission may include a check box on the original \$5 form that authorizes a candidate to treat the qualifying contribution as a general campaign contribution if he or she decides not to participate in the Clean Elections system. If a good faith attempt to return the funds to the contributor is unsuccessful, the contributions shall be submitted to the Fund.

#### Historical Note

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Amended by exempt rulemaking at 13 A.A.R. 2434, effective August 27, 2007 (Supp. 07-2). Amended by exempt rulemaking at 17 A.A.R. 1950, effective August 25, 2011 (Supp. 11-3).

#### R2-20-109. Reporting Requirements

- A. In accordance with A.R.S. § 16-958(E), all persons obligated to file any campaign finance report under any provisions of Chapter 6, Article 2 of the Arizona Revised Statutes shall file such reports using the Secretary of State's Internet-based finance-reporting system, except if expressly provided otherwise by another Commission rule.
- B. All participating candidates shall file campaign finance reports that include all receipts and disbursements for their current campaign account as follows:
  - 1. Expenditures for consulting, advising, or other such services to a candidate shall include a detailed description of what is included in the service, including an allocation of services to a particular election. When appropriate, the Commission may treat such expenditures as though made during the general election period.
  - 2. If a participating candidate makes an expenditure on behalf of the campaign using personal funds, the candidate's campaign shall reimburse the candidate within seven calendar days of the expenditure. After the 7 day period has passed, the expenditure shall be deemed an in-kind contribution subject to all applicable limits.
- 3. A candidate may authorize an agent to purchase goods or services on behalf of such candidate, provided that:
  - a. Expenditures shall be reported as of the date that the agent promises, agrees, contracts or otherwise incurs an obligation to pay for the goods or services;
  - b. The candidate shall have sufficient funds in the candidate's campaign account to pay for the amount of such expenditure at the time it is made and all other outstanding obligations of the candidate's campaign committee; and
  - c. Within seven calendar days of the date upon which the amount of the expenditure is known, the candidate shall pay such amount from the candidate's campaign account to the agent who purchases the goods or services.
- 4. A joint expenditure is made when two or more candidates agree to share the cost of goods or services. Candidates may make a joint expenditure on behalf of one or more other campaigns, but must be authorized in advance by the other candidates involved in the expenditure, and must be reimbursed within seven days. Participating candidates may participate in joint expenditures for the cost of goods and services with one or more candidates, subject to the following:
  - a. Joint expenditures must be authorized in advance by all candidates sharing in the expenditure and allocated fairly among candidates. An allocated share of a joint expenditure paid by one candidate pursuant to such an agreement must be reimbursed within seven days.
  - b. Any violator of part (a) shall be liable for a penalty pursuant to R2-20-222, in addition to penalties prescribed by any other law.
  - c. If a fairly allocated share of any joint expenditure is not reimbursed to a candidate, the unreimbursed amount of the joint expenditure fairly allocated to that candidate shall be deemed a contribution to that candidate by the campaign committee of the candidate obligated to reimburse the share.
  - d. If a fairly allocated share of any joint expenditure is not reimbursed to a participating candidate, the candidate obligated to reimburse the share shall reimburse the fund for the unreimbursed amount of the joint expenditure fairly allocated to the obligated candidate, in addition to any penalty specified by law.
- 5. For the purposes of the Act and Commission rules, a candidate or campaign shall be deemed to have made an expenditure as of the date upon which the candidate or campaign promises, agrees, contracts or otherwise incurs an obligation to pay for goods or services.
- C. Timing of reporting expenditures.
  - 1. Except as set forth in subsection (B)(2) above, a participating candidate shall report a contract, promise or agreement to make an expenditure resulting in an extension of credit as an expenditure, in an amount equal to the full future payment obligation, as of the date the contract, promise or agreement is made.
  - 2. In the alternative to reporting in accordance with subsection (B)(1) above, a participating candidate may report a contract, promise or agreement to make an expenditure resulting in an extension of credit as follows:
    - a. For a month-to-month or other such periodic contract or agreement that is terminable by a candidate at will and without any termination penalty or payment, the candidate may report an expenditure, in an

amount equal to each future periodic payment, as of the date upon which the candidate's right to terminate the contract or agreement and avoid such future periodic payment elapses.

- b. For a contract, promise or agreement to provide goods or services during the general election period that is contingent upon a candidate advancing to the general election period, the candidate may report an expenditure, in an amount equal to the general election period payment obligation, as of the date upon which such contingency is satisfied.
- c. For a contract, promise or agreement to pay rent, utility charges or salaries payable to individuals employed by a candidate's campaign committee as staff, the candidate may report an expenditure, in an amount equal to each periodic payment, as of the date that is the sooner of (i) the date upon which payment is made; or (ii) the date upon which payment is due.

**D. Transportation expenses.**

1. Except as otherwise provided in this subsection, the costs of transportation relating to the election of a participating statewide or legislative office candidate shall not be considered a direct campaign expense and shall not be reported by the candidate as expenditures or as in-kind contributions.
2. If a participating candidate travels for campaign purposes in a privately owned automobile, the candidate may use campaign funds to reimburse the owner of the automobile at a rate not to exceed the state mileage reimbursement rate in which event the reimbursement shall be considered a direct campaign expense and shall be reported as an expenditure. If a candidate chooses to use campaign funds to reimburse, the candidate shall keep an itinerary of the trip, including name and type of events(s) attended, miles traveled and the rate at which the reimbursement was made. Traditional candidates may reimburse in a similar fashion, but are not required to stay within the State mileage rate.
3. Use of airplanes.
  - a. If a participating candidate travels for campaign purposes in a privately owned airplane, within 7 days from the date of travel, the candidate shall use campaign funds to reimburse the owner of the airplane at a rate of \$150 per hour of flying time, in which event the reimbursement shall be considered a direct campaign expense and shall be reported as an expenditure. If the owner of the airplane is unwilling or unable to accept reimbursement, the participating candidate shall remit to the fund an amount equal to \$150 per hour of flying time.
  - b. If a participating candidate travels for campaign purposes in a state-owned airplane, within 7 days from the date of travel, the candidate shall use campaign funds to reimburse the state for the portion allocable to the campaign in accordance with subsection (3)(a), above. The portion of the trip attributable to state business shall not be reimbursed. If payment to the State is not possible, the payment shall be remitted to the Clean Elections Fund.
4. If a participating candidate rents a vehicle or purchases a ticket or fare on a commercial carrier for campaign purposes, the actual costs of such rental (including fuel costs), ticket or fare shall be considered a direct campaign expense and shall be reported as an expenditure.

**E. Reports and Refunds of Excess Monies by Participating Candidates**

1. In addition to the campaign finance reports filed pursuant to A.R.S. §16-913, participating candidates shall file the following campaign finance reports and dispose of excess monies as follows:
  - a. Prior to filing the application for funding pursuant to A.R.S. §16-950, participating candidates shall file a campaign finance report with the names of the persons who have made qualifying contributions to the candidate.
  - b. At the end of the qualifying period, a participating candidate shall file a campaign finance report consisting of all early contributions received, including personal monies and the expenditures of such monies.
    - i. The campaign finance report shall be filed with the Secretary of State no later than five days after the last day of the qualifying period and shall include all campaign activity through the last day of the qualifying period.
    - ii. If the campaign finance report shows any amount unspent monies, the participating candidate, within five days after filing the campaign finance report, shall remit all unspent contributions to the Fund, pursuant to A.R.S. §16-945(B). Any unspent personal monies shall be returned to the candidate or the candidates' family member within five days.
2. Each participating candidate shall file a campaign finance report consisting of all expenditures made in connection with an election, all contributions received in the election cycle in which such election occurs, and all payments made to the Clean Elections Fund. If the campaign finance report shows any amount unspent, the participating candidate, within five days after filing the campaign finance report, shall send a check from the candidate's campaign account to the Commission in the amount of all unspent monies to be deposited the Fund.
  - a. The campaign finance report for the primary election shall be filed within five days after the primary election day and shall reflect all activity through the primary election day.
  - b. The campaign finance report for the general election shall be considered filed upon the filing of the post-general campaign finance report filed in accordance with A.R.S. § 16-913(B)(3).
3. In the event that a participating candidate purchases goods or services from a subcontractor or other vendor through an agent pursuant to subsection (A)(3), the candidate's campaign finance report shall include the same detail as required in A.R.S. § 16-948(C) for each such subcontractor or other vendor. Such detail is also required when petty cash funds are used for such expenditures.

**F. Independent Expenditure Reporting Requirements.**

1. Unless an exemption is obtained pursuant to this subsection, any person making independent expenditures cumulatively exceeding the amount prescribed in A.R.S. § 16-941(D) in an election cycle shall file campaign finance reports in accordance with A.R.S. § 16-958 and Commission rules.
2. Any person required to comply with A.R.S. § 16-917 shall provide a copy of the literature and advertisement to the Commission at the same time and in the same manner as prescribed by A.R.S. § 16-917(A) and (B). For purposes of this subsection, "literature and advertisement"

- includes electronic communications, including emails and social media messages or postings, sent to more than 1,000 people.
3. Any person making an independent expenditure on behalf of a candidate and not timely filing a campaign finance report as required by A.R.S. § 16-941(D), A.R.S. § 16-958, or A.R.S. § 16-913 shall be subject to a civil penalty as described in A.R.S. § 16-942(B). Penalties imposed pursuant to this subsection shall not exceed twice the amount of expenditures not reported. Penalties shall be assessed as follows:
    - a. For an election involving a candidate for statewide office, the civil penalty shall be \$300 per day.
    - b. The penalties in (a) and (b) shall be doubled if the amount not reported for a particular election cycle exceeds ten (10%) percent of the applicable one of the adjusted primary election spending limit or adjusted general election spending limit.
    - c. The dollar amounts in items (a) and (b), and the spending limits in item (c) are subject to adjustment of A.R.S. § 16-959.
  4. Any corporation, limited liability company, or labor organization that is both (a) not registered as a political committee and (b) in compliance with or intends to comply with A.R.S. § 16-920(A)(6) and A.R.S. § 16-914.02(A)(2) may seek an exemption from the reporting requirements of A.R.S. § 16-941(D) and A.R.S. § 16-958(A) and (B) for an election cycle by applying to the Commission for an exemption using a form specified by the Commission's Executive Director.
  5. The form shall contain, at a minimum, a sworn statement by a natural person authorized to bind the corporation, limited liability company, or labor organization certifying that the corporation, limited liability company, or labor organization:
    - a. Is in compliance with, and intends to remain in compliance with, the reporting requirements of A.R.S. § 16-914.02(A)-(J); and
    - b. Has or intends to spend more than the applicable threshold prescribed by A.R.S. § 16-914.02(A)(1) and (A)(2).
  6. A corporation, limited liability company, or labor organization that does not receive an exemption from the Commission must file the Clean Elections Act independent expenditure reports specified by A.R.S. § 16-958.
  7. Unless the request for an exemption is incomplete or the Executive Director is aware that any required statement is untrue or incorrect, the Executive Director shall grant the exemption. Civil penalties shall not accrue during the pendency of a request for exemption.
    - a. If the Executive Director deems the application for exemption is incomplete the person may reapply within two weeks of the Executive Director's decision by filing a completed application for exemption.
    - b. The denial of an exemption pursuant to this subsection is an appealable agency action. The Executive Director shall draft and serve notice of an appealable agency action pursuant to A.R.S. § 41-1092.03 and § 41-1092.04 on the respondent. The notice shall identify the following:
      - i. The specific facts constituting the denial;
      - ii. A description of the respondent's right to request a hearing and to request an informal settlement conference; and
  - iii. A description of what the respondent may do if the respondent wishes to remedy the situation without appealing the Commission's decision.
  8. A corporation, limited liability company, or labor organization that has received an exemption is exempt from the filing requirements of A.R.S. § 16-941(D) and A.R.S. § 16-958 and the civil penalties outlined in A.R.S. § 16-942, provided that the exempt entity, during the election cycle (a) remains in compliance with the reporting requirements of A.R.S. § 16-914.02(A)(J) and (b) remains in compliance with subsection (2) of this subsection. All Commission rules and statutes related to enforcement apply to exempt entities. The Commission may audit any exempt entity pursuant to Article 4 of these rules.
  9. Any person may file a complaint with the Commission alleging that (a) any corporation, limited liability company, or labor organization that has applied for or received an exemption under this subsection has provided false information in an application or violated the terms of the exemption stated in subsection (8) of this subsection; or (b) any person that has not applied for or received an exemption has violated A.R.S. § 16-941(D), § 16-958, or subsections (1), (2), or (6) of this subsection. Complaints shall be processed as prescribed in Article 2 of these rules. If the Commission finds that a complaint is valid, the person complained of shall be liable as outlined in A.R.S. § 16-942(B) and subsection (3) of this subsection, in addition to any other penalties applicable pursuant to rule or statute.
  10. Neither a form filed seeking an exemption pursuant to this subsection nor a Clean Elections Act independent expenditure report filed as specified by A.R.S. § 16-958 constitutes an admission that the filer is or should be considered a political committee. The grant of an exemption pursuant to this subsection does not constitute a finding or determination that the filer is or should be considered a political committee.
  11. Any entity that has been granted an exemption as of September 11, 2014, is deemed compliant with the requirements of subsection (F)(5) for the election cycle ending in 2014.
- G. Non-participating Candidate Reporting Requirements and Contribution Limits.** Any person may file a complaint with the Commission alleging that any non-participating candidate or that candidate's campaign committee has failed to comply with or violated A.R.S. § 16-941(B). Complaints shall be processed as prescribed in Article 2 of these rules. In addition to those penalties outlined in R2-20-222(B), a non-participating candidate or candidate's campaign committee violating A.R.S. § 16-941(B) shall be subject to penalties prescribed in A.R.S. § 16-941(B) and A.R.S. § 16-942(B) and (C) as applicable:
1. Penalties under A.R.S. § 16-942(B), for a violation by or on behalf of any non-participating candidate or that candidate's campaign committee of any reporting requirement imposed by chapter 6 of title 16, Arizona Revised Statutes, in association with any violation of A.R.S. § 16-941(B):
    - a. For an election involving a candidate for statewide office, the civil penalty shall be \$300 per day.
    - b. For an election involving a legislative candidate, the civil penalty shall be \$100 per day.
    - c. The penalties in (a) and (b) shall be doubled if the amount not reported for a particular election cycle exceeds ten percent (10%) of the applicable one of



- the adjusted primary election spending limit or adjusted general election spending limit.
- d. The dollar amounts in items (a) and (b), and the spending limits in item (c) are subject to adjustment of A.R.S. § 16-959.
  2. Penalties under A.R.S. § 16-942(C): Where a campaign finance report filed by a non-participating candidate or that candidate's campaign committee indicates a violation of A.R.S. § 16-941(B) that involves an amount in excess of ten percent (10%) of the sum of the adjusted primary election spending limit and the adjusted general election spending limit specified by A.R.S. § 16-961(G) and (H) as adjusted pursuant to A.R.S. § 16-959, that violation shall result in disqualification of a candidate or forfeiture of office.
  3. Penalties under A.R.S. § 16-941(B): Regardless of whether or not there is a violation of a reporting requirement, a person who violates A.R.S. § 16-941(B) is subject to a civil penalty of three times the amount of money that has been received, expended, or promised in violation of A.R.S. § 16-941(B) or three times the value in money for an equivalent of money or other things of value that have been received, expended, or promised in violation of A.R.S. § 16-941(B).

#### Historical Note

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 13 A.A.R. 3597, effective January 1, 2008 (Supp. 07-4). Amended by exempt rulemaking at 15 A.A.R. 1156, effective August 31, 2009 (Supp. 09-2). Amended by exempt rulemaking at 16 A.A.R. 152, effective January 29, 2010 (Supp. 10-1). Subsections R2-20-109(A), (A)(4), and (B) through (E) amended by exempt rulemaking at 19 A.A.R. 2923, effective October 6, 2011; Subsections R2-20-109(A) and (C)(2) amended by exempt rulemaking at 19 A.A.R. 2923, effective August 29, 2013; Subsection R2-20-109(C)(3) amended by exempt rulemaking at 19 A.A.R. 2923, effective January 1, 2014 (Supp. 13-3). Amended by exempt rulemaking at 19 A.A.R. 3519, effective September 27, 2013 (Supp. 13-4). Amended by exempt rulemaking at 20 A.A.R. 1329, effective May 22, 2014 (Supp. 14-2). Amended by exempt rulemaking at 20 A.A.R. 2804, effective September 11, 2014 (Supp. 14-3).

#### R2-20-110. Campaign Accounts

- A. During an election cycle, each participating and nonparticipating candidate shall conduct all campaign financial activities through a single, current election campaign account and any petty cash accounts as are permitted by law.
- B. A candidate may maintain a campaign account other than the campaign account described in subsection (A) if the other campaign account is for a campaign in a prior election cycle in which the candidate was not a participating candidate.
- C. During the exploratory period, a candidate may receive debt-retirement contributions for a campaign during a prior election cycle if the funds are deposited in the account for that prior campaign. A candidate shall not deposit debt-retirement contributions into current campaign accounts.

#### Historical Note

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section

repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Amended by exempt rulemaking at 19 A.A.R. 1693, effective May 23, 2013 (Supp. 13-2).

#### R2-20-111. Books and Records Requirements

- A. All candidates shall maintain, at a single location within the state, the books and records of financial transactions, and other information required by A.R.S. § 16-904.
- B. All candidates shall ensure that the books and records of accounts and transactions of the candidate are recorded and preserved as follows:
  1. The treasurer of a candidate's campaign committee is the custodian of the candidate's books and records of accounts and transactions, and shall keep a record of all of the following:
    - a. All contributions or other monies received by or on behalf of the candidate.
    - b. The identification of any individual or political committee that makes any contribution together with the date and amount of each contribution and the date of deposit into a campaign account.
    - c. Cumulative totals contributed by each individual or political committee.
    - d. The name and address of every person to whom any expenditure is made, and the date, amount and purpose or reason for the expenditure.
    - e. All periodic bank statements or other statements for the campaign account.
    - f. In the event that the campaign committee uses a petty cash account the candidate's campaign finance report shall include the same detail for each petty cash expenditure as required in A.R.S. § 16-948(C) for each vendor.
  2. No expenditure may be made for or on behalf of a candidate without the authorization of the treasurer or his or her designated agent.
  3. Unless specified by the contributor or contributors to the contrary, the treasurer shall record a contribution made by check, money order or other written instrument as a contribution by the person whose signature or name appears on the bottom of the instrument or who endorses the instrument before delivery to the candidate. If a contribution is made by more than one person in a single written instrument, the treasurer shall record the amount to be attributed to each contributor as specified.
  4. All contributions other than in-kind contributions and qualifying contributions must be made by a check drawn on the account of the actual contributor or by a money order or a cashier's check containing the name of the actual contributor or must be evidenced by a written receipt with a copy of the receipt given to the contributor and a copy maintained in the records of the candidate.
  5. The treasurer shall preserve all records set forth in subsection (B) and copies of all campaign finance reports required to be filed for three years after the filing of the campaign finance report covering the receipts and disbursements evidenced by the records.
  6. If requested by the attorney general, the county, city or town attorney or the filing officer, the treasurer shall provide any of the records required to be kept pursuant to this Section.
- C. Any request to inspect a candidate's records under A.R.S. § 16-958(F) shall be sent to the candidate, with a copy to the Commission, 10 or more days before the proposed date of the inspection. If the request is made within two weeks before the primary or general election, the request shall be delivered at

least two days before the proposed date of inspection. Every request shall state with reasonable particularity the records sought.

1. The inspection shall occur at a location agreed upon by the candidate and the person making the request. If no agreement can be reached, the inspection shall occur at the Commission office. The inspection shall occur during the Commission's regular business hours and shall be limited to a two-hour time period.
2. The requesting party may obtain copies of records for a reasonable fee. The Commission shall not be responsible for making copies. The person in possession of the records shall produce copies within a reasonable time of the receipt of the copying request and fees.
3. The Commission will not permit public inspection of records if it determines that the inspection is for harassment purposes.
4. If a person who requests to inspect a candidate's records under A.R.S. § 16-958(F) is denied such a request, the requesting party may notify the Commission. The Commission may enforce the public inspection request by issuing a subpoena pursuant to A.R.S. § 16-956(B) for the production of any books, papers, records, or other items sought in the public inspection request. The subpoena shall order the candidate to produce:
  - a. All papers, records, or other items sought in the public inspection request;
  - b. No later than two business days after the date of the subpoena; and
  - c. To the Commission's office during regular business hours.
5. Any person who believes that a candidate or a candidate's campaign committee has not complied with this Section may appeal to Superior Court.

#### Historical Note

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 13 A.A.R. 2434, effective August 27, 2007 (Supp. 07-2). Amended by exempt rulemaking at 13 A.A.R. 3597, effective January 1, 2008 (Supp. 07-4). Amended by exempt rulemaking at 15 A.A.R. 1156, effective August 31, 2009 (Supp. 09-2).

#### R2-20-112. Political Party Exceptions

- A. Pursuant to A.R.S. §§ 16-901(5)(b)(v) and (8)(c), payment by a political party of the costs of preparation, printing, display, mailing or other distribution for slate cards, sample ballots, other written materials or listings of candidates that substantially promote three or more candidates for any public office for which an election is held, and other election activities not related to a specific candidate, shall not be considered a contribution or an expenditure for purposes of the Act or Commission rules. This exception is subject to the following limitations:
  1. "Slate card" is defined as a list that contains only:
    - a. The names, party affiliations and offices sought by the candidates;
    - b. Photographs of the candidates; and
    - c. General information regarding the date of the primary or general election; and
    - d. The location of the recipient's polling place.

2. "Sample ballot" is defined as a facsimile of a ballot listing only the names, party affiliations and offices sought by the candidates, appearing substantially as they would on an actual ballot.
3. "Other written materials or listings of candidates that substantially promote three or more candidates" are defined as materials that contain one or more of the elements of a slate card, in addition to statements and/or images describing the platform of the sponsoring party and the position of the party's candidates, and does not feature, mention or depict opposing candidate or candidates of another party.
4. "Other election activities not related to a specific candidate" include invitations to party-sponsored events, issue canvassing, and voter-registration efforts.
5. "Billboards" are defined as outdoor signs that are larger than 32 square feet in size.
6. The exception set forth in subsection (A) shall not apply to materials defined in subsections (A)(1) through (3) when distributed or displayed prior to the general election period unless each candidate featured is unopposed in the primary election.
7. The exception set forth in this subsection shall not apply to costs incurred with respect to a display of the listing of candidates made on telecommunications systems, billboards, or in newspapers, magazines or similar types of general circulation advertising.
- B. This Section is intended to establish, for purposes of the Act and Commission rules, circumstances under which the payment by a political party of certain costs described herein shall be excluded from the definition of contribution pursuant to A.R.S. § 16-901(5)(b)(v) or from the definition of expenditures pursuant to A.R.S. § 16-901(8)(c), as applicable. Nothing in this Section shall be construed to prohibit a political party from making any expenditure or contribution not otherwise prohibited by Arizona law.
- C. The Commission shall treat as an expenditure of de minimis value the payment by a political party of the costs of:
  1. Preparation and display on the political party's web site of a slate card, sample ballot or other printed listing of three or more candidates for any public office for which an election is held; or
  2. Preparation and distribution via e-mail, to recipients who have subscribed to receive e-mail from the political party and whose e-mail addresses are not rented, purchased or otherwise obtained from a third-party source, of a slate card, sample ballot or other printed listing of three or more candidates for any public office for which an election is held.
- D. A political party that pays the costs of preparation, display and/or distribution of a slate card, sample ballot or other printed listing of three or more candidates, as described in subsection (C), and which is otherwise required to file a campaign finance report in accordance with A.R.S. § 16-913, shall disclose such payment as an expenditure with a value of zero dollars.

#### Historical Note

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). New Section made by exempt rulemaking at 13 A.A.R. 3597, effective January 1, 2008 (Supp. 07-4). Amended by exempt

rulemaking at 15 A.A.R. 1423, effective October 22, 2009 (Supp. 09-3).

## **R2-20-113. Repealed**

### **Historical Note**

New Section adopted by exempt rulemaking at 6 A.A.R. 1567, effective June 21, 2000 (Supp. 00-2). Section repealed by exempt rulemaking at 8 A.A.R. 588, effective October 17, 2001 (Supp. 02-1). New Section made by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 13 A.A.R. 2434, effective August 27, 2007 (Supp. 07-2). Amended by exempt rulemaking at 13 A.A.R. 3597, effective January 1, 2008 (Supp. 07-4). Amended by exempt rulemaking at 15 A.A.R. 1156, effective August 31, 2009 (Supp. 09-2). Amended by exempt rulemaking at 15 A.A.R. 1423, effective October 22, 2009 (Supp. 09-3). Amended by exempt rulemaking at 15 A.A.R. 1567, effective September 2, 2009 (Supp. 09-3). Amended by exempt rulemaking at 16 A.A.R. 1200, effective January 8, 2010 (Supp. 10-2). Repealed by exempt rulemaking at 19 A.A.R. 1694, effective October 6, 2011 (Supp. 13-2).

## **ARTICLE 2. COMPLIANCE AND ENFORCEMENT PROCEDURES**

### **R2-20-201. Scope**

These rules provide procedures for processing possible violations of the Citizens Clean Elections Act.

### **Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

### **R2-20-202. Initiation of Compliance Matters**

Compliance matters may be initiated by a complaint or on the basis of information ascertained by the Commission in the normal course of carrying out its statutory responsibilities.

### **Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

### **R2-20-203. Complaints**

- A.** Any person who believes that a violation of any statute or rule over which the Commission has jurisdiction has occurred or is about to occur may file a complaint in writing to the Executive Director.
- B.** A complaint shall conform to the following:
  1. Provide the full name and address of the complainant; and
  2. Contents of the complaint shall be sworn to and signed in the presence of a notary public and shall be notarized.
- C.** All statements made in a complaint are subject to the statutes governing perjury. The complaint shall differentiate between statements based upon personal knowledge and statements based upon information and belief.
- D.** The complaint shall conform to the following provisions:
  1. Clearly identify as a respondent each person or entity who is alleged to have committed a violation;
  2. Statements which are not based upon personal knowledge shall be accompanied by an identification of the source of information which gives rise to the complainant's belief in the truth of such statements;
  3. Contain a clear and concise recitation of the facts which describe a violation of a statute or rule over which the Commission has jurisdiction; and

4. Be accompanied by any documentation supporting the facts alleged if such documentation is known of, or available to, the complainant.

### **Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Amended by exempt rulemaking at 9 A.A.R. 3511, effective May 21, 2002 (Supp. 03-3). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

### **R2-20-204. Initial Complaint Processing; Notification**

- A.** Upon receipt of a complaint, the Administrative Counsel shall review the complaint for substantial compliance with the technical requirements of R2-20-203, and, if it complies with those requirements, shall within five days after receipt notify each respondent that the complaint has been filed, advise each respondent of Commission compliance procedures, and mail each respondent a copy of the complaint.
- B.** If a complaint does not comply with the requirements of R2-20-203, the Administrative Counsel shall so notify the complainant and any person or entity identified therein as respondent, within the five-day period specified in subsection (A), that no action should be taken on the basis of that complaint. A copy of the complaint shall be mailed with the notification to each respondent.

### **Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

### **R2-20-205. Opportunity for No Action on Complaint-generated Matters**

- A.** A respondent shall be afforded an opportunity to demonstrate that no action should be taken on the basis of a complaint by submitting, within five days from receipt of a written copy of the complaint, a letter or memorandum setting forth reasons why the Commission should take no action.
- B.** The Commission shall not take any action, or make any finding, against a respondent other than action dismissing the complaint, unless it has considered such response or unless no such response has been served upon the Commission within the five-day period specified in subsection (A).
- C.** The respondent's response shall be notarized. The respondent's failure to respond in accordance with subsection (A) within five days of receiving the written copy of the complaint may be viewed as an admission to the allegations made in the complaint.

### **Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

### **R2-20-206. Executive Director's Recommendation on Complaint-generated Matters**

- A.** Following either the expiration of the five-day period specified by R2-20-205 or the receipt of a response as specified by R2-20-205(A), whichever occurs first:
  1. The Executive Director may recommend to the Commission whether it should find reason to believe that a respondent has committed or is about to commit a violation of a statute or rule over which the Commission has jurisdiction; or
  2. The Executive Director may recommend that the Commission find that there is no reason to believe that a violation of a statute or rule over which the Commission has

jurisdiction has been committed or is about to be committed, or that the Commission otherwise dismiss a complaint without regard to the provisions of R2-20-205(A).

- B. Neither the complainant nor the respondent has the right to appeal the Executive Director's recommendation made pursuant to subsection (A) because the recommendation is not an appealable agency action.
- C. If the complaint relates to a violation of A.R.S. § 16-941(B) by a non-participating candidate or that candidate's campaign committee, the Executive Director shall not proceed pursuant to R2-20-206(A) or R2-20-207(A), without first receiving Commission approval to initiate an inquiry.
- D. The respondent shall not have the right to appeal the Commission's decision to authorize an inquiry pursuant to subsection (C) because the Commission's decision whether or not to authorize an inquiry is not an appealable agency action.

#### Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 12 A.A.R. 758, effective February 15, 2006 (Supp. 06-1). Amended by exempt rulemaking at 20 A.A.R. 1332, effective May 22, 2014 (Supp. 14-2).

#### R2-20-207. Internally Generated Matters; Referrals

- A. On the basis of information ascertained by the Commission in the normal course of carrying out its statutory responsibilities, or on the basis of a referral from an agency of the state, the Executive Director may recommend in writing that the Commission find reason to believe that a person or entity has committed or is about to commit a violation of a statute or rule over which the Commission has jurisdiction.
- B. If the Commission finds reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred or is about to occur, the Executive Director shall notify the respondent of the Commission's decision and shall include a copy of a staff report setting forth the legal basis and the alleged facts which support the Commission's action.

#### Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Amended by exempt rulemaking at 13 A.A.R. 3524, effective January 1, 2008 (Supp. 07-3).

#### R2-20-208. Complaint Processing; Notification

- A. If the Commission, either after reviewing a complaint-generated recommendation as described in R2-20-206 and any response of a respondent submitted pursuant to R2-20-205, or after reviewing an internally-generated recommendation as described in R2-20-207, determines by an affirmative vote of at least three of its members that it has reason to believe that a respondent has violated a statute or rule over which the Commission has jurisdiction, the Commission shall notify such respondent of the Commission's finding, setting forth the sections of the statute or rule alleged to have been violated and the alleged factual basis supporting the finding. In accordance with A.R.S. § 16-957(A), the Commission shall serve on the respondent an order requiring compliance within 14 days. During that period, the respondent may provide any explanation to the Commission, comply with the order, or enter into a public administrative settlement with the Commission.
- B. If the Commission finds no reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred, or otherwise terminates its proceedings, the

Executive Director shall so notify both the complainant and respondent.

- C. The complainant may bring an action in Superior Court in accordance with A.R.S. § 16-957(C) if the Commission finds there is no reason to believe a violation of a statute or rule over which the Commission has jurisdiction has occurred or otherwise terminates its proceedings.

#### Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 12 A.A.R. 758, effective February 15, 2006 (Supp. 06-1).

#### R2-20-209. Investigation

- A. The Commission shall conduct an investigation in any case in which the Commission finds reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred or is about to occur.
- B. The Commission's investigation may include, but is not limited to, field investigations, audits, and other methods of information gathering.

#### Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

#### R2-20-210. Written Questions Under Order

The Commission may issue an order requiring any person to submit sworn, written answers to written questions and may specify a date by which such answers must be submitted to the Commission.

#### Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Amended by exempt rulemaking at 9 A.A.R. 3511, effective May 21, 2002 (Supp. 03-3).

#### R2-20-211. Subpoenas and Subpoenas Duces Tecum; Depositions

- A. The Commission may authorize its Executive Director or Assistant Attorney General to issue subpoenas requiring the attendance and testimony of any person by deposition and to issue subpoenas duces tecum for the production of documentary or other tangible evidence in connection with a deposition or otherwise.
- B. If the Commission orders oral testimony to be taken by deposition or for documents to be produced, the subpoena shall so state and shall advise the deponent or person subpoenaed that all testimony will be under oath. The Commission may authorize its Executive Director to take a deposition and have the power to administer oaths.
- C. The deponent shall have the opportunity to review and sign depositions taken pursuant to this rule.

#### Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Amended by exempt rulemaking at 13 A.A.R. 3524, effective January 1, 2008 (Supp. 07-3).

#### R2-20-212. Repealed

#### Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

**R2-20-213. Motions to Quash or Modify a Subpoena**

- A. Any person to whom a subpoena is directed may, prior to the time specified therein for compliance, but in no event more than five days after the date of receipt of such subpoena, apply to the Commission to quash or modify such subpoena, accompanying such application with a brief statement of the reasons therefore.
- B. The Commission may deny the application, quash the subpoena or modify the subpoena.
- C. The person subpoenaed and the Executive Director may agree to change the date, time, or place of a deposition or for the production of documents without affecting the force and effect of the subpoena, but such agreements shall be confirmed in writing.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).  
Amended by exempt rulemaking at 13 A.A.R. 3524, effective January 1, 2008 (Supp. 07-3).

**R2-20-214. The Probable Cause to Believe Recommendation; Briefing Procedures**

- A. Upon completion of the investigation conducted pursuant to R2-20-209, the Executive Director shall prepare a brief setting forth his or her position on the factual and legal issues of the case and containing a recommendation on whether the Commission should find probable cause to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred or is about to occur.
- B. The Executive Director shall notify each respondent of the recommendation and enclose a copy of his or her brief.
- C. Within five days from receipt of the Executive Director's brief, the respondent may file a brief with the Commission setting forth the respondent's position on the factual and legal issues of the case.
- D. After reviewing the respondent's brief, the Executive Director shall promptly advise the Commission in writing whether he or she intends to proceed with the recommendation or to withdraw the recommendation from Commission consideration.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).  
Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 12 A.A.R. 758, effective February 15, 2006 (Supp. 06-1).

**R2-20-215. Probable Cause to Believe Finding**

- A. If the Commission, after having found reason to believe and after following the procedures set forth in R2-20-214, determines by an affirmative vote of at least three of its members that there is probable cause to believe that a respondent has violated a statute or rule over which the Commission has jurisdiction, the Commission shall authorize the Executive Director to so notify the respondent by an order, that states the nature of the violation, pursuant to A.R.S. § 16-957.
- B. If the Commission finds no probable cause to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred or otherwise orders a termination of Commission proceedings, it shall authorize the Executive Director to notify both respondent and complainant by letter that the proceeding has ended. The Executive Director's letter also will inform the parties that the Commission is not precluded from taking action on this matter in the future if evidence is discovered which may alter the decision of the Commission.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).  
Amended by exempt rulemaking at 9 A.A.R. 3511, effective May 21, 2002 (Supp. 03-3). Amended by exempt rulemaking at 13 A.A.R. 3524, effective January 1, 2008 (Supp. 07-3).

**R2-20-216. Conciliation**

- A. Upon a Commission finding of probable cause to believe that the respondent has violated a statute or rule over which the Commission has jurisdiction, the Executive Director shall attempt to settle the matter as authorized by A.R.S. § 16-957(A) by informal methods of administrative settlement or conciliation, and shall attempt to reach a tentative conciliation agreement with the respondent.
- B. A conciliation agreement pursuant to subsection (A) of this Section is not binding upon either party unless and until it is signed by the respondent and by the Executive Director upon approval by the affirmative vote of at least three members of the Commission.
- C. If a conciliation agreement is reached between the Commission and the respondent, the Executive Director shall send a copy of the signed agreement to both complainant and respondent.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).  
Amended by exempt rulemaking at 9 A.A.R. 3511, effective May 21, 2002 (Supp. 03-3).

**R2-20-217. Enforcement Proceedings**

- A. Upon a finding of probable cause that the alleged violator remains out of compliance, the Executive Director may recommend to the Commission that the Commission authorize the issuance of an order and assessment of civil penalties pursuant to A.R.S. § 16-957(B).
- B. The Commission may, by an affirmative vote of at least three of its members, authorize the Executive Director to issue an order and assess civil penalties pursuant to A.R.S. § 16-957(B).
- C. Subsections (A) and (B) of this rule shall not preclude the Commission, upon request of a respondent, from entering into a conciliation agreement pursuant to R2-20-216 even after the Commission authorizes the Executive Director to issue an order and assess civil penalties pursuant to subsection (B). Any conciliation agreement reached under this subsection is subject to the provisions of R2-20-216(B) and shall have the same force and effect as a conciliation agreement reached under R2-20-216(D).

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).  
Amended by exempt rulemaking at 9 A.A.R. 3511, effective May 21, 2002 (Supp. 03-3). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 12 A.A.R. 758, effective February 15, 2006 (Supp. 06-1).

**R2-20-218. Repealed****Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

**R2-20-219. Repealed****Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 9 A.A.R. 3511, effective May 21, 2002 (Supp. 03-3).

**R2-20-220. Ex Parte Communications**

- A. In order to avoid the possibility of prejudice, real or apparent, to the public interest in enforcement actions pending before the Commission pursuant to its compliance procedures, except to the extent required for the disposition of ex parte matters as required by law (for example, during the normal course of an investigation or a conciliation effort), no interested person outside the agency shall make or cause to be made to any Commissioner or any member of any Commission staff any ex parte communication relative to the factual or legal merits of any enforcement action, nor shall any Commissioner or member of the Commission's staff make or entertain any such ex parte communications.
- B. This rule shall apply from the time a complaint is filed with the Commission or from the time that the Commission determines on the basis of information ascertained in the normal course of its statutory responsibilities that it has reason to believe that a violation of a statute or rule over which the Commission has jurisdiction has occurred or may occur, and remains in force until the Commission has finally concluded all action with respect to the matter in question.
- C. Nothing in this Section shall be construed to prohibit contact between a respondent or respondent's attorney and any attorney or the Administrative Counsel or the Assistant Attorney General in the course of representing the Commission or the respondent with respect to an enforcement proceeding or civil action. No statement made by a Commission attorney or staff member shall bind or estop the Commission.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-221. Representation by Counsel; Notification**

- A. If a respondent wishes to be represented by counsel with regard to any matter pending before the Commission, respondent shall so advise the Commission by sending a letter of representation signed by the respondent, which letter shall state the following:
  - 1. The name, address, and telephone number of the counsel; and
  - 2. A statement authorizing such counsel to receive any and all notifications and other communications from the Commission on behalf of respondent.
- B. Upon receipt of a letter of representation, the Commission shall have no contact with respondent except through the designated counsel unless authorized in writing by respondent. The Commission will send a copy of this letter to the respondent's attorney.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-222. Civil Penalties**

- A. If the Commission has reason to believe by a preponderance of the evidence that a participating candidate is not in compliance with the Act or Commission rules, then in addition to other penalties under law, the Commission may decertify a candidate, deny or suspend funding, order repayment of funds, or impose a penalty not to exceed \$1,000 for a participating candi-

date for the legislature and 5,000 for a participating candidate for statewide office.

- B. If the Commission has reason to believe by a preponderance of the evidence that a person other than a participating candidate is not in compliance with the Act or Commission rules, then in addition to other penalties under law, the Commission may impose a penalty not to exceed \$1,000.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

Amended by exempt rulemaking at 13 A.A.R. 3524, effective January 1, 2008 (Supp. 07-3). Amended by exempt rulemaking at 19 A.A.R. 1697, effective May 23, 2013 (Supp. 13-2). Amended by exempt rulemaking at 19 A.A.R. 3524, effective September 27, 2013 (Supp. 13-4).

**R2-20-223. Notice of Appealable Agency Action**

If the Commission makes a probable cause finding pursuant to R2-20-215 or decides to initiate an enforcement proceeding pursuant to R2-20-217, the Assistant Attorney General (AAG) shall draft and serve notice of an appealable agency action pursuant to A.R.S. § 41-1092.03 and § 41-1092.04 on the respondent. The notice shall identify the following:

1. The statute or rule violated;
2. A description of the respondent's right to request a hearing and to request an informal settlement conference; and
3. A description of what the respondent may do if the respondent wishes to remedy the situation without appealing the Commission's decision.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

**R2-20-224. Request for an Administrative Hearing**

- A. The respondent must file a request for a hearing with the Commission within 30 days of receipt of the notice prescribed in R2-20-223.
- B. If the respondent requests a hearing, the AAG shall notify the Office of Administrative Hearings (OAH) of the appeal and shall coordinate a hearing date with the Commission's AAG and Commission staff that may be called as witnesses and OAH. The hearing must be held within 60 days after the notice of appeal is filed with the Commission.
- C. The AAG shall prepare and serve a notice of hearing on all parties to the appeal at least 30 days before the hearing date, unless and expedited hearing is requested and granted. The notice of hearing shall be drafted in accordance with A.R.S. § 41-1092.05(D).

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-225. Informal Settlement Conference**

- A. If the respondent requests an informal settlement conference, the informal settlement conference shall be held within 15 days after the Commission receives the request. A request for an informal settlement conference shall be in writing and must be filed with the Commission no later than 20 days before the hearing date. A person with the authority to act on behalf of the Commission must represent the Commission at the conference. The AAG shall attend the settlement conference, but shall not be the individual authorized to act on behalf of the Commission.

- B.** The Commission representative shall notify the appellant in writing that the statements, either written or oral, made by the appellant at the conference, including a written document, created or expressed solely for the purpose of settlement negotiations, are inadmissible in any subsequent administrative hearing. The parties participating in the settlement conference waive their right to object to the participation of the agency representative in the final administrative decision.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-226. Administrative Hearing**

- A.** If the matter continues to a hearing, the hearing shall be held in accordance with A.R.S. § 41-1092.07. The Administrative Law Judge (ALJ) must issue a written recommended decision within 20 days after the hearing is concluded.
- B.** If the enforcement action occurs within six months of the primary or general election, the Commission will request an expedited review of the matter

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-227. Review of Administrative Decision by Commission**

- A.** Within 30 days after the date OAH sends a copy of the ALJ's decision to the Commission, the Commission may review the ALJ's decision and accept, reject or modify the decision.
- B.** If the Commission declines to review the ALJ's decision, the Commission shall serve a copy of the decision on all parties. If the Commission modifies or rejects the decision, the Commission shall file with OAH and serve on all parties, a copy of the ALJ's decision with the rejection or modification and a written justification setting forth the reasons for the rejection or modification. If the Commission accepts, rejects or modifies the decision, the Commission's decision will be certified as final.
- C.** If the Commission does not accept, reject or modify the decision within 30 days after OAH sends the ALJ's decision to the Commission, the ALJ's decision will be certified as final.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-228. Judicial Review**

A party may appeal a final administrative decision pursuant to A.R.S. § 12-901 et seq. (Judicial Review of Administrative Decisions). A party does not have the right to judicial review unless that party first exhausts its administrative remedies by going through the above steps. After a hearing has been held and a final administrative decision has been entered pursuant to § 41-1092.08, a party is not required to file a motion for rehearing or review of the decision in order to exhaust the party's administrative remedies.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-229. Repealed**

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

**R2-20-230. Repealed**

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

**R2-20-231. Repealed**

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 12 A.A.R. 758, effective February 15, 2006 (Supp. 06-1).

**ARTICLE 3. STANDARD OF CONDUCT FOR COMMISSIONERS AND EMPLOYEES**

**R2-20-301. Purpose and Applicability**

- A.** The Commission is committed to implementing the Act in an honest, independent, and impartial fashion and to seeking to uphold public confidence in the integrity of the electoral system. To ensure public trust in the fairness and integrity of the Arizona elections process, all Commissioners and employees must observe the highest standards of conduct. This Article prescribes standards of ethical conduct for Commissioners and employees of the Commission relating to conflicts of interest arising from outside employment, private businesses, professional activities, political activities, and financial interests. The avoidance of misconduct and conflicts of interest on the part of the Commissioners and the employees through informed judgment is indispensable to the maintenance of these prescribed ethical standards. Attainment of these goals necessitates strict and absolute fairness and impartiality in the administration of the law.
- B.** This Article applies to all persons included within the terms "employee" and "Commissioner" of the Commission.
- C.** These Standards of Conduct shall be construed in accordance with any applicable laws, regulations, and agreements between the Commission and a labor organization.
- D.** Pursuant to A.R.S. § 16-955(I), for three years after a Commissioner completes his or her tenure, Commissioners shall not seek or hold any public office, serve as an officer of any political committee, or employ or be employed as a lobbyist.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-302. Definitions**

The following terms apply in all Citizens Clean Elections Act matters:

1. "Commission" means the Citizens Clean Elections Commission of Arizona.
2. "Commissioner" means a voting member of the Commission, appointed pursuant to A.R.S. § 16-955.
3. "Conflict of interest" means a situation in which a Commissioner's or an employee's private interest is or appears to be inconsistent with the efficient and impartial conduct of his or her official duties and responsibilities.
4. "Employee" means an employee or staff member of the Commission.
5. "Former employee" means one who was, and is no longer, an employee of the Commission.
6. "Official responsibility" means the direct administrative or operating authority, whether intermediate or final, to approve, disapprove, or otherwise direct Commission action. Official responsibility may be exercised alone or with others and either personally or through subordinates.

7. "Outside employment" or "outside activity" means any work, service or other activity performed by a Commissioner or employee other than in the performance of the Commissioner's or employee's official employment duties. It includes such activities as writing and editing, publishing, teaching, lecturing, consulting, self-employment, and other services or work performed, with or without compensation.
8. "Person" means an individual, corporation, company, association, firm, partnership, society, joint stock company, political committee, or other group, organization, or institution.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-303. Notification to Commissioners and Employees**

The Executive Director shall provide to each Commissioner and employee of the Commission, upon commencement of his or her term or employment and at least annually thereafter, a copy of this Article and such other information regarding standards of conduct as the Commission and/or applicable law may prescribe.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).  
Amended by exempt rulemaking at 13 A.A.R. 3527, effective January 1, 2008 (Supp. 07-3).

**R2-20-304. Interpretation and Advisory Service**

Commissioners or employees seeking advice and guidance on questions of conflict of interest and on other matters covered by this Article shall consult with the Commission's Chair or Executive Director. The Commission's Chair or Executive Director shall be consulted prior to the undertaking of any action that might violate this Article governing the conduct of Commissioners or employees.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).  
Amended by exempt rulemaking at 13 A.A.R. 3527, effective January 1, 2008 (Supp. 07-3).

**R2-20-305. Reporting Suspected Violations**

- A. Commissioners and employees who have information, which causes them to believe that there has been a violation of a statute or a rule set forth in this Article, shall report promptly, in writing, such incident to the Commission's Chair or Executive Director.
- B. When information available to the Commission indicates a conflict between the interests of a Commissioner or employee and the performance of his or her Commission duties, the Commissioner or employee shall be provided an opportunity to explain the conflict or appearance of conflict in writing.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-306. Disciplinary and Other Remedial Action**

- A. A violation of this Article by an employee may be cause for disciplinary action, which may be in addition to any penalty prescribed by law.
- B. When the Commission's Executive Director determines that an employee may have or appears to have a conflict of interest, the Commission's Executive Director may question the employee in the matter and gather other information. The Commission's Executive Director and the employee's supervisor shall discuss with the employee possible ways of eliminat-

ing the conflict or appearance of conflict. If the Commission's Executive Director, after consultation with the employee's supervisor, concludes that remedial action should be taken, he or she shall refer a statement to the Commission containing his or her recommendation for such action. The Commission, after consideration of the employee's explanation and the results of any investigation, may direct appropriate remedial action as it deems necessary.

- C. Remedial action pursuant to subsection (B) of this Section may include, but is not limited to:
  1. Changes in assigned duties;
  2. Divestment by the employee of his or her conflicting interest;
  3. Disqualification for particular action; or
  4. Disciplinary action.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-307. General Prohibited Conduct**

- A. A Commissioner or employee shall avoid any action whether or not specifically prohibited by this Section that might result in, or create the appearance of:
  1. Using public office for unlawful private gain;
  2. Giving favorable or unfavorable treatment to any person or organization due to any partisan or political consideration;
  3. Impeding Commission efficiency or economy;
  4. Losing impartiality.
  5. Making a Commission decision without Commission approval; or
  6. Adversely affecting the confidence of the public in the integrity of the Commission.
- B. A Commissioner or employee of the Commission shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from a person who:
  1. Has, or is seeking to obtain, contractual or other business or financial relations with the Commission;
  2. Conducts operations or activities that are regulated or examined by the Commission; or
  3. Has an interest that may be substantially affected by the performance or nonperformance of the Commissioner or employee's official duty.
- C. Subsection (B) of this Section shall not apply in the following circumstances:
  1. When circumstances make it clear that obvious family or personal relationships, rather than the business of the persons concerned, are the motivating factors;
  2. To the acceptance of food, refreshments, and accompanying entertainment of nominal value in the ordinary course of a social occasion or a luncheon or dinner meeting or other function where a Commissioner or an employee is properly in attendance;
  3. To the acceptance of unsolicited advertising or promotional material or other items of nominal value such as pens, pencils, note pads, calendars; and
  4. To the acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities, such as home mortgage loans.
- D. A Commissioner or an employee shall not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than himself or herself. However, this subsection does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a spe-



cial occasion such as birthday, holiday, marriage, illness, or retirement.

- E. This Section does not preclude a Commissioner or employee from receipt of reimbursement, unless prohibited by law, for expenses of travel and such other necessary subsistence as is compatible with this Article for which no state payment or reimbursement is made. However, this Section does not allow a Commissioner or employee to be reimbursed, or payment to be made on his or her behalf, for excessive personal living expenses, gifts, entertainment, or other personal benefits, nor does it allow a Commissioner or employee to be reimbursed by a person for travel on official business under Commission orders when reimbursement is prescribed by statute.

#### Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

#### R2-20-308. Outside Employment or Activities

- A. A Commissioner or employee shall not engage in outside employment that is incompatible with the full discharge of his or her duties as a Commissioner or employee.
- B. Incompatible outside employment or other activities by Commissioners or employees include, but are not limited to:
1. Outside employment or other activities that involve illegal activities;
  2. Outside employment or other activities that would give rise to a real or apparent conflict of interest situation even though no violation of a specific statutory provision was involved;
  3. Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances where acceptance may result in, or create the appearance of, a conflict of interest;
  4. Outside employment or other activities that might bring discredit upon the state or Commission;
  5. Outside employment or other activities that establish relationships or property interests that may result in a conflict between the Commissioner's or the employee's private interests and official duties;
  6. Outside employment or other activities which would involve any contractor or subcontractor connected with any work performed for the Commission or would involve any person or organization in a position to gain advantage in its dealings with the state through the Commissioner's or employee's exercise of his or her official duties;
  7. Outside employment or other activities that may be construed by the public to be the official acts of the Commission. In any permissible outside employment, care shall be taken to ensure that names and titles of Commissioners and employees are not used to give the impression that the activity is officially endorsed or approved by the Commission or is part of the Commission's activities;
  8. Outside employment or other activities which would involve use by a Commissioner or employee of his or her official duty time; use of official facilities, including office space, machines, or supplies, at any time; or use of the services of other employees during their official duty hours;
  9. Outside employment or other activities which impair the Commissioner's or employee's mental or physical capacities to perform Commission duties and responsibilities in an acceptable manner; or
  10. Use of information obtained as a result of state employment that is not freely available to the general public or would not be made available upon request. However,

written authorization for the use of any such information may be given when the Commission determines that such use would be in the public interest.

- C. Commissioners and employees shall not receive any salary or anything of monetary value from a private source as compensation for the Commissioner's or employee's services to the state.
- D. Commissioners and employees are encouraged to engage in teaching, lecturing, and writing that is not prohibited by law or this Article. However, Commissioners and employees shall not, either with or without compensation, engage in teaching or writing that is dependent on information obtained as a result of his or her Commission employment, except when that information has been made available to the public or will be made available on request, or when the Commission gives written authorization for the use of nonpublic information on the basis that the use is in the public interest.
- E. This Section does not preclude a Commissioner or employee from participating in the activities of or acceptance of an award for meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, nonprofit, educational, recreational, public service, or civic organization.
- F. An employee who intends to engage in outside employment shall obtain the approval of the Executive Director. The request shall include the name of the person, group, or organization for whom the work is to be performed, the nature of the services to be rendered, the proposed hours of work, or approximate dates of employment, and the employee's certification as to whether the outside employment (including teaching, writing, or lecturing) will depend in any way on information obtained as a result of the employee's official position. The employee will receive, from the Executive Director, written notice of approval or disapproval of any written request. A record of the decision shall be placed in each employee's official personnel folder.

#### Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

#### R2-20-309. Financial Interests

- A. Commissioners and employees shall not engage in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through the Commissioner's or employee's duties or employment.
- B. Commissioners and employees shall not have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with the Commissioner's or employee's official duties and responsibilities, except in cases where the Commissioner or employee makes full disclosure, and disqualifies himself or herself from participating in any decisions, approval, disapproval, recommendation, the rendering of advice, investigation, or in any proceeding of the Commission in which the financial interest is or appears to be affected. Full disclosure by a Commissioner or employee will require that individual to submit a written statement to the Executive Director or Chair disclosing the particular financial interest which conflicts substantially, or appears to conflict substantially, with the Commissioner's or employee's duties and responsibilities.
- C. Commissioners and employees shall disqualify themselves from a proceeding in which the Commissioner's or employee's impartiality might reasonably be questioned, such as in a situation where the Commissioner or employee knows that he or she, or his or her family member, has an interest in the subject matter in controversy or is a party to the proceeding, or has

any other interest that could be substantially affected by the outcome of the proceeding.

- D.** This Section does not preclude a Commissioner or employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Commission, as long as the Commissioner's or employee's financial interest does not conflict with official Commission duties.

#### Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

#### **R2-20-310. Political and Organization Activity**

- A.** Due to the Commission's role in the political process, the following restrictions on political activities are required:
1. Commissioners and employees shall not advocate for the election or defeat of a candidate, nor make contributions to a candidate, political party, or political committee subject to the jurisdiction of the Commission. Commissioners and employees, however, are not prohibited from signing candidate nomination petitions;
  2. Commissioners and employees shall not provide volunteer or paid services for a candidate, political party, or political committee subject to the jurisdiction of the Commission; and
  3. Commissioners and employees not shall display partisan buttons, badges, or other insignia on Commission premises.
- B.** Employees on leave, leave without pay, or on furlough or terminal leave, even though the employees' resignations have been accepted, are subject to the restrictions of this Section. A separated employee who has received a lump-sum payment for annual leave, however, is not subject to the restrictions during the period covered by the lump-sum payment or thereafter, provided he or she does not return to state employment during that period. An employee is not permitted to take a leave of absence to work with a political candidate, committee, or organization or become a candidate for office despite any understanding that he or she will resign his or her position if nominated or elected.
- C.** A Commissioner or employee is accountable for political activity by another person acting as his or her agent or under the Commissioner's or employee's direction or control if the Commissioner or employee is thus accomplishing what he or she may not lawfully do directly and openly.

#### Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

#### **R2-20-311. Membership in Associations**

Commissioners or employees who are members of nongovernmental associations or organizations shall avoid activities on behalf of those associations or organizations that are incompatible with their official positions.

#### Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

#### **R2-20-312. Use of State Property**

A Commissioner or employee shall not directly or indirectly use, or allow the use of, state property of any kind, including property leased to the state, for other than officially approved activities. Commissioners and employees have a positive duty to protect and conserve state property including equipment, supplies, and other property entrusted or issued to him or her.

#### Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

### ARTICLE 4. AUDITS

#### **R2-20-401. Purpose and Scope**

This article prescribes procedures for conducting examinations and audits of participating candidates' campaign finances.

#### Historical Note

New Section made by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 19 A.A.R. 1699, effective October 6, 2011 (Supp. 13-2).

#### **R2-20-402. General**

The Commission may conduct an examination and audit of the receipts, disbursements, debts and obligations of each candidate. In addition, the Commission may conduct other examinations and audits as it deems necessary to carry out the provisions of the Act and regulations. Information obtained pursuant to any audit and examination may be used by the Commission as the basis, or partial basis, for its repayment determinations.

#### Historical Note

New Section made by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

#### **R2-20-402.01. Random Audits**

To ensure compliance with the Act and Commission rules, the Commission shall conduct random audits of participating candidates after each primary election period and each general election period. Random audits shall include the review of campaign finance reports and related documentation in accordance with procedures established by the Commission. The Commission may hire independent accounting firms to carry out the random audits. The selection of statewide offices and legislative districts for audit shall be determined by random lot at a Commission meeting. All candidates who appeared on the ballot for the selected offices or districts will be audited. Candidates for the following offices and districts shall not be subject to selection for random audit:

1. For the primary election period and the general election period, candidates for statewide offices and for legislative offices from districts in which no participating candidates were on the ballot; and
2. For the general election period, candidates for statewide offices and for legislative offices from districts that were selected for random audit following the primary election period.

#### Historical Note

New Section made by exempt rulemaking at 13 A.A.R. 3529, effective January 1, 2008 (Supp. 07-3). Amended by exempt rulemaking at 19 A.A.R. 1700, effective October 6, 2011 (Supp. 13-2).

#### **R2-20-403. Conduct of Fieldwork**

- A.** The Commission will provide the candidate two days notice of the Commission's intention to commence fieldwork on the audit and examination. The Commission will conduct fieldwork at a site provided by the candidate. During or after fieldwork, the Commission may request additional or updated information, which expands the coverage dates of information previously provided. During or after fieldwork, the Commission may also request additional information that was created by or becomes available to the candidate that is of assistance in the Commission's audit. The candidate shall produce the additional or updated information no later than two days after service of the Commission's request.

- B. On the date scheduled for the commencement of fieldwork, the candidate shall facilitate the examination or audit by making records available in one central location, such as the Commission's office space, or shall provide the Commission with office space and records. The candidate shall be present at the site of the fieldwork. The candidate shall be familiar with the candidate's records and shall be available to the Commission to answer questions and to aid in locating records.
- C. If the candidate fails to provide adequate office space, personnel or records, the Commission may seek judicial intervention to enforce the request or assess other penalties.
- D. If, in the course of the examination or audit process, a dispute arises over the documentation sought, the candidate may seek review by the Commission of the issues raised. To seek review, the candidate shall submit a written statement within five days after the disputed Commission request is made, describing the dispute and indicating the candidate's proposed alternatives.

**Historical Note**

New Section made by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

**R2-20-404. Preliminary Audit Report**

- A. After the completion of fieldwork, the auditors may prepare a written preliminary audit report, which will be provided to the candidate after it is reviewed by the Executive Director. The preliminary audit report may include:
  - 1. An evaluation of procedures and systems employed by the candidate to comply with applicable provisions of the Act and Commission rules,
  - 2. The accuracy of statements and campaign finance reports filed with the Secretary of State by the candidate, and
  - 3. Preliminary findings.
- B. The candidate may submit in writing within 10 days after receipt of the preliminary audit report, legal and factual materials disputing or commenting on the proposed findings contained in the preliminary audit report. In addition, the candidate shall submit any additional documentation requested by the Commission.
- C. If the preliminary audit report cannot be completed, the Commission shall notify the candidate in writing that the audit report will not be completed.

**Historical Note**

New Section made by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 16 A.A.R. 1200, effective February 28, 2008 (Supp. 10-2).

**R2-20-405. Final Audit Report**

- A. Before voting on whether to approve and issue a final audit report, the Commission will consider any written legal and factual materials timely submitted by the candidate in accordance with R2-20-404. The Commission-approved final audit report may address issues other than those contained in the preliminary audit report.
- B. The final audit report may identify issues that warrant referral for possible enforcement proceedings.
- C. Addenda to the final audit report may be approved and issued by the Commission from time to time as circumstances warrant and as additional information becomes available. Such addenda may be based on follow-up fieldwork conducted, or information ascertained by the Commission in the normal course of carrying out its responsibilities. The procedures set forth in R2-20-404 and subsections (A) and (B) will be followed in preparing such addenda.

**Historical Note**

New Section made by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

**R2-20-406. Release of Audit Report**

- A. The Commission will consider the final audit report specified in R2-20-405 in an open meeting. The Commission will provide the candidate with copies of the final audit report to be considered in an open meeting 24 hours prior to the public meeting.
- B. Following Commission approval of the final audit report, the report will be forwarded to the candidate within five days after the public meeting.

**Historical Note**

New Section made by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

**ARTICLE 5. RULEMAKING****R2-20-501. Purpose and Scope**

This Article prescribes the procedures for the submission, consideration, and disposition of rulemaking petitions filed with the Commission, establishes the conditions under which the Commission may identify and respond to petitions for rulemaking, and informs the public of the procedures the agency follows in response to such petitions.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-502. Procedural Requirements**

- A. Any interested person may file with the Commission a written petition for the issuance, amendment, or repeal of an administrative rule implementing any of the Citizens Clean Elections Act.
- B. The petition shall:
  - 1. Include the name and address of the petitioner or agent. An authorized agent of the petitioner may submit the petition, but the agent shall disclose the identity of his or her principal;
  - 2. Identify itself as a petition for the issuance, amendment, or repeal of a rule;
  - 3. Identify the specific Section of the regulations to be affected;
  - 4. Set forth the factual and legal grounds on which the petitioner relies, in support of the proposed action; and
  - 5. Be addressed and submitted to the Commission.
- C. The petition may include draft regulatory language that would effectuate the petitioner's proposal.
- D. The Commission may, in its discretion, treat a document that fails to conform to the format requirements of subsection (B) of this Section as a basis for rulemaking addressing issues raised in a petition.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-503. Processing of Petitions**

- A. Within 10 days of receiving a petition, the Commission shall send a letter to the petitioner acknowledging the receipt of the petition and informing the petitioner that the Commission will review and decide whether to deny or accept the petition. To assist in determining whether a rulemaking proceeding should be initiated, the Commission may publish a Notice of Availability on the Commission web site or otherwise post notice, stating that the petition is available for public inspection in the Commission's Office and that statements in support of or in

opposition to the petition may be filed within a stated period after publication of the Notice of Availability.

- B. If the Commission decides a public hearing on the petition would help determine whether to commence a rulemaking proceeding, it will publish an appropriate notice of the hearing on the Commission web site or otherwise post notice, to notify interested persons and to invite their participation in the hearing.
- C. The Commission will consider all comments regarding whether rulemaking proceedings should be initiated.

#### Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

#### R2-20-504. Disposition of Petitions

- A. After considering the comments and any other information relevant to the subject matter of the petition, the Commission will decide whether to initiate rulemaking based on the filed petition.
- B. If the Commission decides to initiate rulemaking proceedings, it shall file a Notice of Proposed Rulemaking and the proposed rule, in the format prescribed in A.R.S. § 41-1022, with the Secretary of State's office for publication in the Arizona Administrative Register. After the Commission approves the proposed rule, the Commission will accept public comments on the proposed rule for 60 days. After consideration of the comments received in the 60-day comment period, the Commission may adopt the rule in open meeting.
- C. If the Commission decides not to initiate rulemaking, it will give notice of this action by publishing a Notice of Disposition on the Commission web site, or otherwise post notice, and by sending a letter to the petitioner. The Notice of Disposition will include a brief statement of the grounds for the Commission's decision.

#### Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

#### R2-20-505. Commission Considerations

The Commission's decision on the petition for rulemaking may include, but will not be limited to, the following considerations:

1. The Commission's statutory authority;
2. Policy considerations;
3. The desirability of proceeding on a case-by-case basis;
4. The necessity or desirability of statutory revision;
5. Available agency resources; and
6. Substantive policy statements.

#### Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

#### R2-20-506. Administrative Record

- A. The Commission record for the petition process consists of the following:
  1. The petition, including all attachments on which it relies, filed by the petitioner;
  2. Written comments on the petition that have been circulated to and considered by the Commission, including attachments submitted as a part of the comments;
  3. Agenda documents, in the form they are circulated to and considered by the Commission in the course of the petition process;
  4. All notices published on the Commission web site and in the Arizona Administrative Register, including the Notice of Availability and Notice of Disposition;

5. The transcripts or audiotapes of any public hearing on the petition;
  6. All correspondence between the Commission and the petitioner, other commentators and state agencies pertaining to Commission consideration of the petition; and
  7. The Commission's decision on the petition, including all documents identified or filed by the Commission as part of the record relied on in reaching its final decision.
- B. The administrative record specified in subsection (A) of this Section is the exclusive record for the Commission's decision.

#### Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

### ARTICLE 6. EX PARTE COMMUNICATIONS

#### R2-20-601. Purpose and Scope

This Article prescribes procedures for handling ex parte communications made regarding Commission audits, investigations, and litigation. Rules governing such communications made in connection with Commission enforcement actions are found at R2-20-220.

#### Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

#### R2-20-602. Definitions

- A. "Ex parte communication" means any written or oral communication, by any person outside the agency to any Commissioner or any employee, which imparts information or argument regarding prospective Commission action or potential action concerning:
  1. Any ongoing audit;
  2. Any pending investigation; or
  3. Any litigation matter.
- B. "Ex parte communication" does not include the following communications:
  1. Public statements by any person in a public forum; or
  2. Statements or inquiries by any person limited to the procedural status of an open proceeding involving a Commission audit, investigation, or litigation matter.

#### Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

#### R2-20-603. Audits, Investigations, and Litigation

- A. In order to avoid the possibility of prejudice, real or apparent, in Commission decision making, no person outside the Commission shall make, or cause to be made, to any Commissioner or employee, any ex parte communication regarding any audit undertaken by the Commission or any pending or prospective Commission decision regarding any investigation or litigation, including whether to initiate, settle, appeal, or any other decision concerning an investigation or litigation matter.
- B. A Commissioner or employee who receives an oral ex parte communication concerning any matters addressed in subsection (A) of this Section shall attempt to prevent the communication. If unsuccessful in preventing the communication, the Commissioner or employee shall advise the person making the communication that he or she will not consider the communication and shall, as soon after the communication as is reasonably possible, but no later than three business days after the communication, or prior to the next Commission discussion of the matter, whichever is earlier, prepare a statement setting forth the substance and circumstances of the communication, and deliver the statement to the Executive Director for placement in the applicable case file.

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- C. A Commissioner or employee who receives a written ex parte communication concerning any matters addressed in subsection (A) of this Section shall, as soon after the communication as is reasonably possible but no later than three business days after the communication, or prior to the next Commission discussion of the matter, whichever is earlier, deliver a copy of the communication to the Executive Director for placement in the applicable case file.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**R2-20-604. Sanctions**

Any person who becomes aware of a possible violation of this Article shall notify the Executive Director in writing of the facts and circumstances of the alleged violation. The Executive Director shall recommend to the Commission the appropriate action to be taken. The Commission shall determine the appropriate action by at least three votes.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).

**ARTICLE 7. USE OF FUNDS AND REPAYMENT****R2-20-701. Purpose and Scope**

A participating candidate may spend clean elections monies only for reasonable and necessary expenses that are directly related to the campaign of that participating candidate.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1).  
Amended by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

**R2-20-702. Use of Campaign Funds**

- A. A participating candidate shall use funds in the candidate's current campaign account to pay for goods and services for direct campaign purposes only. Funds shall be disbursed and reported in accordance with A.R.S. § 16-948(C).
- B. A participating candidate's payment from a campaign account to a political committee or civic organization is not a contribution if the payment is reasonable in relation to the value received. Payment of customary charges for services rendered, such as for printing voter or telephone lists, and payment of not more than \$200 per person to attend a political event open to the public or to party members shall be considered reasonable in relation to the value received.
- C. A participating candidate shall not use funds in the candidate's campaign account for:
1. Costs of legal defense in any campaign law enforcement proceeding or for any affirmative claim or litigation in court or before the Commission regarding a campaign. This prohibition does not bar use of campaign funds for payments to attorneys or certified accountants for proactive compliance advice and assistance.
  2. Food and beverages for staff and volunteers exceeding \$11 for breakfast, \$16 for lunch, and \$27 for dinner, per person.
  3. Personal use, which includes, but is not limited to, any item listed below:
    - a. Household food items or supplies.
    - b. Clothing, other than items of de minimis value that are used in the campaign, such as campaign "t-shirts" or caps with campaign slogans.
    - c. Tuition payments, other than those associated with training campaign staff.

- d. Mortgage, loan, rent, lease or utility payments:
  - i. For any part of any personal residence of the candidate or a member of the candidate's family; or
  - ii. For real or personal property that is owned or leased by the candidate or a member of the candidate's family and used for campaign purposes, to the extent the payments exceed the fair market value of the property usage.
- e. Admission to a sporting event, concert, theater or other form of entertainment, unless part of a specific campaign activity.
- f. Dues, fees or gratuities at a country club, health club, recreational facility or other nonpolitical organization, unless they are part of the costs of a specific fundraising event that takes place on the organization's premises.
- g. Gifts or donations.
- h. Extended warranties or other similar purchase options that extend beyond the campaign.

4. Payment to a candidate or a candidate's family member, as defined in R2-20-101(13), or an enterprise owned in whole or part by a candidate or family member, for the provisions of goods or services to the extent the payments exceed the fair market value of the goods or services. All payments made to family members or to enterprises owned in whole or part by the candidate or a family member shall be clearly itemized and indicated as such in all campaign finance reports.

- D. Participating candidates may purchase fixed assets with a value not to exceed \$800. Fixed assets, including accessories, purchased with campaign funds that can be used for non-campaign purposes with a value of \$200 or more shall be turned into the Commission no later than 14 days after the primary election or the general election if the candidate was successful in the primary. For purposes of determining whether a fixed asset is valued at \$200 or more, the value shall include any accessories purchased for use with the fixed asset in question. A candidate may elect to keep an item by reimbursing the Commission for 80 percent of the original purchase price including the cost of accessories.
- E. During the primary election period, a participating candidate shall not make any expenditure greater than the difference between:
1. The sum of early contributions received plus public funds disbursed through the primary election period; less
  2. All other expenditures made during and for the exploratory, qualifying and primary election periods.
- F. During the general election period, a participating candidate shall not make any expenditure greater than the difference between:
1. The amount of public funds disbursed during and for the general election period; less
  2. All other expenditures made during and for the general election period.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed; new Section made by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).  
Amended by exempt rulemaking at 13 A.A.R. 3606, effective January 1, 2008 (Supp. 07-4). Amended by exempt rulemaking at 15 A.A.R. 1423, effective October 22, 2009 (Supp. 09-3). Amended by exempt rulemaking at 17 A.A.R. 1267, effective April 12, 2011 (Supp. 11-2). Since language in subsections R2-20-702(C)(3)(d)(i) and

(ii) and R2-20-702(C)(4) and (5) are substantively identical, the Commission requested to remove the redundant language in R2-20-702(C)(3)(d)(i) and (ii) under A.R.S. § 41-1011(C), Office File No. M11-345, filed October 3, 2011 (Supp. 11-2). Amended by exempt rulemaking at 19 A.A.R. 1702, effective October 6, 2011 (Supp. 13-2).

#### **R2-20-702.01. Use of Assets**

A participating candidate may use assets such as signs, pamphlets, and office equipment from a prior election cycle only after the candidate's current campaign pays for the assets in an amount equal to the fair market value of the assets, which amount shall in no event be less than one-fifth (1/5) the original purchase price of such assets. If the candidate was a participating candidate during the prior election cycle, the cash payment shall be made to the Fund. If the candidate was not a participating candidate during the prior election cycle, the cash payment shall be made to the prior campaign. If the prior campaign account of a nonparticipating candidate is closed, the payment shall be made to the candidate.

#### **Historical Note**

New Section made by exempt rulemaking at 12 A.A.R. 758, effective February 15, 2006 (Supp. 06-1). Amended by exempt rulemaking at 13 A.A.R. 3606, effective January 1, 2008 (Supp. 07-4). Amended by exempt rulemaking at 15 A.A.R. 1156, effective August 31, 2009 (Supp. 09-2).

#### **R2-20-703. Documentation for Direct Campaign Expenditures**

- A.** In addition to the general books and records requirements prescribed in R2-20-111, participating candidates shall comply with the following requirements:
  1. All participating candidates shall have the burden of proving that expenditures made by the candidate were for direct campaign purposes. The candidate shall obtain and furnish to the Commission on request any evidence regarding direct campaign expenses made by the candidate as provided in subsection (A)(2).
  2. All participating candidates shall retain records with respect to each expenditure and receipt, including bank records, vouchers, worksheets, receipts, bills and accounts, journals, ledgers, fundraising solicitation material, accounting systems documentation, and any related materials documenting campaign receipts and disbursements, for a period of three years, and shall present these records to the Commission on request.
  3. All participating candidates shall maintain a list of all fixed assets whose purchase price exceeded \$300 when acquired by the campaign. The list shall include a brief description of each fixed asset, the purchase price, the date it was acquired, the method of disposition and the amount received in disposition.
- B.** Upon written request from a candidate, the Commission shall determine whether a planned campaign expenditure or fundraising activity is permissible under the Act. To make a request, a candidate shall submit a written description of the planned expenditure or activity to the Commission. The Commission shall inform the candidate whether an enforcement action will be necessary if the candidate carries out the planned expenditure or activity. The Commission shall ensure that the candidate can rely on a "no action" letter. A "no action" letter applies only to the candidate who requested it.
- C.** Joint expenditures. Expenditures may be made in conjunction with other candidates, but each candidate shall pay his or her proportionate share of the cost. A candidate's payment for an advertisement, literature, material, campaign event or other

activity shall be considered a joint expenditure including, but not limited to, the following criteria:

1. The activity includes express advocacy of the election or defeat of more than two candidates;
2. The purpose of the material or activity is to promote or facilitate the election of a second candidate;
3. The use and prominence of a second candidate or his or her name or likeness in the material or activity;
4. The material or activity includes an expression by a second candidate of his or her view on issues brought up during the election campaign;
5. The timing of the material or activity in relation to the election of a second candidate;
6. The distribution of the material or the activity is targeted to a second candidate's electorate; or
7. The amount of control a second candidate has over the material or activity.

- D.** Any expenditure made by the candidate or the candidate's committee that cannot be documented as a direct expenditure shall promptly be repaid to the Fund with the candidate's personal monies.

#### **Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed; new Section made by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4). Amended by exempt rulemaking at 12 A.A.R. 758, effective February 15, 2006 (Supp. 06-1).

#### **R2-20-704. Repayment**

- A.** In general, the Commission may determine that a participating candidate who has received payments from the Fund must repay the Fund as determined by the Commission.
  1. A candidate who has received payments from the Fund shall pay the Fund any amounts that the Commission determines to be repayable. In making repayment determinations, the Commission may utilize information obtained from audits and examinations or otherwise obtained by the Commission in carrying out its responsibilities.
  2. The Commission will notify the candidate of any repayment determinations made under this Section as soon as possible, but not later than one year after the day of the election.
  3. Once the candidate receives notice of the Commission's repayment determination, the candidate should give preference to the repayment over all other outstanding obligations of the candidate, except for any taxes owed by the candidate.
  4. Repayments may be made only from the following sources: personal funds of the candidate, funds in the candidate's accounts, and any additional funds raised subject to the limitations and prohibitions of the Act.
  5. The Commission may withhold the portion of funds required to be repaid from future payments to a participating candidate if the Commission has made a repayment determination.
- B.** The Commission may determine that a participating candidate who has received payments from the Fund must repay the Fund under any of the following circumstances:
  1. Payments in excess of candidate's entitlement. If the Commission determines that any portion of the payments made to the candidate was in excess of the aggregate payments to which such candidate was entitled, it will so notify the candidate, and such candidate shall pay to the Fund an amount equal to such portion.

2. Use of funds not for direct campaign expenses. If the Commission determines that any amount of any payment to an eligible candidate from the Fund was used for purposes other than direct campaign purposes described in R2-20-702, it will notify the candidate of the amount so used, and such candidate shall pay to the Fund an amount equal to such amount.
  3. Expenditures that were not documented in accordance with campaign finance reporting requirements, expended in violation of state or federal law, or used to defray expenses resulting from a violation of state or federal law, such as the payment of fines or penalties.
  4. Surplus. If the Commission determines that a portion of payments from the Fund remains unspent after all direct campaign expenses have been paid, it shall so notify the candidate, and such candidate shall pay the Fund that portion of surplus funds.
  5. Income on investment or other use of payments from the Fund. If the Commission determines that a candidate received any income as a result of an investment or other use of payments from the Fund, it shall so notify the candidate, and such candidate shall pay to the Fund an amount equal to the amount determined to be income, less any federal, state or local taxes on such income.
  6. Unlawful acceptance of contributions by an eligible candidate. If the Commission determines that a participating candidate accepted contributions, other than early contributions or qualifying contributions, it shall notify the candidate of the amount of contributions so accepted, and the candidate shall pay to the Fund an amount equal to such amount, plus any civil penalties assessed.
- C. Repayment determination procedures. The Commission's repayment determination will be made in accordance with the following procedures:
1. Repayment determination. The Commission will send a repayment determination pursuant to Article 2, Compliance and Enforcement Procedures, and will set forth the legal and factual reasons for such determination, as well as the evidence upon which any such determination is based. The candidate shall repay, in accordance with subsection (D), the amount that the Commission has determined to be repayable.
  2. Administrative review of repayment determination. If a candidate disputes the Commission's repayment determination, he or she may request an administrative appeal of the determination in accordance with A.R.S. § 41-1092 et. seq.
- D. Repayment period.
1. Within 30 days of service of the notice of the Commission's repayment determination, the candidate shall repay the amounts the Commission has determined must be repaid. Upon application by the candidate, the Commission may grant an extension of time in which to make repayment.
  2. If the candidate requests an administrative appeal of the Commission's repayment determination of this Section, the time for repayment will be suspended until the Commission has concluded its review of the Administrative Law Judge's (ALJ) decision. Within 30 days after service of the notice of the Commission's review of the ALJ's decision, the candidate shall repay the amounts that the Commission has determined to be repayable. Upon application by the candidate, the Commission may grant an extension of up to 30 days in which to make repayment.
  3. Interest shall be assessed on all repayments made after the initial 30-day repayment period or the 30-day repay-

ment period established by this Section. The amount of interest due shall be the greater of:

- a. An amount calculated in accordance with A.R.S. § 44-1201(A); or
- b. The amount actually earned on the funds set aside or to be repaid under this Section.

#### Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed; new Section made by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

#### R2-20-705. Additional Audits or Repayment Determinations

- A. The Commission may conduct an additional audit or examination of any candidate in any case in which the Commission finds reason to believe that a violation of a statute or regulation over which the Commission has jurisdiction has occurred or is about to occur.
- B. The Commission may make additional repayment determinations after it has made an initial repayment determination pursuant to R2-20-704. The Commission may make additional repayment determinations where there exist facts not used as the basis for any previous determination. Any such additional repayment determination will be made in accordance with the provisions of this Article.

#### Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed; new Section made by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

#### R2-20-706. Repealed

#### Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

#### R2-20-707. Repealed

#### Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

#### R2-20-708. Repealed

#### Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

#### R2-20-709. Repealed

#### Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

#### R2-20-710. Repealed

#### Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 588, effective November 27, 2001 (Supp. 02-1). Section repealed by exempt rulemaking at 11 A.A.R. 4518, effective May 28, 2005 (Supp. 05-4).

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**Supplement to the**

**Arizona Administrative Code**

The official compilation of Arizona Rules

**Arizona Secretary of State's Office**

Public Services Division

1700 W. Washington Street, Fl 7.

Phoenix, AZ 85007

***Replacement Check List***

For rules filed within the

Third

July 1, 2014 - September 30, 2014

**Code Release Number: Supp. 14-3**

Within the stated calendar quarter, this Title contains all rules made, amended, repealed, renumbered, and recodified; or rules that have expired or were terminated due to an agency being eliminated under sunset law. These rules were either certified by the Governor's Regulatory Review Council or the Attorney General's Office; or exempt from the rulemaking process, and filed with the Office of the Secretary of State. Refer to the historical notes for more information. Please note that some rules you are about to remove may still be in effect after the publication date of this Supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

**Follow the instructions to replace the updated Chapters.**

**TITLE 03. Agriculture**

**Chapter 02. Department of Agriculture - Animal Services Division**

Sections, Parts, Exhibits, Tables or Appendices modified

R3-2-203, R3-2-701 and R3-2-810

REMOVE Supp. 14-2

Pages: 1 - 41

REPLACE with Supp. 14-3

Pages: 1 - 41

**Chapter 03. Department of Agriculture - Environmental Services Division**

Sections, Parts, Exhibits, Tables or Appendices modified

R3-3-702

REMOVE Supp. 13-4

Pages: 1 - 50

REPLACE with Supp. 14-3

Pages: 1 - 50

**Chapter 04. Department of Agriculture - Plant Services Division**

Sections, Parts, Exhibits, Tables or Appendices modified

R3-4-301

REMOVE Supp. 13-4

Pages: 1 - 57

REPLACE with Supp. 14-3

Pages: 1 - 57

**Chapter 06. Department of Agriculture - Office of Commodity Development and Promotion**

Sections, Parts, Exhibits, Tables or Appendices modified

R3-6-102

REMOVE Supp. 13-3

Pages: 1 - 1

REPLACE with Supp. 14-3

Pages: 1 - 1

**Chapter 09. Department of Agriculture - Agricultural Councils and Commissions**

Sections, Parts, Exhibits, Tables or Appendices modified

R3-9-303

REMOVE Supp. 14-1

Pages: 1 - 10

REPLACE with Supp. 14-3

Pages: 1 - 10

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**TITLE 3. AGRICULTURE**  
**CHAPTER 2. DEPARTMENT OF AGRICULTURE**  
**ANIMAL SERVICES DIVISION**

(Authority: A.R.S. §§ 3-1201 et seq., 3-601 et seq., and 3-701 et seq., and 3-2901 et seq.)

*Chapter 2, Articles 1 through 7 renumbered from Title 3, Chapter 9, Articles 1 through 7; Article 8, consisting of Sections R3-2-801 through R3-2-808, renumbered from Title 3, Chapter 5, Article 1, Sections R3-5-01 through R3-5-08; Article 9, consisting of Sections R3-2-901 through R3-2-909 renumbered from Title 3, Chapter 6, Article 1, Sections R3-6-101 through R3-6-109 (Supp. 91-4).*

*Article 1 consisting of Sections R3-9-101 through R3-9-103; Article 2 consisting of Sections R3-9-201 through R3-9-208; Article 3 consisting of Sections R3-9-301 and R3-9-302; Article 4 consisting of Sections R3-9-401 through R3-9-409; Article 5 consisting of Sections R3-9-501 through R3-9-504; Article 6 consisting of Sections R3-9-601 through R3-9-620; Article 7 consisting of Sections R3-9-701 and R3-9-702 adopted effective August 19, 1983.*

*Former Article 1 consisting of Sections R3-9-01 through R3-9-11; Article 2 consisting of Sections R3-9-16 through R3-9-26; Article 3 consisting of Sections R3-9-22 through R3-9-35; Article 4 consisting of Sections R3-9-46 through R3-9-48 repealed effective August 19, 1983.*

**ARTICLE 1. GENERAL PROVISIONS**

*Article 1, consisting of Section R3-2-101, adopted effective May 7, 1997 (Supp. 97-2).*

*Article 1, consisting of Sections R3-2-101 through R3-2-109, recodified to Article 11, Sections R3-2-1101 through R3-2-1109 (Supp. 97-1).*

*Article 1, consisting of Sections R3-2-101 through R3-2-109, adopted effective September 11, 1996 (Supp. 96-3).*

*Article 1, consisting of Sections R3-2-101 through R3-2-103, renumbered from R3-9-101 through R3-9-103 (Supp. 91-4).*

Section	
R3-2-101.	Definitions
R3-2-102.	Licensing Time-frames
R3-2-103.	Recodified
R3-2-104.	Recodified
R3-2-105.	Recodified
R3-2-106.	Recodified
R3-2-107.	Recodified
R3-2-108.	Recodified
R3-2-109.	Recodified
Table 1.	Time-frames (Calendar Days)

**ARTICLE 2. MEAT AND POULTRY INSPECTION**

*Article 2, consisting of Sections R3-2-201 through R3-2-208, renumbered from Sections R3-9-201 through R3-9-208 (Supp. 91-4).*

Section	
R3-2-201.	Definitions
R3-2-202.	Meat and Poultry Inspection; Slaughtering and Processing Standards
R3-2-203.	Licenses; Registration; Records
R3-2-204.	Official Slaughter Establishment
R3-2-205.	Requirements for Designation of Rendering Plants to Produce Certified Animal Fat
R3-2-206.	Purchase, Sale, Collection, Transportation, Disposition, and Use of Meat or Meat Food Products; Dead Animals; Animal Bone, Animal Fat, Animal Offal
R3-2-207.	Meat from Dead Animals Processed and Decharacterized for Use as Animal Food
R3-2-208.	Diseased and Injured Animals
R3-2-209.	Exempt Non-mobile Slaughter Establishments

**ARTICLE 3. FEEDING OF ANIMALS**

*Article 3, consisting of Sections R3-2-301 and R3-2-302, renumbered from R3-9-301 and R3-9-302 (Supp. 91-4).*

Section	
R3-2-301.	Operation of Beef Cattle Feedlots

R3-2-302. Permit to Feed Garbage to Swine; Requirements

**ARTICLE 4. ANIMAL DISEASE PREVENTION AND CONTROL**

*Article 4, consisting of Sections R3-2-401 through R3-2-409 renumbered from R3-9-401 through R3-9-409 (Supp. 91-4).*

Section	
R3-2-401.	Definitions
R3-2-402.	Mandatory Disease Reporting by Veterinarians and Veterinary Laboratories
R3-2-403.	Individual Identification of Swine at Market
R3-2-404.	Importation, Manufacture, Sale, and Distribution of Biologicals and Semen
R3-2-405.	Depopulation of Animals Infected with a Foreign Disease
R3-2-406.	Disease Control; Feedlots
R3-2-407.	Equine Infectious Anemia
R3-2-408.	Disposition of Livestock Exposed to Rabies
R3-2-409.	Rabies Vaccines for Animals
R3-2-410.	Restricted Swine Feedlots
R3-2-411.	Exhibition Swine
R3-2-412.	Exhibition Sheep and Goats
R3-2-413.	Sheep and Goats; Intrastate Movement

**ARTICLE 5. STATE-FEDERAL COOPERATIVE DISEASE CONTROL PROGRAM**

*Article 5, consisting of Sections R3-2-501 and R3-2-504, renumbered from R3-9-501 and R3-9-504 (Supp. 91-4).*

Section	
R3-2-501.	Tuberculosis Control and Eradication Procedures
R3-2-502.	Repealed
R3-2-503.	Brucellosis Control and Eradication Procedures
R3-2-504.	Pseudorabies Procedures for Eradication
R3-2-505.	Scrapie Procedures for Eradication

**ARTICLE 6. HEALTH REQUIREMENTS GOVERNING ADMISSION OF ANIMALS**

*Article 6, consisting of Sections R3-2-601 and R3-2-620, renumbered from R3-9-601 and R3-9-620 (Supp. 91-4).*

Section	
R3-2-601.	Definitions
R3-2-602.	Importation Requirements
R3-2-603.	Importation of Diseased Animals
R3-2-604.	Livestock Permit Requirements; Exceptions
R3-2-605.	Quarantine for Animals Entering Illegally
R3-2-606.	Health Certificate
R3-2-607.	Permit Number
R3-2-608.	Consignment of Animals

R3-2-609.	Diversion; Prohibitions
R3-2-610.	Tests; Official Confirmation
R3-2-611.	Transporter Duties
R3-2-612.	Importation of Cattle and Bison
R3-2-613.	Swine
R3-2-614.	Sheep and Goats
R3-2-615.	Equine Importation
R3-2-616.	Cats and Dogs
R3-2-617.	Poultry
R3-2-618.	Psittacine Birds
R3-2-619.	Repealed
R3-2-620.	Zoo Animals
R3-2-621.	Non-restricted Live Wildlife Cervidae
R3-2-622.	Monkeys

**ARTICLE 7. LIVESTOCK INSPECTION**

*Article 7, consisting of Sections R3-2-701 and R3-2-703, renumbered from R3-9-701 and R3-9-703 (Supp. 91-4).*

## Section

R3-2-701.	Department Livestock Inspection
R3-2-702.	Livestock Self-inspection
R3-2-703.	Seasonal Self-inspection Certificate
R3-2-704.	Repealed
R3-2-705.	Repealed
R3-2-706.	Repealed
R3-2-707.	Ownership and Hauling Certificate for Equines; Fees
R3-2-708.	Equine Rescue Facility Registration

**ARTICLE 8. DAIRY AND DAIRY PRODUCTS CONTROL**

(Authority: A.R.S. § 3-601 et seq.)

*Article 8, consisting of Sections R3-2-801 through R3-2-808, renumbered from R3-5-01 through R3-5-08 (Supp. 91-4).*

## Section

R3-2-801.	Definitions
R3-2-802.	Milk and Milk Product Standards
R3-2-803.	Milk and Milk Products Labeling
R3-2-804.	Trade Products
R3-2-805.	Grade A Raw Milk For Consumption
R3-2-806.	Parlors and Milk Rooms
R3-2-807.	Frozen Dessert Plant and Processing Standards
R3-2-808.	Frozen Desserts Reconstituted from Powdered Mixes
R3-2-809.	Medicinal, Chemical and Radioactive Residues in Milk
R3-2-810.	License Fees
<b>EMERGENCY RULEMAKING</b>	
R3-2-811.	Dairy Farm Permit

**ARTICLE 9. EGG AND EGG PRODUCTS CONTROL**

(Authority: A.R.S. § 3-701 et seq.)

*Article 9, consisting of Sections R3-2-901 through R3-2-909 renumbered from R3-6-101 through R3-6-109 (Supp. 91-4).*

## Section

R3-2-901.	Definitions
R3-2-902.	Standards, Grades, and Weight Classes for Shell Eggs
R3-2-903.	Sampling: Schedule and Methods for Evidence
R3-2-904.	Quarterly Report Periods
R3-2-905.	Inspection Fee Rate
R3-2-906.	Violations and Penalties
R3-2-907.	Poultry Husbandry; Standards for Production of Eggs
R3-2-908.	Sanitary Standards; Egg Processing

R3-2-909.	Repealed
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**ARTICLE 10. AQUACULTURE**

(Authority: A.R.S. § 3-2901 et seq.)

*Article 10, consisting of Sections R3-2-1001 through R3-2-1010, adopted effective May 3, 1993 (Supp. 93-2).*

## Section

R3-2-1001.	Definitions
R3-2-1002.	Fees for Licenses; Inspection Authorization and Fees
R3-2-1003.	General Licensing Provisions
R3-2-1004.	Specific Licensing Provisions; Aquaculture Facility; Fee Fishing Facility; Special License Facility
R3-2-1005.	Fee Fishing Facility
R3-2-1006.	Processor License
R3-2-1007.	Transporter License; Transport; Delivery
R3-2-1008.	Repealed
R3-2-1009.	Disease Certification
R3-2-1010.	Importation of Aquatic Animals

**ARTICLE 11. EXPIRED**

*Article 11, consisting of Sections R3-2-1101 through R3-2-1109, expired under A.R.S. § 41-1056(E) at 8 A.A.R. 3755, effective May 10, 2002 (Supp. 02-3).*

*Article 11, consisting of Sections R3-2-1101 through R3-2-1109, recodified from Article 1, Sections R3-2-101 through R3-2-109 (Supp. 97-1).*

## Section

R3-2-1101.	Expired
R3-2-1102.	Expired
R3-2-1103.	Expired
R3-2-1104.	Expired
R3-2-1105.	Expired
R3-2-1106.	Expired
R3-2-1107.	Expired
R3-2-1108.	Expired
R3-2-1109.	Expired

**ARTICLE 1. GENERAL PROVISIONS****R3-2-101. Definitions**

In addition to the definitions provided in A.R.S. §§ 3-1201, 3-1451, and 3-1771, the following terms apply to this Chapter:

“Animal” means livestock, bison, dogs, cats, rabbits, rodents, game animals, furbearing and wildlife mammals, and poultry and other birds.

“APHIS” means the Animal and Plant Health Inspection Service of the United States Department of Agriculture.

“Breeding swine” means any member of the family Suidae having the potential to procreate, and includes gilts, sows, and boars.

“Cervidae” means the family of cervids that includes, but is not limited to, deer, moose, elk, reindeer, and caribou.

“Dairy cattle” means cattle of dairy breeds or dairy types used for the production of milk or milk products for human consumption.

“Designated feedlot” means a confined drylot area under state quarantine that is approved and licensed by the State Veterinarian, contains a restricted feeding pen, and is maintained for finish feeding of cattle or bison that do not meet the brucellosis or tuberculosis import test requirements.

“Health certificate” means a legible record that is issued by a VS animal health official, state animal health official, or accredited veterinarian at the point of origin of a shipment of animals, conforms to the requirements of R3-2-606, and is written on a form approved by the chief animal health official of the state of origin or an equivalent form of the USDA attesting that the animal described has been inspected and found to meet the Arizona entry requirements.

“Permit number” or “permit” means a serialized number issued by the State Veterinarian’s Office that conforms to the requirements of R3-2-607 and allows the regulated movement of certain animals into Arizona.

“USDA” means the United States Department of Agriculture.

“VS” means the Veterinary Services branch of APHIS.

#### **Historical Note**

Reserved Section R3-2-101 renumbered from R3-9-101 (Supp. 91-4). New Section adopted effective September 11, 1996 (Supp. 96-3). Section R3-2-101 recodified to R3-2-1101 (Supp. 97-1). New Section adopted effective May 7, 1997 (Supp. 97-2). Amended by final rulemaking at 14 A.A.R. 876, effective May 3, 2008 (Supp. 08-1).

#### **R3-2-102. Licensing Time-frames**

- A.** Overall time-frame. The Department shall issue or deny a license within the overall time-frames listed in Table 1 after receipt of the complete application. The overall time-frame is the total of the number of days provided for the administrative completeness review and the substantive review.
- B.** Administrative completeness review.
1. The administrative completeness review time-frame established in Table 1 begins on the date the Department receives the application. The Department shall notify the applicant in writing within the administrative completeness review time-frame whether the application or request is incomplete. The notice shall specify what information is missing. If the Department does not provide notice to the applicant within the administrative completeness review time-frame, the Department considers 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 date the Department mails the notice of missing information to the applicant until the date the Department receives the information.
  3. If the applicant fails to submit the missing information before the expiration of the completion request period, the Department shall close the file, unless the applicant requests an extension. An applicant whose file has been closed may obtain a license by submitting a new application.
- C.** Substantive review. The substantive review time-frame established in Table 1 shall begin after the application is administratively complete.
1. If the Department makes a comprehensive written request for additional information, the applicant shall submit the additional information identified by the request within the

additional information period provided in Table 1. The substantive review time-frame is suspended from the date of the Department request until the information is received by the Department. If the applicant fails to provide the information identified in the written request within the additional information period, the Department shall deny the license.

2. The Department shall issue a written notice granting or denying a license within the substantive review time-frame. If the application is denied, the Department 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.

#### **Historical Note**

Reserved Section R3-2-102 renumbered from R3-9-102 (Supp. 91-4). New Section adopted effective September 11, 1996 (Supp. 96-3). Section R3-2-102 recodified to R3-2-1102 (Supp. 97-1). New Section R3-2-102 adopted effective October 8, 1998 (Supp. 98-4).

#### **R3-2-103. Recodified**

##### **Historical Note**

Adopted effective August 19, 1983 (Supp. 83-4). R3-2-103 renumbered from Section R3-9-103 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2). New Section adopted effective September 11, 1996 (Supp. 96-3). Section R3-2-103 recodified to R3-2-1103 (Supp. 97-1).

#### **R3-2-104. Recodified**

##### **Historical Note**

Adopted effective September 11, 1996 (Supp. 96-3). Section R3-2-104 recodified to R3-2-1104 (Supp. 97-1).

#### **R3-2-105. Recodified**

##### **Historical Note**

Adopted effective September 11, 1996 (Supp. 96-3). Section R3-2-105 recodified to R3-2-1105 (Supp. 97-1).

#### **R3-2-106. Recodified**

##### **Historical Note**

Adopted effective September 11, 1996 (Supp. 96-3). Section R3-2-106 recodified to R3-2-1106 (Supp. 97-1).

#### **R3-2-107. Recodified**

##### **Historical Note**

Adopted effective September 11, 1996 (Supp. 96-3). Section R3-2-107 recodified to R3-2-1107 (Supp. 97-1).

#### **R3-2-108. Recodified**

##### **Historical Note**

Adopted effective September 11, 1996 (Supp. 96-3). Section R3-2-108 recodified to R3-2-1108 (Supp. 97-1).

#### **R3-2-109. Recodified**

##### **Historical Note**

Adopted effective September 11, 1996 (Supp. 96-3). Section R3-2-109 recodified to R3-2-1109 (Supp. 97-1).

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

License	Authority	Administrative Completeness Review	Response to Completion Request	Substantive Completeness Review	Response to Additional Information	Overall Time-frame
<b>MEAT AND POULTRY INSPECTION</b>						
License to Slaughter	A.R.S. § 3-2002 A.R.S. § 3-2003 R3-2-208	14	14	30	14	44
Transfer of license without fee	A.R.S. § 3-2009	14	14	30	5	44
State Meat Inspection Service	A.R.S. § 3-2047	14	14	30	14	44
Sale or Exchange of Meat or Poultry	A.R.S. § 3-2081 R3-2-208	14	14	30	14	44
Rendering Facility Certification	A.R.S. § 3-2081 R3-2-205	14	14	30	14	44
Transfer of License	A.R.S. § 3-2086	14	14	30	5	44
Official Slaughter Meat Licenses	A.R.S. § 3-2122 R3-2-208	14	14	30	14	44
<b>FEEDING OF ANIMALS</b>						
Feed Lot License	A.R.S. § 3-1452	14	14	60	14	74
Permit to Feed Garbage to Swine	A.R.S. § 3-2664	14	14	60	14	74
<b>DAIRY PRODUCTS AND CONTROL</b>						
Milk Distributing Plant New Renewal	A.R.S. § 3-607	14 14	14 14	14 14	14 14	28 28
Milk Processing Plant New Renewal	A.R.S. § 3-607	14 14	14 14	14 14	14 14	28 28
Plant Licensing New Renewal	A.R.S. § 3-665	14 14	14 14	14 14	14 14	28 28
Request to market a product as a milk product	A.R.S. § 601.01	14	14	14	14	28
Tester License	A.R.S. § 3-619	7	7	7	7	14
Trade Product Label	A.R.S. § 3-667	14	14	30	30	44
<b>LIVESTOCK INSPECTION</b>						
Equine Trader Permit	A.R.S. § 3-1348	7	7	7	7	14
Ownership and Hauling Certificate for Equines	A.R.S. § 3-1344 A.R.S. § 3-1345	14	14	14	14	28
<b>EGG PRODUCTS AND CONTROL</b>						
Annual Licensing	A.R.S. § 3-714	10	10	10	10	20
<b>AQUACULTURE</b>						
Aquaculture Facility	A.R.S. § 3-2907 R3-2-1004	14	14	30	14	44
Fee Fishing Facility	R3-2-1005	14	14	30	14	44
Processor	R3-2-1006	14	14	30	14	44
Transporter	R3-2-1007	14	14	30	14	44
Special Licenses	A.R.S. § 3-2908 R3-2-1008	14	14	30	14	44

**Historical Note**

Adopted effective October 8, 1998 (Supp. 98-4). Amended by final rulemaking at 8 A.A.R. 3625, effective August 7, 2002 (Supp. 02-3). Amended by final rulemaking at 9 A.A.R. 2089, effective August 2, 2003 (Supp. 03-2).

**ARTICLE 2. MEAT AND POULTRY INSPECTION****R3-2-201. Definitions**

In addition to the definitions provided in A.R.S. §§ 3-101 and 3-2001 and 9 CFR 301.2 and 9 CFR 381.1, which are incorporated by reference in R3-2-202, the following terms apply to this Article:

1. “Animal” means any steer, heifer, calf, cow, bull, sheep, goat, swine, horse, ass, mule, burro, ratite, or poultry.
2. “Dead animal” means an animal that died other than by slaughter in a place where inspection is performed by the Department or by the United States Department of Agriculture.
3. “Inedible meat” means:
  - a. Meat or meat food product from an animal that died by slaughter or was processed in an inspected slaughterhouse, but which an inspector did not pass as fit for human consumption; or
  - b. Meat condemned by a federal or state inspector.
4. “Rendering” means the conversion of packinghouse waste or dead animal carcasses and parts into industrial fat, oil, or other product unfit for human consumption.

**Historical Note**

Adopted effective August 19, 1983 (Supp. 83-4).  
 Amended effective June 4, 1987 (Supp. 87-2). Amended subsection (A) effective February 28, 1989 (Supp. 89-1).  
 Section R3-2-201 renumbered from Section R3-9-201 (Supp. 91-4). Section repealed, new Section adopted effective July 13, 1995 (Supp. 95-3). Amended by final rulemaking at 10 A.A.R. 2661, effective August 7, 2004 (Supp. 04-2).

**R3-2-202. Meat and Poultry Inspection; Slaughtering and Processing Standards**

All meat and poultry inspection, slaughtering, production, processing, labeling, storing, handling, transportation and sanitation procedures shall be conducted as prescribed in 9 CFR Chapter III, revised January 1, 2013, as amended by 76 FR 68058-64 (November 3, 2011), except sections 302.2, 307.5, 307.6, 312, 322, 327, 329.7, 329.9, 331, 335, 351, 352, 354, 355, 381.38, 381.39, 381.96 through 381.112, 381.195 through 381.209, 381.218 through 381.225, 390, 391, 392, 590 and 592. This material is incorporated by reference and does not include any later amendments or editions. A copy of the incorporated material is available from the Department and may also be viewed online at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

**Historical Note**

Adopted effective August 19, 1983 (Supp. 83-4).  
 Amended effective June 4, 1987 (Supp. 87-2). Amended subsection (A) effective February 28, 1989 (Supp. 89-1).  
 Section R3-2-202 renumbered from Section R3-9-202 (Supp. 91-4). Amended effective July 13, 1995 (Supp. 95-3). Amended effective March 5, 1997 (Supp. 97-1).  
 Amended by final rulemaking at 6 A.A.R. 465, effective January 5, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 3625, effective August 7, 2002 (Supp. 02-3). Amended by final rulemaking at 10 A.A.R. 1971, effective May 4, 2004 (Supp. 04-2). Amended by emergency rulemaking at 15 A.A.R. 1890, effective October 21, 2009 for 180 days (Supp. 09-4). Emergency expired; Section amended by final rulemaking at 16 A.A.R. 351, effective April 3, 2010 (Supp. 10-1).  
 Amended by emergency rulemaking at 19 A.A.R. 150, effective January 9, 2013 (Supp. 13-1). Amended by final rulemaking at 19 A.A.R. 1789, effective July 9, 2013 (Supp. 13-3).

**R3-2-203. Licenses; Registration; Records**

- A. Any person operating a business in any of the following categories shall obtain the appropriate license from the Department.
  1. Types of slaughter licenses.
    - a. Official slaughter – the slaughtering of animals in a slaughterhouse for sale for human consumption.
    - b. Exempt slaughter.
      - i. Exempt non-mobile slaughter – the slaughtering or dressing of an animal in a stationary building for human consumption, that is not sold or offered for sale.
      - ii. Exempt mobile slaughter – the slaughtering or dressing of an animal for human consumption by using a mobile structure on the property of the animal’s owner, that is not sold or offered for sale.
  2. Types of meat licenses.
    - a. Broker – any person, firm or corporation engaged in buying or selling carcasses, parts of carcasses, meat or poultry food products, or by-products from state or federally inspected establishments. A broker negotiates purchases or sales of these products other than for the broker’s own account, as an employee of another person, and is paid a commission.
    - b. Exempt – any person, firm, or corporation engaged in processing meat or poultry products without meat inspection, for an individual owner of meat that is not for sale.
    - c. Distributor – any person, firm, or corporation engaged in receiving carcasses, parts of carcasses, meat or poultry food products, or by-products from state or federally inspected establishments and storing or distributing these products to commercial outlets, processors, or individuals. A distributor does not process any of these products.
    - d. Jobber – any person, firm, or corporation with an established place of business that buys meat or poultry food products and offers the products for sale to someone other than the end-use consumer.
    - e. Pet food manufacturer – any person, firm, or corporation engaged in manufacturing animal food from meat or poultry unfit for human consumption.
    - f. Processor – any person, firm, or corporation that changes meat or poultry food products by cutting, mixing, blending, canning, curing or otherwise preparing meat or meat food products wholesale for human consumption.
    - g. Renderer – any person, firm, or corporation that renders and tallows and any person, firm, or corporation engaged commercially in the hide, hair, or pelt removal, cutting up, or rendering of animals.
- B. Applications for a license or registration pursuant to A.R.S. § 3-2081(A), shall be made on forms provided by the Department and shall contain the following:
  1. The name of the applicant and the applicant’s partners, officers or directors of the business, if any;
  2. The business name, mailing address, telephone number, and Social Security number of the applicant;
  3. The exact location of the business, if different from subsection (B)(2).
- C. All persons licensed or registered under this Section, and all other persons described in A.R.S. § 3-2081, shall maintain the records required under A.R.S. § 3-2081 for a minimum of one year. In addition, all registered dead animal haulers, licensed rendering and tallow plants, and pet food manufacturing plants

shall prepare and submit the reports required under A.R.S. § 3-2695 and shall include copies of those reports as part of records maintained under this Section and A.R.S. § 3-2081.

- D.** During fiscal year 2015, the fee to obtain or renew a license to slaughter is:
1. For not to exceed 45 head of cattle, and not to exceed 55 head of sheep, goats or swine in one calendar year: \$250.
  2. For more than 45 and not to exceed 150 head of cattle and more than 45 and not to exceed 160 head of sheep, goats or swine in one calendar year: \$300.
  3. For more than 150 head of cattle and more than 160 head of sheep, goats or swine in any one calendar year: \$450.
- E.** During fiscal year 2015, the fee to obtain or renew a meat license is:
1. For a broker, \$450.
  2. For exempt processing, \$300.
  3. For a distributor, \$500.
  4. For a jobber, \$450.
  5. For a pet food manufacturer, \$300.
  6. For a processor, \$300.
  7. For meat storage, \$450.
  8. For transportation, \$300.

#### Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-208 renumbered from Section R3-9-208 (Supp. 91-4). Amended effective July 13, 1995 (Supp. 95-3). Former Section R3-2-203 renumbered to R3-2-208; new Section R3-2-203 renumbered from Section R3-2-208 and amended by final rulemaking at 5 A.A.R. 1593, effective May 5, 1999 (Supp. 99-2). Amended by exempt rulemaking at 16 A.A.R. 1331, effective June 29, 2010 (Supp. 10-2). Amended by exempt rulemaking at 17 A.A.R. 1756, effective July 20, 2011 (Supp. 11-3). Amended by exempt rulemaking at 18 A.A.R. 2060, effective August 2, 2012 (Supp. 12-3). Amended by exempt rulemaking at 19 A.A.R. 3127, effective September 14, 2013 (Supp. 13-3). Amended by exempt rulemaking at 20 A.A.R. 2449, effective July 24, 2014 (Supp. 14-3).

#### R3-2-204. Official Slaughter Establishment

In addition to the requirements in A.R.S. § 3-2051, the following shall be provided when slaughtering cattle, calves, sheep, and hogs:

1. Cattle.
  - a. A metal knocking box or concrete box with metal door to confine the animals prior to stunning;
  - b. A separately drained, dry landing area at least five feet wide in front of the knocking box;
  - c. A curbed-in bleeding area at least eight feet wide and seven feet long, located so that blood will not splash upon stunned animals lying in the dry landing area or upon carcasses being skinned on the siding bed. Curbing shall be at least six inches high and six inches wide;
  - d. A separately drained area at least five feet from the curbed-in bleeding area to the siding bed;
  - e. A distance of at least 14 feet from the vertical of the dropoff to the vertical of the hoist where carcasses are eviscerated. For multiple-bed plants, this distance shall be increased to 16 feet;
  - f. A distance of at least 14 feet between the vertical of the hoist where carcasses are eviscerated and the header rail leading to the cooler. This distance may be shortened when a single rail hang-off is used;
  - g. A distance of at least three feet from the header rail to the adjacent wall;

- h. A bleeding rail with its top at least 16 feet above the floor or a traveling hoist on an I-beam which will provide an equivalent distance of the carcass from the floor;
  - i. Floor space for a head-flushing cabinet and head inspection rack with removable hooks;
  - j. When hides are dropped to a room below, a hide chute near the point where hides are removed from the carcasses. The chute shall have a vented hood with a self-closing, push-in door. The vent shall be approximately 10 inches in diameter and extend to a point above the roof. Additional chutes, which meet the requirements of this subsection, for inedible and condemned materials shall be provided separate from the hide chutes;
  - k. A two-level viscera inspection truck for evisceration, except when a moving top viscera inspection table is used;
  - l. An area for washing and shrouding carcasses which shall be curbed and sloped to a separate drain or have a slope of approximately 1/2 inch to the foot leading to a separate drain;
  - m. Dressing rails and cooler rails at least 11 feet in height.
2. Calves and sheep.
    - a. A bleeding rail with its top approximately 11 feet from the floor. The floor of the bleeding area shall be curbed and separately drained;
    - b. Dressing and cooler rails of such height as to provide a clearance of at least eight inches from the carcasses to the floor. Calves which are of such size that there is not a clearance of at least eight inches above the floor, or whose viscera cannot be transferred manually and unaided to the inspection stand, shall be skinned and eviscerated as cattle;
    - c. Facilities for washing hides of calves before any incision is made (except the sticking wound) when carcasses are dressed hide on. The heads of calves and veal slaughtered by the Kosher method shall be skinned prior to the washing of the carcasses;
    - d. Facilities for flushing, washing, and inspecting calf heads, including head-flushing cabinet and head inspection rack with removal calf loops;
    - e. Facilities for the inspection of the viscera. A hopped metal stand shall be provided which accommodates two removal inspection pans. One inspection pan is for the thoracic viscera; the other is for the abdominal viscera. The pans shall have perforated bottoms and handles or hand holes for removal. A sterilizing receptacle shall be provided for sterilization of contaminated pans;
    - f. Facilities for washing sheep carcasses after removal of the pelt. Calves and sheep shall be washed again after they have been eviscerated.
  3. Hogs.
    - a. Facilities for bleeding hogs in a hanging position, over a separately drained, curbed-in bleeding area;
    - b. A scalding vat and gambreling table, including the platforms, of metal construction;
    - c. A shaving rail to assure that carcasses are cleaned;
    - d. A hopped metal stand for the inspection of viscera. A sterilizing receptacle shall be provided at a convenient location for the sterilization of contaminated pans;
    - e. Dressing and cooler rails at least nine feet high or of such height as to provide a clearance of at least eight



- inches between the lowest point of the carcass, or head if left attached, and the floor.
4. Coolers. A chill cooler and separate holding coolers may be provided or both may be combined in one room. The chill cooler shall have floors of concrete sloped to a drain. The walls shall be smooth, light colored, impervious, and the room shall be sealed. The other coolers shall have floors of concrete; the walls shall be smooth, free of cracks, light colored, impervious, and the room shall be sealed. The door between the slaughtering department and the chill cooler shall be clad with rust-resistant metal. Rails shall be spaced at least two feet from walls, columns, refrigerating equipment, or other fixed equipment to prevent contact with the carcasses. Header rails shall be three feet from the walls. When overhead refrigerating facilities are provided, insulated drip pans must be installed beneath them and the pans connected to the drainage system. If wall coils are installed, a drip gutter of impervious material and connected with the drainage system shall be installed beneath the coils. When edible offal is chilled or stored in a cooler other than a separate offal cooler, that area shall be separately drained.
  5. Other edible products departments.
    - a. Floors, walls, and ceilings in the various edible products departments of the plant shall be constructed of material that can be readily kept clean. Wooden structures and equipment shall be kept at a minimum. Floors requiring drainage shall be constructed of dense concrete or floor brick laid on a concrete base. The interior walls and, where practical, ceiling surfaces shall be smooth and flat. Walls shall be constructed of glazed tile, smooth cement plaster, or other USDA-approved impervious material. Walls shall be free of cracks and crevices, and, where brick or tile is used, the mortar joints shall be flush with the surface of the walls. Walls shall be light colored.
    - b. The floors of the plant shall be well-drained; a slope of not less than 1/4 inch to the foot to drainage inlets is required. The floors shall be smooth, impervious, and in good repair; they shall be free from cracks and depressions which could hold floor liquids. Wooden floors are not permitted. Junctions of floors and walls shall be coved.
    - c. Walls, ceilings, beams, and hangers shall be cleaned. Rails may be oiled instead of painted. Rust and scale shall be removed from hangers and meat trolleys. Smooth Portland cement plaster walls shall not be painted.
  6. Hide room. The floor of the hide room, if provided, shall be of concrete and drained. Walls shall be smooth and impervious to at least the highest point of the hide pile. The hide room shall not connect with the slaughtering department except for one opening which shall be equipped with a tight-fitting, self-closing door. The hide room shall not connect with any other room in which edible products are stored, processed, or handled.
  7. Disposal of blood. When blood is not permitted to drain into the sewage system, it may be collected in a metal tank and removed from the premises or blown to the blood drier in a manner that will not mask odors or create a harborage for pests.
  8. Other inedible products departments.
    - a. An inedible products department, completely separate and apart from edible products departments, shall be provided. Walls shall be of smooth, finished, Portland cement plaster, glazed tile, or other USDA-approved material impervious to moisture. Floors shall be constructed of dense concrete or floor tile, sloped to drain. Hot and cold water connections shall be provided. With the exception of one opening to the slaughtering department, there shall be no openings between an inedible products department and an edible products department. This one opening shall be approximately five feet in width to allow the free passage of materials and shall be equipped with a close-fitting, self-closing door of solid construction. This door shall be kept closed at all times, except when in actual use, to prevent the entrance of undesirable odors to the slaughtering department. The area at the loading dock shall be paved, drained, and of sufficient size to accommodate the largest truck used. If inedible offal is stored in an edible offal room, the room is classed as an inedible products department. Paunches may be opened in the slaughtering department only when a hydraulic mechanically operated paunch lift table is provided and used for this purpose. Otherwise, the paunches shall be opened in the inedible offal rooms.
    - b. Requests for permission for rendering of shop scraps and outside dead animals shall be made to the inspector who shall grant or deny the request pursuant to Article 2.
  9. Pens.
    - a. Holding pens shall be surfaced with an impervious material, sloped to drains. A curb shall be installed around the outside of the pens to prevent the wash from escaping. Water under pressure shall be available for washing out the pens. Feeding pens shall be at least 300 feet from the plant and shall not be located in front of the plant.
    - b. Holding and shackling pens shall be located outside of, or separated from, the slaughtering department.
  10. Drainage
    - a. Floors which require flushing during operations shall have sloped floor drains to carry off the floor drainage. Each floor drain shall be equipped with a deep-seal trap; the drainage lines shall be vented to the outside in accordance with local plumbing codes. In no case shall a drain line be less than four inches in diameter.
    - b. Sewage may be disposed of into a municipal sewer system, if permitted by local ordinance, or it may be disposed of into a stream or other similar body of water, provided that:
      - i. This method is acceptable to local health authorities having jurisdiction over sewage disposal, and
      - ii. The flow of the stream or other body of water is sufficient to carry the sewage away from the plant at all seasons of the year. When cesspools are used, they shall be of sufficient size to receive the sewage from the plant at all times; they shall be so constructed that they do not create a nuisance by breeding flies or other insects.
    - c. Grease recovery basins shall not mask odors or create a harborage for pests.
  11. Equipment and utensils.
    - a. Equipment shall be constructed of metal and shall be so constructed that it can be easily cleaned. Cutting boards may be of hard wood or synthetic material,

- but equipment, such as the framework of boning or cutting tables, scalding vats, offal racks and trees, product storage racks, and product trucks shall be of metal construction. Rusty or worn-out equipment shall be replaced.
- b. All equipment shall be thoroughly cleaned following each day's operations. The use of a clear, colorless, odorless, tasteless, edible mineral oil may be used on metal equipment, such as choppers, grinders, mixers, tables, meat trucks, offal racks, hooks, and trolleys. Scale shall not be permitted to accumulate on metal equipment.
  - c. Sterilizing receptacles equipped with drains to permit draining and cleaning shall be placed at convenient locations in the slaughtering department for the cleaning and sterilization of contaminated tools and equipment. Water wasting from equipment shall not flow across the floor.
  - d. Shovels used for transferring ice or other edible materials from one container to another shall not touch the floor.
12. Ventilation and lighting. Natural ventilation may be supplemented by artificial means and shall be sufficient to assure the absence of dust, masking odors, or steam vapors. Points where inspection is conducted may require special lighting. The glass area shall be at least 1/4 of the floor area in all nonrefrigerated work rooms. To assure adequate lighting at all times and at all places, natural lighting must be supplemented by well-distributed artificial lighting.
  13. Water supply, wash basins, sterilizing facilities.
    - a. Hot and cold running water, under pressure, shall be available at all parts of the establishment and in conformity with the requirements of the Arizona Department of Health Services. The hot water used for sterilizing equipment, floors, and walls that may be contaminated by the dressing procedure or handling of diseased carcasses, viscera, and other animal parts, shall be at least 180° F. A thermometer shall be installed to verify the temperature of the water at the point of use. A cleanup hose shall be available for use.
    - b. Foot-pedal operated wash basins shall be placed in or near dressing rooms. These wash basins shall be equipped with running hot and cold water, delivered through a combination mixing faucet with an outlet at least 12 inches above the rim of the bowl. The drainage outlet shall lead directly into the sewage lines. Soap and towels, and a receptacle for dirty paper towels or other trash, shall be convenient to the wash basin.
    - c. One or more wash basins shall be located in the slaughtering department, and one or more in the sausage manufacturing room and at any other place in the establishment essential to ensure cleanliness of all persons handling products. The wash basins shall be equipped with hot and cold running water, delivered through a combination mixing faucet with an outlet at least 12 inches above the rim of the bowl. The water delivery shall be foot-pedal operated, and the drainage outlet shall lead directly into the sewage lines. Soap and disposable towels shall be convenient to the wash basins.
    - d. Water for sterilizing purposes shall be maintained at a temperature of at least 180° F. One or more sterilizing receptacles of rust-resisting, impervious material shall be placed at convenient locations in the slaughtering department for the sterilization of all implements that have been contaminated or used on a diseased carcass or part of a diseased carcass. The sterilizer shall be equipped with a cold water and steam line, or other means to maintain water at a temperature of at least 180° F during slaughtering operations. The sterilizer shall contain a drain so that water may be completely drained out for daily cleaning. Boilers and water heaters shall not be located in the slaughtering department or in any edible products department. To prevent possible back siphonage, vacuum breakers shall be provided on all steam and water lines when open ends are submerged or connected to equipment.
  14. Protection against flies, rodents, or other vermin.
    - a. Plants must be kept free of flies, rats, mice, roaches, and other pests or vermin. The plant shall be constructed to prevent entrance of rodents to the premises and to eliminate their breeding places from the surrounding areas and in the establishment. Construction of the plant shall be such as to eliminate roach and other insect harbors. Windows, doors, and other openings to the plant shall be provided with insect screens, or other measures to prevent entrance of flies or other insects. The screens shall be kept in good repair. Sprays containing residual-acting chemicals shall not be used in edible products departments.
    - b. Animal-handling facilities such as stock pens and runways shall be cleaned as often as necessary and the manure or other waste materials removed shall not be permitted to accumulate at or near the plant.

#### Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-204 renumbered from Section R3-9-204 (Supp. 91-4). Amended effective July 13, 1995 (Supp. 95-3). Amended by final rulemaking at 5 A.A.R. 1593, effective May 5, 1999 (Supp. 99-2).

#### R3-2-205. Requirements for Designation of Rendering Plants to Produce Certified Animal Fat

- A. Certification of animal fat.
  1. The Department shall provide certification of rendering facilities and of animal fats to be exported to foreign countries.
  2. Any licensed rendering plant in Arizona may apply in writing to the Department for certification of its plant or of the animal fat produced in the plant.
  3. As prescribed in subsection (G)(2), the certificate of animal fat shall state that the animal fat identified has been produced by renderers who exclude carcasses and parts condemned because of disease, and dead animals and materials not originally produced under federal or state inspection.
- B. Certification of facilities.
  1. Upon written request from a renderer, an inspection shall be made of the rendering plant to determine the plant's category:
    - a. Category A: No raw materials from diseased carcasses and parts or dead animals are used in the rendering plant.
    - b. Category B: Diseased carcasses and parts and dead animals are processed only in segregated equipment within the plant.

- c. Category C: Diseased carcasses and parts and dead animals are processed through the plant equipment at a separate time of the day from the production of certified animal fat. Raw materials used in the production of non-certified animal fats shall be segregated from raw material used in producing certified animal fat. Production of certified animal fat shall take place in equipment from which all non-certified material has been removed.
- 2. The Department shall certify the plant's participation in the certified animal fat program if it finds that the rendering plant meets the following requirements:
  - a. The plant is licensed by the state of Arizona as a rendering plant pursuant to A.R.S. § 3-2081.
  - b. The plant is equipped and staffed to operate in accordance with the procedures designated in this rule.
- C. Processing certified animal fat.
  - 1. Raw materials used in the production of certified animal fat shall be free from condemned and/or diseased material and shall be derived from products originally produced under federal and state inspection.
  - 2. The following materials shall be excluded from the production of certified animal fat.
    - a. All carcasses and parts from dead, dying, or diseased animals;
    - b. All meat and meat products not originally inspected by state or federal inspectors;
    - c. All meat and meat products condemned because of disease during state or federal meat and poultry inspection.
  - 3. Separation of raw materials.
    - a. Raw materials not certified pursuant to subsection (G)(2) for certified animal fat production shall be separated from other material at the plant of origin by storing the raw material in separate marked containers which shall be identified as containing material not approved for use in producing certified animal fat.
    - b. The separation of raw materials as described in subsection (C)(3)(a) shall be maintained at all times including during transportation, storage, and rendering.
- D. Registration and recordkeeping. All persons engaged in the business of buying, selling, storing and exporting certified animal fat shall be registered with the Department and shall maintain records of all transactions in connection with such fats.
- E. Inspection.
  - 1. Inspectors shall make one or more unannounced inspections a year to ensure that only raw materials certified pursuant to subsection (G)(2) are used in certified animal fat production and that the separation of finished products is maintained.
  - 2. Rendering plants certified under this rule shall make all premises of the rendering plant including storage and export facilities open to inspection by the Department inspectors during the normal hours of operation.
- F. General.
  - 1. The inspector shall sign the renderer's certificate verifying the animal fat produced in the plant.
  - 2. If the renderer's certificate has been suspended or revoked, the renderer shall surrender the certificate upon request of the inspector.
  - 3. No animal fats shipped into Arizona may be mixed with certified animal fat produced in Arizona unless it is certified by the producing state or the USDA.

- 4. A copy of the certificate shall be available for inspection by a representative of the Department during normal business hours.

**G. Certificates of certification.**

- 1. Certification of facilities

**Exhibit A**

Arizona Department of Agriculture

Date \_\_\_\_\_

This is to certify that \_\_\_\_\_  
(Company)

at its plant located at \_\_\_\_\_  
produces animal fat obtained by rendering raw materials (free from condemned and/or diseased materials) collected only from sources which process meat products or slaughter animals for edible consumption under Category \_\_\_\_\_ of A.A.C. R3-2-205.

\_\_\_\_\_  
(Inspector)

- 2. Certification of animal fat

**Exhibit B**

This certification is for \_\_\_\_\_ pounds  
(Weight)  
of rendered animal produced by renderers who exclude carcasses and parts condemned because of disease and dead animals and materials not originally produced under federal inspection or A.A.C. R3-2-205 during the period \_\_\_\_\_ to \_\_\_\_\_ represented

by invoice(s) \_\_\_\_\_  
(Date) (Date)  
(Invoice Numbers)

dated \_\_\_\_\_ sold or shipped to  
(Date)

\_\_\_\_\_  
(Firm Name and Address)

\_\_\_\_\_  
(Authorized Signature)

This certificate and a copy of the invoice shall follow the lot of animal fat to the export terminal.

**Historical Note**

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-205 renumbered from Section R3-9-205 (Supp. 91-4). Amended effective July 13, 1995 (Supp. 95-3).

**R3-2-206. Purchase, Sale, Collection, Transportation, Disposition, and Use of Meat or Meat Food Products; Dead Animals; Animal Bone, Animal Fat, Animal Offal**

- A. A person shall not buy, sell, offer for sale, store, transport, receive, or collect any meat or meat food product except as provided in this subsection.

- 1. Any of the following meat or meat food products may be bought, sold, or offered for sale as animal food and may be stored, transported, received, or collected anywhere within the state:
  - a. Any meat or meat food product that is processed in an animal food manufacturing plant licensed by the Department;
  - b. Any meat or meat food product that comes from an animal that died by slaughter or is approved or passed for animal food by either state or federal meat inspectors;
  - c. Any meat or meat food product that is thoroughly cooked at a minimum temperature of 180° F for 30

minutes and is certified by a state or a federal meat inspector having jurisdiction at the place of processing.

2. A carcass with the hide, hair, or pelt still on the carcass may be bought, sold, offered for sale, collected and transported to or received by the following only:
    - a. A rendering or tallow plant;
    - b. A state or county diagnostic laboratory, a veterinarian's clinic, or crematory;
    - c. An animal food manufacturing plant;
    - d. A landfill regulated by the Arizona Department of Environmental Quality;
    - e. An out-of-state landfill regulated by that state's landfill regulatory authority; or
    - f. A landfill located on a Native American reservation that is regulated by equivalent standards to those prescribed by the Arizona Department of Environmental Quality.
  3. Any meat or meat food product described in subsection (A)(1) or a carcass with the hide, hair, or pelt still on the carcass from an official state or federal slaughter establishment shall be denatured that will not leave a toxic residue and is removable when steam-distilled at atmospheric pressure.
  4. Any meat or meat food product that has been condemned by state or federal meat inspectors shall be treated as provided in 9 CFR 314.3, which has been incorporated by reference in R3-2-202, and may be disposed of as provided in that rule or may be collected and transported to or received by a rendering or tallow plant or a state or county diagnostic laboratory or crematory.
- B.** A person engaged commercially in the collection or transportation of dead animal carcasses or inedible meat shall register with the Department as a dead animal hauler as prescribed in R3-2-203(B) and shall maintain and keep all records for the time required by R3-2-203(C).
- C.** A vehicle or other means of conveyance used to transport a dead animal carcass or inedible meat shall be:
1. Leak-proof,
  2. Constructed of impervious materials that permit thorough cleaning and sanitizing,
  3. Equipped to control insects and odors and prevent the spread of disease, and
  4. Comply with the Department of Environmental Quality vehicle requirements prescribed in R18-13-310(A) and (B).
- D.** Except as provided in subsection (E), a dead animal carcass may be rendered or made into animal food only at a licensed rendering or animal food manufacturing plant as prescribed in A.R.S. § 3-2088 and this Article.
- E.** Dead animals diagnosed with anthrax or an animal disease foreign to the United States shall be handled as directed by the State Veterinarian.
- F.** Discarded animal bone, animal fat, and animal offal generated by a wholesale food manufacturer shall be transported to and received by only a:
1. Licensed rendering plant, or
  2. Landfill, as prescribed in subsections (A)(2)(d), (A)(2)(e), and (A)(2)(f).

#### Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-206 renumbered from Section R3-9-206 (Supp. 91-4). Amended effective July 13, 1995 (Supp. 95-3). Citation in subsection (B) corrected to R3-2-203(C) from R3-2-208(C) under R1-1-109(C) (Supp. 01-2). Amended by final rulemaking at 8 A.A.R. 3015, effective July 10,

2002 (Supp. 02-3).

#### **R3-2-207. Meat from Dead Animals Processed and Decharacterized for Use as Animal Food**

- A.** The following are minimum requirements for animal food manufacturing plants:
1. Hot and cold water shall be provided with facilities for its distribution in the plant which shall conform with the minimum requirements of the state Department of Health Services. The hot water shall be at least 180° F and shall be used for the cleaning of equipment, floors, and walls.
  2. There shall be a drainage and plumbing system and a sewage disposal system that will not serve as a breeding place for flies, constitute a hazard, or endanger public health. Both systems shall meet the minimum requirements of the state Department of Health Services.
  3. The floors, walls, ceilings, partitions, posts, doors, and other parts of all structures shall be of materials, construction, and finish that are capable of being thoroughly cleaned. The floors shall be tile, cement or other material impervious to water and shall have sufficient drainage to preclude stagnant accumulations of moisture.
  4. All outside windows and doors shall be screened.
  5. All rooms shall have natural or artificial lighting and well-distributed ventilation sufficient to prevent uncontrolled mold growth and filth or bacteria that may endanger health.
  6. The plant shall be kept free from flies, rats, mice, and other vermin. Dogs and cats shall be excluded from the plants.
  7. Tables, benches, and other equipment shall be provided so that processing can be performed free from filth or bacteria that may endanger health.
  8. Each plant shall provide toilets, wash basins, towels, hot and cold running water, and soap for the employees with separate facilities when both sexes are employed. Toilets and wash basins shall be kept free from filth or bacteria that may endanger health. The rooms in which the toilet facilities are located shall be ventilated and shall be separated from the rooms in which the animal food is manufactured.
  9. Coolers shall be maintained below 40° F. Freezers shall be maintained below 10° F.
- B.** Decharacterizing or denaturant agents: The following USDA-approved denaturant agents may be used: Charcoal (finely powdered) with a minimum 1 lb. per 100 lbs. meat, F-D & C Blue 1, F-D & C Blue 2, F-D & C Green 3, or liquid charcoal.
1. In addition to the application of the denaturing agents listed, meat or meat products shall be identified with the following information:
    - a. The kind of animal,
    - b. The following phrases:
      - i. For pet food only from dead animals,
      - ii. Denatured with \_\_\_\_\_,
    - c. The correct statement of net weight, and
    - d. The name and address of processor or manufacturer.
  2. Before the denaturing agents are applied to pieces more than four inches in diameter, the pieces shall be freely slashed or sectioned. The application of any of the denaturing agents listed in this Section to the outer surfaces of molds or blocks of boneless meat, meat by-products, or meat food products shall not be considered adequate. The denaturing agent shall be mixed thoroughly with all of the material to be denatured and shall be applied in such quantity and manner that it cannot easily and readily be removed by washing or soaking. Denaturant shall be used to give the meat, meat by-products, raw animal fat, or

rendered animal fats and oils, a distinctive color, odor, or taste so that such material cannot be confused with an article of human food.

3. All denaturing shall be done immediately upon condemnation of the meat or product, or immediately after the meat or product is prepared or during preparation.
  4. True containers shall be legibly marked with the words “Beef or horse meat from dead animals for pet food only and not for human consumption” in letters at least 3/4 inch in height, on all sides and in at least two places if the container has less than four sides.
  5. Every carrying container in which meat obtained from a dead animal is packaged shall have an exterior surface sufficiently absorbent so that the markings on at least two sides, in letters two inches high “Pet food only,” will not become illegible during handling, storage, or transportation of the container.
- C. Sales of meat obtained from a dead animal are permitted only to kennels, zoos, and animal food manufacturing plants registered by the Department, and records of sales shall be maintained by the purchaser and animal food manufacturing plant.
- D. Each vehicle used for the transportation of fresh or frozen pet food shall be clearly and legibly marked with the name of the manufacturer in letters not less than four inches in height on both sides of the cab or body.

#### Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-207 renumbered from Section R3-9-207 (Supp. 91-4). Amended effective July 13, 1995 (Supp. 95-3).

#### R3-2-208. Diseased and Injured Animals

##### A. Diseased animals.

1. No meat from any diseased animal shall be processed, sold or stored at premises where food is sold or prepared for human consumption, unless it is decharacterized and clearly identified “Not for Human Consumption.”
2. Subsection (A)(1) does not apply to meat from animals affected by any disease that does not render the meat unfit for human consumption if the affected animals are slaughtered in establishments where meat inspection is maintained under A.R.S. § 3-2051 and 9 CFR, Chapter III, Subchapter A, which is incorporated by reference in R3-2-202(A).

##### B. Injured animals. An injured animal may be slaughtered by:

1. The animal’s owner at the owner’s premises if the meat is used solely for consumption by the owner, the owner’s immediate family, or employees. The owner shall keep the animal’s hide until it has been inspected and marked or tagged by a livestock officer under A.R.S. § 3-2011.
2. An official slaughter establishment, if:
  - a. The animal is inspected by a livestock officer at origin; or
  - b. The animal is transported to the official slaughter establishment with a self-inspection certificate; or
  - c. The animal is transported to an official slaughter establishment with a waiver from the Associate Director and the waiver is documented by the livestock officer.
3. An exempt slaughterer, if the meat is used solely for consumption by the animal’s owner, the owner’s immediate family or employees, and if:
  - a. The animal’s body temperature is 103° F or less and except for the injury its condition appears normal; and

- b. The animal is inspected by a livestock officer at origin who verifies the temperature and condition of the animal and approves it for slaughter; or
- c. The Associate Director waives the inspection and the waiver is documented by the livestock officer, and the exempt slaughterer verifies the temperature and condition of the animal.

#### Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-203 renumbered from Section R3-9-203 (Supp. 91-4). Amended effective July 13, 1995 (Supp. 95-3). Former Section R3-2-208 renumbered to R3-2-203; new Section R3-2-208 renumbered from Section R3-2-203 and amended by final rulemaking at 5 A.A.R. 1593, effective May 5, 1999 (Supp. 99-2).

#### R3-2-209. Exempt Non-mobile Slaughter Establishments

In addition to A.R.S. § 3-2050 and the material incorporated in R3-2-202(A), the following shall be provided when slaughtering animals in an exempt non-mobile slaughter establishment:

1. General.
  - a. A metal knocking box or concrete box with metal door to confine the animal before stunning;
  - b. A distance of at least three feet from the header rail to the adjacent wall;
  - c. A bleeding rail with its top at least 16 feet above the floor; and
  - d. Dressing rails and cooler rails placed so the lowest part of the carcass is at least 12 inches from the floor.
2. Coolers. A chill cooler and separate holding cooler may be provided or both may be combined in one unit. The walls shall be light colored, smooth, free from cracks, and impervious to moisture. The door between the slaughtering department and the chill cooler shall be clad with rust-resistant material. Rails shall be spaced at least two feet from walls, columns, refrigeration equipment, or other fixed equipment to prevent contact with the carcasses.
3. Disposal of blood. If blood is not permitted to drain into the sewage system, it may be collected in a metal tank and removed from the premises.
4. Drainage.
  - a. Floors that require flushing during operations shall have sloped floor drains to carry off the effluent. Drainage systems shall conform to state and local plumbing codes.
  - b. Grease recovery systems shall not mask odors or create a harborage for pests.
5. Ventilation and lighting. Natural ventilation may be supplemented by artificial means and shall be sufficient to ensure the absence of dust, masking odors, or steam vapors. To ensure adequate lighting at all times and at all places, natural lighting shall be supplemented by well-distributed artificial lighting.
6. Potable water supply, wash basins, sterilizing facilities.
  - a. Hot and cold running water, under pressure, shall be available in all parts of the plant and in conformity with the requirements of the Arizona Department of Health Services. The hot water used for sterilizing equipment, floors, and walls that may be contaminated by the dressing procedure or handling of diseased carcasses, viscera, and other animal parts, shall be at least 180° F. A thermometer shall be installed to verify the temperature of the water at the

point of use. A cleanup hose shall be available for use.

- b. One or more wash basins shall be located in the slaughtering department. The wash basins shall be equipped with hot and cold running water, delivered through a combination mixing faucet with an outlet at least 12 inches above the rim of the bowl. The water delivery shall be foot-pedal operated, and the drainage outlet shall lead directly into the sewage lines. Soap and disposable towels shall be convenient to the wash basins.
  - c. The tool sterilizer shall be maintained at 180° F and be in operation at all times during slaughter activities.
7. Protection against flies, rodents, or other vermin.
- a. Establishments shall be free of flies, rats, mice, roaches, and other pests or vermin. The establishment shall be constructed and maintained to prevent entrance of pests to the premises and to eliminate breeding places from the surrounding area and in the establishment.
  - b. Animal handling facilities such as stock pens and runways shall be clean and manure or other waste materials removed shall not accumulate at or near the establishment.

#### Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 1593, effective May 5, 1999 (Supp. 99-2).

### ARTICLE 3. FEEDING OF ANIMALS

#### R3-2-301. Operation of Beef Cattle Feedlots

- A. An operator shall manage a feedlot under the standards prescribed in A.R.S. § 3-1454(A) and R3-2-406.
- B. An operator shall comply with applicable federal, state, and local laws.

#### Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-301 renumbered from Section R3-9-301 (Supp. 91-4). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3).

#### R3-2-302. Permit to Feed Garbage to Swine; Requirements

A swine garbage feeding permit holder or applicant for a permit to feed garbage to swine shall comply with the following requirements:

1. An approved cooker is installed and in operating condition on the premises, and fenced off from all swine.
2. A concrete slab, trough, other easily cleanable area, and equipment for feeding garbage is provided.
3. Premises utilized for swine garbage feeding are reasonably clean, free of litter, adequately drained, and provide for removal of animal excrement and garbage not consumed.
4. Individually operated swine garbage feeding premises are separated from other swine premises by a minimum distance of 200 feet in all directions and constructed to prevent the escape of any swine.

#### Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-302 renumbered from Section R3-9-302 (Supp. 91-4). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3).

### ARTICLE 4. ANIMAL DISEASE PREVENTION AND CONTROL

#### R3-2-401. Definitions

The following terms apply to this Article:

“Accredited veterinarian” means a veterinarian approved by the State Veterinarian and the Deputy Administrator of VS to perform functions required by cooperative State-Federal animal disease control and eradication programs.

“Biologicals” means medical preparations made from living organisms and their products, including serums, vaccines, antigens, and antitoxins.

“Designated feedlot” means a confined drylot area under state quarantine that is approved and licensed by the State Veterinarian, contains restricted feeding pens, and is maintained for finish feeding of cattle or bison that do not meet the brucellosis or tuberculosis import test requirements.

“Equine infectious anemia” or “EIA” means a viral disease, also known as Swamp Fever, of members of the family equidae.

“Restricted feeding pen” means an enclosed area in a designated feedlot, located at least eight feet from other pens, where cattle are maintained for feeding in a drylot without provisions for pasturing or grazing.

#### Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-401 renumbered from Section R3-9-401 (Supp. 91-4). Former Section R3-2-401 renumbered to R3-2-402; new Section R3-2-401 adopted by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3).

#### R3-2-402. Mandatory Disease Reporting by Veterinarians and Veterinary Laboratories

All veterinarians and laboratories performing diagnostic services on animals shall:

1. Notify the State Veterinarian at (602) 542-4293, within four hours of diagnosing or suspecting any Office of International Epizootics List A disease, Eighth Edition, 1999, which is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Department and the Office of the Secretary of State, chronic wasting disease, or the following List B diseases:  
 Anthrax  
 Aujeszky's disease  
 Babesiosis  
 Bovine brucellosis  
 Bovine spongiform encephalopathy  
 Bovine tuberculosis  
 Caprine and ovine brucellosis  
 Contagious caprine pleuropneumonia  
 Contagious equine metritis  
 Dourine  
 Enterovirus encephalomyelitis  
 Epizootic lymphangitis  
 Equine infectious anaemia  
 Equine piroplasmosis  
 Equine viral arteritis  
 Equine viral encephalomyelitis

Fowl typhoid  
 Glanders  
 Heartwater  
 Horse pox  
 Infectious haematopoietic necrosis of fish  
 Nairobi sheep disease  
 Ovine epididymitis  
 Paratuberculosis  
 Porcine brucellosis  
 Pullorum disease  
 Q fever  
 Rabies  
 Scrapie  
 Screwworm  
 Spring viraemia of carp  
 Surra  
 Theileriosis  
 Trypanosomiasis  
 Viral haemorrhagic septicaemia of fish

2. Notify the State Veterinarian by facsimile at (602) 542-4290 by the end of the month, after diagnosing any Office of International Epizootics List B disease, Eighth Edition, 1999, not specified in subsection (1). This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Department and the Office of the Secretary of State.
3. Follow the reporting criteria listed in the National Animal Health Reporting system Manual, January 1, 1999 when making an Epizootics List B notification specified in subsection (2). This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Department and the Office of the Secretary of State.

#### Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-402 renumbered from Section R3-9-402 (Supp. 91-4). Former Section R3-2-402 renumbered to R3-2-403; new Section R3-2-402 renumbered from R3-2-401 and amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1).

#### R3-2-403. Individual Identification of Swine at Market

The owner, or the owner's agent, of an auction licensed by the USDA shall individually identify all swine in Arizona moving through the auction or other concentration point in intrastate and interstate commerce and shall submit the following information by the first of each month, to the State Veterinarian:

1. The name of the owner of the swine;
2. The name of the buyer of the swine;
3. The farm of origin;
4. The individual identification of each swine; and
5. The destination of the swine.

#### Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-403 renumbered from Section R3-9-403 (Supp. 91-4). Former Section R3-2-403 repealed; new Section R3-2-403 renumbered from Section R3-2-402 and amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1).

#### R3-2-404. Importation, Manufacture, Sale, and Distribution of Biologicals and Semen

- A. Any person importing, manufacturing, selling, or distributing any biological intended for diagnostic or therapeutic treatment of animals shall request, in writing, permission from the State Veterinarian.
- B. The State Veterinarian shall deny approval of the importation, manufacture, sale, or distribution of any biological that will interfere with the State disease control program.
- C. A person shall import semen only from boars in pseudorabies Stage IV or V states.

#### Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-404 renumbered from Section R3-9-404 (Supp. 91-4). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1).

#### R3-2-405. Depopulation of Animals Infected with a Foreign Disease

When a foreign animal disease is diagnosed, the State Veterinarian shall order the owner to immediately depopulate and dispose of all infected and exposed animals on the premises if necessary to prevent the spread of the disease among animals.

#### Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-405 renumbered from Section R3-9-405 (Supp. 91-4). Amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1).

#### R3-2-406. Disease Control; Feedlots

- A. A restricted feeding pen shall:
  1. Be isolated from all other pens,
  2. Have separate loading and unloading chutes, alleys, and handling facilities from all other pens,
  3. Not share water or feeding facilities accessible to other areas,
  4. Be posted at all corners with permanently affixed signs stating "Restricted Feeding Area,"
  5. Have a minimum of eight feet between restricted and other pens and facilities, and
  6. Have no common fences or gates with other pens.
- B. An operator may place cattle in a restricted feeding pen as follows:
  1. All cattle, except steers and spayed heifers, shall be branded with an "F", at least two inches in height, on the jaw or adjacent to the tailhead before entering the pen; and
  2. Imported cattle, any age and from any area if accompanied by a permit number and an official health certificate; or
  3. Native Arizona cattle accompanied by an Arizona live-stock inspection certificate.
- C. An operator may remove cattle from a restricted feeding pen as follows:
  1. All animals, except steers and spayed heifers, shall be moved only to slaughter, to another designated feedlot, or to an auction market approved by the State Veterinarian or APHIS for sale to slaughter.
  2. A steer or spayed heifer may be moved to any location.

**Historical Note**

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-406 renumbered from Section R3-9-406 (Supp. 91-4). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3).

**R3-2-407. Equine Infectious Anemia**

- A. The Arizona official test for EIA is either the agar-gel immunodiffusion test, known as the Coggins Test, or the Competitive Enzyme-Linked Immunosorbent Assay test, known as the CELISA test. The test shall be performed in a laboratory approved by APHIS, and required samples shall be drawn by an accredited veterinarian, the State Veterinarian, the State Veterinarian's designee, or an APHIS veterinarian.
- B. Disposal of equine testing positive.
  1. When an Arizona equine tests positive to EIA, the testing laboratory shall immediately notify the State Veterinarian by telephone or fax.
  2. The EIA-positive equine shall be quarantined to the premises where tested, segregated from other equine, and shall not be moved unless authorized by the State Veterinarian. The equine shall be retested by the State Veterinarian, the State Veterinarian's designee, or an APHIS veterinarian within two weeks of the notification.
  3. Within 14 days of being notified by the testing laboratory of a positive test conducted under subsection (B)(2), the State Veterinarian or the State Veterinarian's designee shall brand the equine on the left side of its neck with "86A" not less than two inches in height.
  4. Within 10 days after being branded, the EIA-positive equine shall be:
    - a. Humanely destroyed,
    - b. Confined to a screened stall marked "EIA Quarantine" that is at least 200 yards from other equine, or
    - c. Consigned to slaughter at a slaughtering establishment. If consigned to slaughter, the equine shall be accompanied by a Permit for Movement of Restricted Animals, VS 1-27, issued by the State Veterinarian, the State Veterinarian's designee, or an APHIS veterinarian.
  5. Offspring of mares testing EIA-positive shall be quarantined, segregated from other equine, and tested for EIA at six months of age. Offspring testing positive shall be handled as prescribed in subsections (B)(3) and (B)(4).
  6. If an EIA-positive equine is located on premises other than those of the owner at the time a quarantine under this Section is effective, the State Veterinarian may authorize movement of the EIA-positive equine to the owner's premises if requested by the owner. Movement shall be under the direct supervision of the State Veterinarian or the State Veterinarian's designee. If the owner lives in another state, the owner may move the equine to that state with the permission of the chief livestock health official of the state and APHIS.
- C. The State Veterinarian shall require testing of any equine located in the same facility as the EIA-positive equine or any equine considered exposed to the EIA-positive equine. The owner of the equine tested shall pay the expenses for the testing.
- D. The owner of any equine found to be EIA-positive shall not be indemnified by the state for any loss caused by the destruction or loss of value of the equine.

**Historical Note**

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-407 renumbered from Section R3-9-407 (Supp. 91-4). Amended effective February 4, 1998 (Supp. 98-1).

Amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3).

**R3-2-408. Disposition of Livestock Exposed to Rabies**

Livestock bitten by a known or suspected rabid animal shall be handled using the methods prescribed in the National Association of State Public Health Veterinarians' Compendium of Animal Rabies Control, 1999, Part III, Section 5. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Department and the Office of the Secretary of State.

**Historical Note**

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-408 renumbered from Section R3-9-408 (Supp. 91-4). Amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1).

**R3-2-409. Rabies Vaccines for Animals**

All animals in Arizona vaccinated against rabies shall be vaccinated as prescribed in the National Association of State Public Health Veterinarians' Compendium of Animal Rabies Control, 1999, Part II. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Department and the Office of the Secretary of State.

**Historical Note**

Adopted effective August 19, 1983 (Supp. 83-4). Amended effective October 16, 1986 (Supp. 86-5). Amended effective January 6, 1989 (Supp. 89-1). Section R3-2-409 renumbered from Section R3-9-409 (Supp. 91-4). Amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1).

**R3-2-410. Restricted Swine Feedlots**

- A. The State Veterinarian shall approve restricted swine feedlots for feeding swine from herds not known to be infected with pseudorabies and not tested for pseudorabies before importation if the imported swine meet all requirements in Article 6. Swine moved from a restricted swine feedlot shall be transported directly to a state or federal slaughter facility for immediate slaughter.
- B. No breeding swine shall be located on or within 1/4 mile of a restricted swine feedlot.
- C. If pseudorabies is diagnosed in swine at a restricted swine feedlot, the feedlot shall be immediately quarantined and shall not receive any additional shipments of swine until the herd at the feedlot is declared free of pseudorabies or all swine are depopulated from the premises and the premises are cleaned and disinfected.
- D. A restricted swine feedlot owner or agent shall submit monthly feedlot records to the State Veterinarian, listing the animal's origin, health certificate number, permit number, slaughter destination, and shipping date.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in



the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1).

### **R3-2-411. Exhibition Swine**

- A.** In addition to meeting the requirements in Article 6, all imported swine not moved directly to an exhibition an Arizona shall be inspected by a Department livestock officer or inspector within 30 days after entry.
- B.** Exhibit officials shall deny entry to any swine not accompanied by the following documents:
  1. Imported swine moved directly to an exhibition. An official health certificate specified in R3-2-606 and an import permit specified in R3-2-607;
  2. Imported swine not moved directly to the exhibition. A Department-issued certificate of inspection of exhibition swine containing the following:
    - a. The name, address, telephone number, and signature of the owner;
    - b. The name of the inspector and the date, time, and location of the inspection;
    - c. The individual identification of the swine, using an earnotch, that conforms to the universal swine-earnotch system, and the premises identification number using a tattoo or producer-furnished tamper-proof eartag that conforms to the USDA National Premises Identification System.
  3. Native Arizona swine. A Department-issued certificate of inspection of exhibition swine containing the following:
    - a. The name, address, telephone number, and signature of the owner;
    - b. The name of the inspector and the date, time, and location of the inspection;
    - c. The individual identification of the swine, using an earnotch that conforms to the universal swine-earnotch system, and the premises identification number using a tattoo or producer-furnished tamper-proof eartag that conforms to the USDA National Premises Identification System.
- C.** Department-issued certificate of inspection of exhibition swine. The owner shall provide the Department with:
  1. Imported swine.
    - a. The certificate of veterinary inspection listing import permit and individual identification of the swine, using an earnotch that conforms to the universal swine-earnotch system, and the premises identification using a tattoo or a producer-furnished tamper-proof eartag that conforms to the USDA National Premises Identification System; and
    - b. If from a Stage IV state, documentation of a negative pseudorabies test conducted 15 to 30 days after entry.
  2. Native swine.
    - a. A bill of sale listing:
      - i. The name of the seller and buyer;
      - ii. The individual identification of the swine, using an earnotch that conforms to the universal swine-earnotch system, and the premises identification using a tattoo or a producer-furnished tamper-proof eartag that conforms to the USDA National Premises Identification System; and
      - iii. The date of the sale; or
    - b. Verification that the swine has been raised in Arizona and the individual identification of the swine, using an earnotch that conforms to the universal swine-earnotch system, and the premises identification using a tattoo or a producer-furnished tamper-

proof eartag that conforms to the USDA National Premises Identification System.

### **Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 4812, effective December 7, 2000 (Supp. 00-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1).

### **R3-2-412. Exhibition Sheep and Goats**

An exhibit official shall deny entry to any sheep or goat not individually identified by the following:

1. Imported sheep or goat.
  - a. The health certificate prescribed in R3-2-606 and the animal identification required in R3-2-614, and
  - b. The import permit prescribed in R3-2-607.
2. Native Arizona sheep or goat. A method prescribed in 9 CFR 79.2(a)(2) for a non-neutered sheep or goat, and a neutered sheep or goat more than 18 months of age.

### **Historical Note**

New Section made by final rulemaking at 8 A.A.R. 3628, effective August 7, 2002 (Supp. 02-3).

### **R3-2-413. Sheep and Goats; Intrastate Movement**

- A.** Before intrastate movement of a sheep more than 18 months of age, or a sheep or goat of any age not in a slaughter channel, the producer shall identify the animal to the flock of birth before leaving the flock of birth. A sheep or goat not in a slaughter channel includes an animal not for sale, transfer, or movement to:
  1. A slaughter facility,
  2. Custom slaughter, or
  3. A feeding operation before movement to slaughter.
- B.** Subsection (A) does not apply if:
  1. The first point of commingling with animals other than those in the flock of birth is an Arizona auction market, and
  2. The auction market acts as the owner's agent to identify the sheep or goat to the flock of birth.
- C.** This Section is effective January 1, 2003.

### **Historical Note**

New Section made by final rulemaking at 8 A.A.R. 3628, effective January 1, 2003 (Supp. 02-3).

## **ARTICLE 5. STATE-FEDERAL COOPERATIVE DISEASE CONTROL PROGRAM**

### **R3-2-501. Tuberculosis Control and Eradication Procedures**

- A.** Procedures for tuberculosis control and eradication in cattle, bison, and goats shall be as prescribed in the USDA publication, Bovine Tuberculosis Eradication – Uniform Methods and Rules, effective February 3, 1989. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Office of the Secretary of State.
- B.** Cattle or bison willfully exposed to quarantined cattle or bison are not eligible for the tuberculosis depopulation indemnity provided in A.R.S. § 3-1745.
- C.** Procedures for tuberculosis control and eradication in cervidae not listed as restricted live wildlife in A.A.C. R12-4-406 shall be as prescribed in the USDA publication, Tuberculosis Eradication in Cervidae – Uniform Methods and Rules, effective May 15, 1994, including 1995 amendments. This material is incorporated by reference, does not include any later amend-

ments or editions of the incorporated matter, and is on file with the Office of the Secretary of State.

#### Historical Note

Adopted effective August 19, 1983 (Supp. 83-4).  
Amended subsection (A) effective October 16, 1986 (Supp. 86-5). Section R3-2-501 renumbered from Section R3-9-501 (Supp. 91-4). Amended effective March 5, 1997 (Supp. 97-1).

### R3-2-502. Repealed

#### Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-502 renumbered from Section R3-9-502 (Supp. 91-4). Amended effective March 5, 1997 (Supp. 97-1). Section repealed by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1).

### R3-2-503. Brucellosis Control and Eradication Procedures

- A. Procedures for brucellosis control and eradication in cattle and bison shall be as prescribed in the USDA publication *Brucellosis Eradication – Uniform Methods and Rules*, effective February 1, 1998. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Department and the Office of the Secretary of State.
- B. Procedures for brucellosis control and eradication in swine shall be as prescribed in the USDA publication, *Swine Brucellosis Control/Eradication, State-Federal-Industry – Uniform Methods and Rules*, revised February 1995. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Department and the Office of the Secretary of State.
- C. Procedures for brucellosis control and eradication in Cervidae not listed as restricted live wildlife in A.A.C. R12-4-406, shall be as prescribed in the USDA publication, *Brucellosis in Cervidae: Uniform Methods and Rules*, effective September 30, 1998, and the May 14, 1999 revision. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Department and the Office of the Secretary of State.

#### Historical Note

Adopted effective August 19, 1983 (Supp. 83-4).  
Amended effective October 16, 1986 (Supp. 86-5).  
Amended effective January 6, 1989 (Supp. 89-1). Section R3-2-503 renumbered from Section R3-9-503 (Supp. 91-4). Amended March 5, 1997 (Supp. 97-1). Amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1).

### R3-2-504. Pseudorabies Procedures for Eradication

Procedures for pseudorabies control and eradication in swine shall be as prescribed in the USDA publication, *Pseudorabies Eradication, State-Federal-Industry Program Standards*, effective January 1, 1999. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Department and the Office of the Secretary of State.

#### Historical Note

Adopted effective March 5, 1997 (Supp. 97-1). Amended by final rulemaking at 6 A.A.R. 25, effective December

8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1).

### R3-2-505. Scrapie Procedures for Eradication

The Department controls and eradicates scrapie using the procedures outlined in 9 CFR 54; 66 FR 43963-44003, August 21, 2001. This material is incorporated by reference, does not include any later amendments or editions, and is on file with the Department and the Office of the Secretary of State.

#### Historical Note

New Section made by final rulemaking at 8 A.A.R. 3628, effective August 7, 2002 (Supp. 02-3).

## ARTICLE 6. HEALTH REQUIREMENTS GOVERNING ADMISSION OF ANIMALS

### R3-2-601. Definitions

The following terms apply to this Article:

“Animal” means livestock, feral swine, ratite, bison, water buffalo, oxen, llama, and any exotic mammal not regulated as restricted live wildlife by the Arizona Game and Fish Department.

“Certified copy” means a copy of an official health certificate that includes an additional original signature from the authorizing veterinarian.

“Macaque” means any monkey of the genus *Macaca* in the family *Ceropithecidae*.

“Official eartag” means an identification tag providing unique identification for individual animals. An official eartag that contains or displays an AIN with an 840 prefix must bear the US shield. The design, size, shape, color, and other characteristics of the official eartag will depend on the needs of the users, subject to the approval of the USDA. The official eartag must be tamper-resistant and have a high retention rate in the animals. Official eartags must adhere to one of the following number systems:

National Uniform Eartagging System,  
Animal identification number (AIN),  
Premises-based number system. The premises-based number system combines an official premises identification number (PIN) with a producer’s livestock production numbering system to provide a unique identification number. The PIN and the production number must both appear on the official tag, or  
Any other numbering system approved by the Administrator of APHIS for the identification of animals in commerce.

“Specifically approved stockyard” means a stockyard specifically approved by VS and the State Veterinarian for receiving from other states cattle and bison that are not brucellosis-reactor, brucellosis-suspect, or brucellosis-exposed.

#### Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-601 renumbered from Section R3-9-601 (Supp. 91-4). Amended effective March 5, 1997 (Supp. 97-1).

Amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3). Amended by final rulemaking at 14 A.A.R. 876, effective

May 3, 2008 (Supp. 08-1).

### **R3-2-602. Importation Requirements**

- A.** All animals and poultry transported or moved into the state of Arizona, unless otherwise specifically provided for in this Article, must be accompanied by:
  - 1. An official health certificate from the state of origin or a permit number, or both; and
  - 2. The health documentation shall be attached to the waybill or in the possession of the driver of the vehicle or person in charge of the animals.
- B.** When a single health certificate and permit number is issued for animals being moved in more than one vehicle, the driver of each vehicle shall retain the original or a certified copy of the health certificate and permit number.

#### **Historical Note**

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-602 renumbered from Section R3-9-602 (Supp. 91-4). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3).

### **R3-2-603. Importation of Diseased Animals**

- A.** An animal affected with or recently exposed to any infectious, contagious, or communicable disease, or which originates in a state or federal quarantine area, shall not be transported or moved into the state of Arizona unless a permit for the entry is first obtained from the Arizona State Veterinarian's Office. All conditions for the movement of animals from a quarantined area established by the quarantining authority or APHIS shall be met.
- B.** The owner or owner's agent shall obtain prior permission from the State Veterinarian to ship or move into Arizona any animal from a lot or herd from which an animal shows a suspicious or positive reaction to a test required for admission to Arizona.

#### **Historical Note**

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-603 renumbered from Section R3-9-603 (Supp. 91-4). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3).

### **R3-2-604. Livestock Permit Requirements; Exceptions**

- A.** Livestock may not enter the state of Arizona unless accompanied by an Arizona permit. Except as discussed in subsection (B), this requirement applies regardless of the species, breed, sex, class, age, point of origin, place of destination, or purpose of the movement of the livestock entering the state.
- B.** Exceptions:
  - 1. Horses, mules, and asses; or
  - 2. Livestock consigned directly to slaughter at a state or federally licensed slaughter establishment.

#### **Historical Note**

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-604 renumbered from Section R3-9-604 (Supp. 91-4). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3).

### **R3-2-605. Quarantine for Animals Entering Illegally**

- A.** Animals entering the state without a valid health certificate or permit number, or both if required, or in violation of any Section under 3 A.A.C. 2, shall be held in quarantine at the risk and expense of the owner until released by an authorized representative of the State Veterinarian. Animals under quarantine for noncompliance with this Article may be released only after the State Veterinarian is satisfied by testing, dipping, or observation over time, that the animals are not a threat to the livestock industry.

- B.** The State Veterinarian may request that an imported animal failing to meet entry requirements be returned to the state of origin, consigned directly to slaughter, confined to a designated feedlot, or consigned to a feedlot in another state within two weeks of the request. Any extension to this time-frame shall be approved in writing by the State Veterinarian.
- C.** If the owner or owner's agent fails to comply with a request to return an animal to the state of origin within the time-frame required in subsection (B), the Department shall require that the animal be immediately gathered at the owner's risk and expense to avoid exposure of Arizona animals. The owner shall pay the expenses no later than five days after receipt of the bill, or an auction of sufficient livestock to pay the just expenses shall be held within 10 days at a livestock auction market. If additional expenses occur due to lack of cooperation by the owner or the owner's agent, the Director shall order the further sale of livestock.

#### **Historical Note**

Adopted effective August 19, 1983 (Supp. 83-4). Former Section R3-9-605 renumbered to R3-2-605 (Supp. 91-4). Amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1).

### **R3-2-606. Health Certificate**

- A.** A health certificate is valid for not more than 30 days after the date of issue, except where otherwise noted in this Article, and shall contain:
  - 1. The name and address of the shipper and receiver;
  - 2. The origin of the animal;
  - 3. The animal's final destination;
  - 4. Cattle.
    - a. The number of animals covered by the health certificate, an accurate description and, except for steers, spayed heifers, or "F" branded heifers consigned to a designated feedlot identified by brand, one of the following individual identifications:
      - i. The official eartag number that, for dairy cattle, identifies the herd of birth, or
      - ii. The registration tattoo number and the registration brand of a breed association recognized by VS.
    - b. The health status of the animals, including date and result of an inspection, dipping, test, or vaccination required by Arizona;
    - c. The method of transportation; and
    - d. For bulls subject to testing under R3-2-612(J), a statement that the bulls:
      - i. Tested negative for *Tritrichomonas foetus* within one month prior to shipment using a polymerase chain reaction test or three cultures collected at intervals of no less than seven days apart; and
      - ii. Have had no breeding activity during the interval between the collection of the samples and the date of shipment.
  - 5. Swine.
    - a. Evidence that the swine have been inspected by the veterinarian issuing the health certificate within 10 days before the shipment,
    - b. A statement that:
      - i. The swine have never been fed garbage, and
      - ii. The swine have not been vaccinated for pseudorabies;

- c. Except for feeder swine consigned to a restricted swine feedlot:
    - i. A list of the individual permanent identification for each exhibition swine, using an earnotch that conforms to the universal swine-earnotch system or for each commercial swine, using other individual identification, and the premises identification using a tattoo or producer-furnished tamper-proof eartag that conforms to the USDA National Premises Identification System;
    - ii. The validated brucellosis-free herd number and last test date for swine originating from a validated brucellosis-free herd;
    - iii. The pseudorabies status of the state of origin; and
    - iv. The pseudorabies qualified negative herd number, if applicable;
  - d. Except for feeder swine consigned to a restricted swine feedlot, swine moving directly to an exhibition, and swine from a farm of origin in a state recognized by APHIS as a pseudorabies Stage V state, a statement that the swine shall be quarantined on arrival at destination and kept separate and apart from all other swine until tested negative for pseudorabies no sooner than 15 days nor later than 30 days after entry into Arizona; and
  - e. Feeder swine consigned to a restricted swine feedlot shall be identified by premises of origin using a tattoo or producer-furnished tamper-proof eartag that conforms to the USDA National Premises Identification System;
6. Sheep and goats.
- a. Individual identification prescribed in R3-2-614;
  - b. A statement that:
    - i. The sheep or goats are not infected with blue-tongue, or exposed to scrapie, and do not originate from a scrapie-infected or source flock;
    - ii. Breeding rams have been individually examined and are free of gross lesions of ram epididymitis; and
  - c. A statement that the sheep or goat test negative for *Brucella ovis* if a test is required by R3-2-614(B); and
7. Equine.
- a. An accurate identification for each equine covered by the health certificate including age, sex, breed, color, name, brand, tattoo, scars, and distinctive markings; and
  - b. A statement that the equine has a negative test for EIA, as required in R3-2-615, including:
    - i. The date and results of the test;
    - ii. The name of the testing laboratory; and
    - iii. The laboratory accession number.
- B.** Additions, deletions, and unauthorized or uncertified changes inserted or applied to a health certificate renders the certificate void. Uncertified photocopies of health certificates are invalid.
- C.** The veterinarian issuing a health certificate shall certify that the animals shown on the health certificate are free from evidence of any infectious, contagious, or communicable disease or known exposure.
- D.** An accredited veterinarian shall inspect animals for entry into the state.
- E.** The Director may limit the period for which a health certificate is valid to less than 30 days if advised by the State Veterinarian

of the occurrence of a disease that constitutes a threat to the livestock industry.

#### Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-606 renumbered from Section R3-9-606 (Supp. 91-4). Amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by final rulemaking at 8 A.A.R. 3628, effective August 7, 2002 (Supp. 02-3). Amended by final rulemaking at 14 A.A.R. 884, effective May 3, 2008 (Supp. 08-1). Amended by final rulemaking at 14 A.A.R. 876, effective May 3, 2008 (Supp. 08-1).

#### R3-2-607. Permit Number

- A.** A permit number may be obtained from the Office of the State Veterinarian, by calling (602) 542-4293. Any person applying for a permit number shall provide the following information:
1. The name and address of the shipper and receiver;
  2. The number and kind of animals;
  3. The origin of shipment;
  4. The shipment's final destination;
  5. The method of transportation; and
  6. Any other information required by the State Veterinarian.
- B.** A permit number is valid for 15 calendar days from the date of issuance unless otherwise specified.
- C.** A permit number shall be issued if the animals listed on the permit are in compliance with this Article. To cope with changing disease conditions, the State Veterinarian may refuse to issue a permit number or may require additional conditions not specifically established in this Article if necessary to protect animal health in Arizona.
- D.** The permit number issued shall be affixed or written on the health certificate, brand inspection certificate, and any other official documents as follows: "Arizona Permit No. \_\_\_\_\_" followed by the serialized number.
- E.** The State Veterinarian shall refuse to grant a permit number to any person who repeatedly commits the following:
1. Giving false information concerning a permit number for transportation of animals,
  2. Failing to fulfill the conditions of a permit number, or
  3. Failing to obtain a permit number.

#### Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-607 renumbered from Section R3-9-607 (Supp. 91-4). Amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1).

#### R3-2-608. Consignment of Animals

The owner, or owner's agent, of an animal transported or moved into Arizona, except an exhibition or show animal, shall consign the animal to or place it in the care of an Arizona resident or an entity authorized to do business in Arizona.

#### Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-608 renumbered from Section R3-9-608 (Supp. 91-4). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3).

**R3-2-609. Diversion; Prohibitions**

A person consigning, transporting, or receiving an animal into the state of Arizona shall not authorize, order, or carry out diversion of the animal to a destination or consignee other than as set forth on the health certificate and permit, if required, without first obtaining permission from the State Veterinarian.

**Historical Note**

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-609 renumbered from Section R3-9-609 (Supp. 91-4). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3).

**R3-2-610. Tests; Official Confirmation**

A state or federal animal diagnostic laboratory or APHIS-approved laboratory shall perform or confirm any animal testing required by a state or federal authority as a condition for entry into Arizona.

**Historical Note**

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-610 renumbered from Section R3-9-610 (Supp. 91-4). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3).

**R3-2-611. Transporter Duties**

- A. All owners and operators of railroads, trucks, airplanes, or other conveyances transporting animals into or through the state shall possess a valid health certificate under R3-2-606, and a permit number issued by the State Veterinarian, if required by R3-2-607. These documents shall be attached to the waybill, or be in the possession of the vehicle driver, or person in charge of the animals. When a single health certificate or permit number is issued for animals being moved in more than one vehicle, the driver of each vehicle shall possess the original or a certified copy of the health certificate containing the permit number, if required.
- B. The owner of a railroad car, truck, airplane, or other conveyance used to transport animals into or through the state shall maintain the conveyance in a clean and sanitary condition.
- C. The owners and operators of railroads, trucks, airplanes, or other conveyances who transport animals into the state in violation of this Section shall clean and disinfect the conveyance in which the animals were illegally brought into the state before using the conveyance for transporting more animals. The cleaning and disinfection shall be performed under the supervision of an authorized representative of the State Veterinarian or the USDA.
- D. The owners and operators of railroads, trucks, airplanes, or other conveyances shall follow the USDA requirements, Department and Arizona Commerce Commission rules, and Arizona statutes in the humane transport of animals into, within, or through the state.

**Historical Note**

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-611 renumbered from Section R3-9-611 (Supp. 91-4). Amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1).

**R3-2-612. Importation of Cattle and Bison**

- A. The owner of cattle and bison entering Arizona or the owner's agent shall comply with the requirements in R3-2-602 through R3-2-611 and the following conditions:
  1. Pay the expenses incurred to quarantine, test, and retest the imported cattle or bison or return them to the state of origin.

2. For imported beef breeding cattle, breeding bison, and dairy cattle, ensure that an accredited veterinarian applies an official eartag to each animal.

**B. Arizona shall not accept:**

1. Cattle or bison from brucellosis infected, exposed, or quarantined herds regardless of their vaccination or test status, or both, except:
  - a. Steers and spayed females, and
  - b. Animals shipped directly for immediate slaughter to an official state or federal slaughter establishment;
2. Cattle or bison of unknown brucellosis exposure status, unless consigned for feeding purposes to a designated feedlot;
3. Dairy cattle from a state or region within a foreign country without brucellosis status comparable to a Class-Free State, or without tuberculosis status comparable to an Accredited-Free State;
4. Dairy and dairy cross steers, and dairy and dairy cross spayed heifers from Mexico;
5. Beef breeding cattle or breeding bison from a state or region within a foreign country without brucellosis status comparable to a Class A State, or without tuberculosis status comparable to a Modified Accredited State.

**C. Brucellosis testing requirements for beef breeding cattle, breeding bison, and dairy cattle imported into Arizona from other states.**

1. The owner or owner's agent shall ensure that an official calfhood vaccinate is tested negative for brucellosis within 30 days before entering Arizona if the official calfhood vaccinate is:
  - a. 18 months or older,
  - b. Cutting the first set of permanent incisors, or
  - c. Parturient or postparturient.
2. The owner or owner's agent shall ensure that bulls and non-vaccinated heifers test negative for brucellosis if 12 months of age or older, unless consigned for feeding purposes to a designated feedlot. All cattle or bison consigned to a designated feedlot shall be branded with an "F" adjacent to the tail head before entry into Arizona unless the State Veterinarian grants permission to apply the "F" brand upon arrival. All "F" branded cattle or bison that leave the designated feedlot shall be shipped directly to:
  - a. An official state or federal slaughter establishment for immediate slaughter,
  - b. Another designated feedlot, or
  - c. Another state if shipping is permitted by the State Veterinarian in the state of destination.
3. If cattle or bison originate from a Certified Brucellosis-Free Herd and the herd certification number is documented on the health certificate and import permit, no brucellosis test is required.
4. If native ranch cattle are from a brucellosis Class-Free State that does not have free-ranging brucellosis infected bison or wildlife, no brucellosis test is required as long as:
  - a. The native ranch cattle are moved directly from the ranch of origin to an Arizona destination and the official eartag numbers are listed on a health certificate; or
  - b. The native ranch cattle are from a state that has a brand inspection program approved by the State Veterinarian and the owner's brand is listed on a brand inspection certificate or health certificate.

5. Health and brand inspection certificates issued for the movement shall be forwarded to the State Veterinarian in Arizona within two weeks of issue.
  6. The owner or owner's agent:
    - a. Shall ensure that beef breeding cattle or breeding bison from a Class A State remain under import quarantine and isolation until the cattle test negative for brucellosis. The test shall be performed no earlier than 45 days and no later than 120 days after entry.
    - b. Shall retest dairy cattle if the State Veterinarian determines there is a potential risk of the introduction of brucellosis in the state.
    - c. Is not required to quarantine or test for brucellosis official calfhood vaccinates less than 18 months of age, if permission is granted by the State Veterinarian.
  7. The owner or owner's agent:
    - a. Shall notify the State Veterinarian within seven days of moving cattle or bison that are under import quarantine from the destination listed on the import permit and health certificate.
    - b. Shall notify the State Veterinarian at the time animals are retested for brucellosis, if the animals are under import quarantine and are not moved from the destination listed on the import permit and health certificate.
    - c. Is not required to notify the State Veterinarian if the cattle or bison are shipped directly to an official state or federal slaughter establishment for immediate slaughter.
  8. Beef breeding cattle, breeding bison, and dairy cattle meeting the criteria of subsections (C)(1) or (C)(2) and not meeting the criteria of subsection (C)(3) may be imported without a brucellosis test if moved to a specifically approved stockyard and tested before sale or movement from the stockyard. The owner or owner's agent shall not commingle these cattle or bison with other cattle or bison until these cattle or bison are tested and found to be brucellosis negative.
  9. Within seven days after importation, the owner or owner's agent shall ensure that the individual official eartag identification for imported dairy cattle is the same as that listed on the health certificate and. The owner or the owner's agent shall report any discrepancies between the official eartag and the health certificate to the State Veterinarian. Any dairy cattle shipped into Arizona not documented on the health certificate shall be tested for brucellosis and tuberculosis by the receiver within one week of arrival.
- D.** Brucellosis testing requirements for beef breeding cattle, breeding bison, and dairy cattle imported into Arizona from Mexico.
1. Before entry into Arizona, beef breeding cattle, breeding bison, or dairy cattle from Mexico shall meet the requirements of 9 CFR 93.424 through 93.427, January 1, 2007, edition. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Department at 1688 W. Adams St., Phoenix, AZ 85007.
  2. The owner or owner's agent shall ensure that beef breeding cattle, breeding bison, and dairy cattle from Mexico remain under import quarantine and isolation until tested negative for brucellosis. The test shall not be performed earlier than 60 days nor later than 120 days after entry into Arizona. The test shall be performed again on breeding cattle and breeding bison 30 days after calving, unless the animals were consigned to a designated feedlot. All cattle or bison consigned to a designated feedlot shall be branded with an "F" adjacent to the tail head before entry into Arizona unless the State Veterinarian grants permission to apply the "F" brand on arrival. Unless neutered, all beef breeding cattle, breeding bison, and dairy cattle leaving the designated feedlot shall go directly to an official state or federal slaughter establishment for immediate slaughter or to another designated feedlot. The owner of the designated feedlot shall ensure that official eartag identification records are kept on all incoming consignments and then submit the records monthly to the State Veterinarian. An accredited veterinarian shall identify, on a form approved by the State Veterinarian, all cattle and bison leaving the designated feedlot. A copy of the form shall accompany the cattle or bison to slaughter and a copy shall be submitted to the State Veterinarian.
- E.** Except for the following, all female dairy cattle four months of age or older, imported into Arizona, shall be official calfhood vaccinates, properly identified, certified, and legibly tattooed:
1. Show cattle for exhibition,
  2. Cattle from a Certified Brucellosis-Free Herd with permission of the State Veterinarian,
  3. Cattle from a brucellosis-free state or country with permission of the State Veterinarian,
  4. Cattle consigned directly to an official state or federal slaughter establishment for immediate slaughter, and
  5. Cattle consigned for feeding purposes to a designated feedlot under import permit.
- F.** When imported breeding cattle, breeding bison, or dairy cattle under import quarantine and isolation are sold at a specifically approved stockyard, the owner or owner's agent shall, at the time of the sale, identify those cattle to the new owner as being under import quarantine. If market cattle identification testing for brucellosis is conducted at the auction, the owner or owner's agent shall ensure that the cattle or bison are tested before the sale. The new owner shall segregate the cattle or bison and retest for brucellosis 45 to 120 days after the animals entered the state.
- G.** Tuberculosis testing requirements for beef breeding cattle, breeding bison, and dairy cattle imported into Arizona from other states.
1. No tuberculosis test is required for:
    - a. Beef breeding cattle, breeding bison, or dairy cattle from an accredited herd if the herd accreditation number is documented on the health certificate and import permit;
    - b. Native commercial and purebred beef breeding cattle from an Accredited-Free State if its accredited-free status is documented on the health certificate; and
    - c. Steers and spayed heifers.
  2. Unless from an accredited herd, prescribed in subsection (G)(1), the owner or owner's agent shall ensure that purebred beef breeding cattle from modified accredited states, breeding bison, dairy females, and bulls for breeding dairy cattle test negative for tuberculosis within 60 days before entry into Arizona.
- H.** Tuberculosis testing requirements for cattle and bison imported into Arizona from Mexico.
1. Before entry into Arizona, cattle and bison from Mexico shall meet the requirements of 9 CFR 93.424 through 93.427, incorporated by reference in subsection (D)(1).
  2. Steers and spayed heifers from states or regions in Mexico shall not enter the state if they have not been deter-

mined by the State Veterinarian to have fully implemented the Control, Eradication, or Free Phase of the bovine tuberculosis eradication program of Mexico.

3. Steers and spayed heifers from states or regions in Mexico determined by the State Veterinarian to have fully implemented the Control Phase of the bovine tuberculosis eradication program of Mexico shall not be imported into Arizona without permission of the State Veterinarian.
4. Steers and spayed heifers from states or regions in Mexico determined by the State Veterinarian to have fully implemented the Eradication Phase of the bovine tuberculosis eradication program of Mexico may be imported into Arizona, if they have either:
  - a. Tested negative for tuberculosis in accordance with procedures equivalent to the Bovine Tuberculosis Eradication – Uniform Methods and Rules within 60 days before entry into the United States, or
  - b. Originated from a herd that is equivalent to an accredited herd in the United States and are moved directly from the herd of origin across the border as a single group and not commingled with other cattle or bison before arriving at the border.
5. Steers and spayed heifers from states or regions in Mexico determined by the State Veterinarian to have achieved the Free Phase of the bovine tuberculosis eradication program of Mexico may move directly into Arizona without testing or further restrictions if they are moved as a single group and not commingled with other cattle before arriving at the border.
6. Beef breeding cattle and breeding bison from states or regions in Mexico may be imported into Arizona if the State Veterinarian determines the Eradication or Free Phase of the bovine tuberculosis eradication program of Mexico has been fully implemented and the breeding cattle and breeding bison remain under import quarantine and isolation until retested negative for tuberculosis in accordance with the Bovine Tuberculosis Eradication - Uniform Methods and Rules. The test shall be performed not earlier than 60 days but not later than 120 days after entry unless consigned to a designated feedlot for feeding purposes only. Unless neutered, all beef breeding cattle or breeding bison consigned to a designated feedlot shall be branded with an “F” adjacent to the tail head before entry into Arizona, unless permission is granted by the State Veterinarian to apply the “F” brand on arrival. All beef breeding cattle or breeding bison leaving the designated feedlot shall go directly to an official state or federal slaughter establishment for immediate slaughter or to another designated feedlot. The owner of the designated feedlot shall ensure that official eartag identification records are kept on all incoming consignments and submit the records monthly to the State Veterinarian. An accredited veterinarian shall identify, on a form approved by the State Veterinarian, all beef breeding cattle and breeding bison leaving the designated feedlot. A copy of the form shall accompany the cattle and bison to slaughter and a copy shall be submitted to the State Veterinarian.

**I. Bovine scabies requirements.**

1. The owner or owner’s agent shall ensure that no cattle or bison affected with or exposed to scabies is shipped, trailed, driven, or otherwise transported or moved into Arizona except cattle or bison identified and moving under permit number and seal for immediate slaughter at an official state or federal slaughter establishment.

2. The owner or owner’s agent of cattle or bison from an official state or federal scabies quarantined area shall comply with the requirements of 9 CFR 73, Scabies in Cattle, January 1, 2007, edition, before moving the cattle or bison into Arizona. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Department.
  3. The State Veterinarian may require that breeding and feeding cattle and bison from known scabies infected areas and states be dipped or treated even if the animals are not known to be exposed. The State Veterinarian shall require that dairy cattle be dipped only if the animals are known to be exposed; otherwise a veterinarian’s examination and certification shall be sufficient.
- J. Trichomoniasis requirements for bulls imported into Arizona from other states.**
1. The owner or owner’s agent shall ensure bulls:
    - a. Test negative for *Tritrichomonas foetus* within 30 days prior to shipment using a polymerase chain reaction test or three cultures collected at intervals of no less than seven days apart, except for bulls:
      - i. Less than one year of age,
      - ii. Consigned directly to a state or federal licensed slaughter facility,
      - iii. Consigned directly to a dairy,
      - iv. Consigned directly to an exhibition or rodeo,
      - v. Consigned directly to a licensed feedlot for castration on arrival,
      - vi. Branded with an “F” adjacent to the tailhead and consigned directly to a designated feedlot for feeding and later movement directly to slaughter, and
    - b. Have no breeding activity during the interval between the collection of a sample and the date of shipment.
  2. An accredited veterinarian approved to collect samples for *Tritrichomonas foetus* testing by the state animal health official in the state of origin shall collect the *Tritrichomonas foetus* test samples.
  3. A laboratory approved to conduct tests for *Tritrichomonas foetus* by the state animal health official in the state of origin shall perform the test for *Tritrichomonas foetus*.

**Historical Note**

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-612 renumbered from Section R3-9-612 (Supp. 91-4). Amended effective March 5, 1997 (Supp. 97-1). Amended effective February 4, 1998 (Supp. 98-1). Amended by final rulemaking at 14 A.A.R. 884, effective May 3, 2008 (Supp. 08-1). Amended by final rulemaking at 14 A.A.R. 876, effective May 3, 2008 (Supp. 08-1).

**R3-2-613. Swine**

- A.** The owner of swine entering Arizona, or the owner’s agent, shall comply with the requirements of Article 6 and the following conditions:
1. Pay the expenses incurred to quarantine, test, and retest the imported swine; and
  2. Obtain an official health certificate specified in R3-2-606 and permit specified in R3-2-607.
- B.** Brucellosis test requirements. Breeding swine imported into Arizona from other states shall:
1. Originate from a validated swine brucellosis-free herd or from a swine brucellosis-free state; or
  2. Test negative for brucellosis within 30 days before entry.

**C. Pseudorabies test requirements. Swine imported into Arizona from other states shall:**

1. Be shipped directly from:
  - a. The farm of origin in a state recognized by USDA-APHIS as a pseudorabies Stage IV or Stage V state;
  - b. The farm of origin in a state recognized by USDA-APHIS as a pseudorabies Stage III state if the swine are:
    - i. Consigned directly to a terminal exhibition of only neutered swine;
    - ii. Tested negative within 15 days before entry, and
    - iii. Transported directly to a state or federally inspected slaughter facility immediately after the exhibition in a truck sealed by the State Veterinarian or agent;
  - c. A pseudorabies monitored feeder pig herd in a pseudorabies Stage II or Stage III state if the swine are consigned to a restricted swine feedlot; or
  - d. A sale in a state recognized by USDA-APHIS as a pseudorabies Stage IV or Stage V state if all swine entered in the sale are from a state recognized by USDA-APHIS as a pseudorabies Stage IV or Stage V state.
2. Except for feeder swine consigned to a restricted swine feedlot, swine moving directly to exhibition, and swine from a farm of origin in a state recognized by USDA-APHIS as a pseudorabies Stage V state, remain under import quarantine and isolation at the location specified on the import permit and health certificate, with the following restrictions, until tested negative for pseudorabies no sooner than 15 days or later than 30 days after entry:
  - a. The isolation pen shall be at least 200 feet from straying pigs, other livestock, pets, or working dogs, and not be accessible to normal traffic flow;
  - b. Equipment, tools, and implements shall not be moved from an isolation pen and used at another pen;
  - c. Workers shall disinfect their shoes and clothing before working with other livestock or the main herd; and
  - d. The distance between an isolation pen barrier and another swine pen barrier shall be at least 200 feet and the isolation pen shall be double-fenced to prevent exposure to accidental strays.
  - e. Imported quarantined swine testing positive after entry shall be shipped directly to a state or federal slaughter establishment within 15 days after the positive identification and shall be accompanied by a USDA-VS Form 1-27. The remainder of exposed animals shall be quarantined until the herd is declared free of the disease, or all exposed animals are depopulated and the premises cleaned and disinfected.
3. If swine move directly to exhibition from a herd in a Stage IV state, and remain in the state, the swine shall be held under import quarantine at a location disclosed by the exhibitor. The exhibitor shall disclose the location of the quarantine facility to the Department within three days of the end of the exhibition. The swine shall be quarantined according to the restrictions identified in subsections (C)(2)(a) through (C)(2)(e) until tested negative for pseudorabies no sooner than 15 days or later than 30 days after entry into the state.

**Historical Note**

Adopted effective August 19, 1983 (Supp. 83-4).

Amended effective June 29, 1984 (Supp. 84-3). Section R3-2-613 renumbered from Section R3-9-613 (Supp. 91-4). Amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 4812, effective December 7, 2000 (Supp. 00-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1).

**R3-2-614. Sheep and Goats**

- A. The owner of a sheep or goat entering Arizona, or the owner's agent, shall comply with the requirements of:
  1. Article 6 and pay the expenses incurred to quarantine, test, and retest the sheep or goat; and
  2. Animal identification prescribed in 9 CFR 79, January 1, 2007, edition. This material is incorporated by reference, does not include any later amendments or editions, and is on file with the Department at 1688 W. Adams St., Phoenix, AZ 85007.
- B. A breeding ram six months of age or older shall test negative for *Brucella ovis* within 30 days of entry or originate from a certified brucellosis-free flock. An exhibition ram that returns to the out-of-state flock of origin within five days of the conclusion of the exhibit is exempt from the testing requirement of this subsection.

**Historical Note**

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-614 renumbered from Section R3-9-614 (Supp. 91-4). Amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by final rulemaking at 8 A.A.R. 3628, effective August 7, 2002 (Supp. 02-3). Amended by final rulemaking at 14 A.A.R. 876, effective May 3, 2008 (Supp. 08-1).

**R3-2-615. Equine Importation**

- A. Except for R3-2-607, an equine may enter the state as prescribed in R3-2-602 through R3-2-611.
- B. A person shall not import an equine with fistulous withers or poll evil.
- C. All equine six months of age or older shall, using a test established in R3-2-407(A), be tested negative for EIA within 12 months before entry. Testing expenses shall be paid by the owner.

**Historical Note**

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-615 renumbered from Section R3-9-615 (Supp. 91-4). Amended effective February 4, 1998 (Supp. 98-1). Amended by final rulemaking at 8 A.A.R. 3628, effective August 7, 2002 (Supp. 02-3).

**R3-2-616. Cats and Dogs**

A dog or cat shall be accompanied by a health certificate that documents the animal is currently vaccinated against rabies according to the requirements of the National Association of State Public Health Veterinarians' Compendium of Animals Rabies Control, incorporated by reference in R3-2-409.

**Historical Note**

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-616 renumbered from Section R3-9-616 (Supp. 91-4). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to



reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by final rulemaking at 14 A.A.R. 876, effective May 3, 2008 (Supp. 08-1).

### **R3-2-617. Poultry**

The Department has no entry requirements on poultry provided the poultry appear healthy, do not originate from a poultry quarantine area, comply with all interstate requirements of APHIS, and are accompanied by a health certificate or Form 9-3 from the National Poultry Improvement Program.

#### **Historical Note**

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-617 renumbered from Section R3-9-617 (Supp. 91-4). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3). Amended by final rulemaking at 14 A.A.R. 876, effective May 3, 2008 (Supp. 08-1).

### **R3-2-618. Psittacine Birds**

- A. The owner or the owner's agent of a psittacine bird entering Arizona shall obtain a health certificate issued by a veterinarian within 30 days of entry, certifying:
  1. The bird is not infected with the agent that causes avian chlamydiosis, and
  2. The bird was not exposed to birds known to be infected with avian chlamydiosis within the past 30 days.
- B. The health certificate shall accompany the psittacine bird at the time of entry into Arizona.

#### **Historical Note**

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-618 renumbered from Section R3-9-618 (Supp. 91-4). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3). Amended by final rulemaking at 14 A.A.R. 876, effective May 3, 2008 (Supp. 08-1).

### **R3-2-619. Repealed**

#### **Historical Note**

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-619 renumbered from Section R3-9-619 (Supp. 91-4). Section repealed by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1).

### **R3-2-620. Zoo Animals**

- A. An owner or owner's agent may transport or move zoo animals into the state of Arizona if the animals are accompanied by an official health certificate, and consigned to a zoo or in the charge of a circus or show.
- B. The owner, or owner's agent, of an animal in a "Petting Zoo" shall have the animal tested for tuberculosis within 12 months before importation. A negative test result is required for entry into Arizona.
- C. A business that transports or exhibits zoo animals shall be licensed by the Arizona Game and Fish Department.

#### **Historical Note**

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-620 renumbered from Section R3-9-620 (Supp. 91-4). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3). Amended by final rulemaking at 14 A.A.R. 876, effective May 3, 2008 (Supp. 08-1).

### **R3-2-621. Non-restricted Live Wildlife Cervidae**

The owner of non-restricted live wildlife Cervidae entering Arizona, or the owner's agent, shall comply with the requirements in Article 6 and the following conditions:

1. Pay the expenses incurred to quarantine, test, and retest the imported non-restricted live wildlife cervids;
2. Ensure that each non-restricted live wildlife cervid is individually identified on the health certificate by an official eartag number;
3. Tuberculosis testing.
  - a. Except for non-restricted live wildlife Cervidae from a tuberculosis accredited-free herd, a tuberculosis qualified herd, or a tuberculosis monitored herd, ensure that non-restricted live wildlife Cervidae are tested negative twice for tuberculosis no less than 90 days apart with the second test conducted within 90 days before the date of entry;
  - b. Test non-restrictive live wildlife Cervidae originating from a tuberculosis qualified or monitored herd for tuberculosis once within 90 days before entry.
4. Brucellosis testing.
  - a. Certified brucellosis-free cervid herd. No testing required.
  - b. Brucellosis-monitored cervid herd. All sexually intact non-restricted live wildlife Cervidae six months of age or older shall be tested negative for brucellosis within 90 days before entry.
  - c. Other cervid herds. Sexually intact non-restricted live wildlife Cervidae six months of age or older shall be tested negative for brucellosis within 30 days before entry. A retest shall be conducted within 90 days after entry.

#### **Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by final rulemaking at 14 A.A.R. 876, effective May 3, 2008 (Supp. 08-1).

### **R3-2-622. Monkeys**

The owner or owner's agent of macaque entering Arizona shall comply with Article 6, except for R3-2-607, and the following conditions:

1. Each macaque shall be tested negative for Simian Herpes B virus within 30 days before entry into Arizona. If the macaque is less than two months of age, it shall be accompanied by a document issued and signed by an accredited veterinarian in the state of origin attesting that the biologic maternal parent of the macaque tested negative for Simian Herpes B virus not more than 30 days before the macaque's arrival in Arizona.
2. Each macaque shall be tested negative for tuberculosis within 30 days before movement into Arizona. Animals less than three months of age shall be accompanied by a health certificate with a statement attesting that no macaques housed within a circumference of 300 ft. from the macaque being shipped have exhibited symptoms of or tested positive for tuberculosis within 90 days.
3. Each macaque shall be permanently and uniquely identified with either a tattoo or microchip and the identification noted clearly on the health certificate and any accompanying document.

#### **Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 25,

effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1).

#### ARTICLE 7. LIVESTOCK INSPECTION

##### R3-2-701. Department Livestock Inspection

- A. A Division employee shall inspect range cattle, as defined in R3-2-702(A), at a ranch if the owner or agent is:
1. Moving cattle out-of-state,
  2. Transferring cattle ownership, or
  3. Shipping cattle for custom slaughter.
- B. A Division employee shall inspect cattle at a feedlot or dairy if the cattle are being shipped for custom slaughter.
- C. The Department shall not issue a self-inspection certificate to an owner, agent, or operator of a ranch, dairy, or feedlot if that individual has been convicted of a felony under A.R.S. Title 3 within the three-year period before the date on the self-inspection application. A Division employee shall inspect livestock if an applicant is denied self-inspection authority.
- D. During fiscal year 2015, livestock officers and inspectors shall collect from the person in charge of cattle, dairy cattle, or sheep inspected a service charge of \$10 plus the per head inspection fee set out in A.R.S. § 3-1337 for making inspections for the transfer of ownership, sale, slaughter or transportation of the animals.

##### Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-701 renumbered from Section R3-9-701 (Supp. 91-4). Section R3-2-701 repealed; new Section R3-2-701 adopted effective February 4, 1998 (Supp. 98-1). Error in subsection (A)(3) corrected under R1-1-109, filed with the Office of the Secretary of State October 18, 2001 (Supp. 01-3). Amended by final rulemaking at 9 A.A.R. 513, effective April 6, 2003 (Supp. 03-1). Amended by exempt rulemaking at 16 A.A.R. 1331, effective June 29, 2010 (Supp. 10-2). Amended by exempt rulemaking at 17 A.A.R. 1756, effective July 20, 2011 (Supp. 11-3). Amended by exempt rulemaking at 18 A.A.R. 2060, effective August 2, 2012 (Supp. 12-3). Amended by exempt rulemaking at 19 A.A.R. 3127, effective September 14, 2013 (Supp. 13-3). Amended by exempt rulemaking at 20 A.A.R. 2449, effective July 24, 2014 (Supp. 14-3).

##### R3-2-702. Livestock Self-inspection

###### A. Definitions.

“Description” means sex, breed, color, and markings, as applicable to the type of livestock.

“Exhibition” means an event including a fair, show, or field day that has as its primary purpose the opportunity for a member of a youth livestock organization, including 4-H and FFA, to display an animal raised by the youth in a judged competition.

“Identification” means brand, back tag number, ear mark, tattoo, metal eartag, plastic eartag, and premises identification number, as applicable to the type of livestock.

“Livestock” means cattle, sheep, and goats.

“Range” means every character of lands, enclosed or unenclosed, outside of cities and towns, upon which livestock is permitted by custom, license or permit to roam and feed. A.R.S. § 3-1201(7)

“Range cattle” means cattle customarily permitted to roam upon the ranges of the state, whether public domain or in private control, and not in the immediate actual possession or control of the owner although occasionally placed in enclosures for temporary purposes. A.R.S. § 3-1201(8)

###### B. Application.

1. An owner of five or fewer head of livestock shall call the Department at (602) 542-6407 to request a self-inspection certificate. The owner shall provide answers to the questions in subsections (B)(2)(a) through (B)(2)(f) to a Department employee before a certificate will be provided.
2. An owner of six or more head of livestock and an owner or operator of a dairy or feedlot shall request a book of self-inspection certificates from the Department. The applicant shall submit a written application form obtained from the Department and provide the following information:
  - a. Name, mailing address, physical address, telephone number, and fax;
  - b. Name of ranch, dairy, or business and type of operation;
  - c. Social security or business tax identification number;
  - d. Whether the applicant has been convicted of a felony under A.R.S. Title 3 within the past three years, and if so, the case number, court, charge, and sentence;
  - e. Recorded brand and brand location;
  - f. Individual designated to sign self-inspection certificates, if applicable; and
  - g. Signature and date.
3. The holder of a self-inspection book shall advise the Department by phone within 30 days of any change to the information provided on an application form.
4. The holder of a self-inspection book shall renew registration with the Department every two years from the date the initial or renewal application form is signed.

###### C. Self-inspection certificate.

1. An owner, agent, or operator shall provide the following information, as applicable, on a self-inspection certificate whenever livestock subject to self-inspection are moved or ownership is transferred:
  - a. Name, address, telephone number, and signature of the owner or agent;
  - b. Date of the shipment or transfer of ownership;
  - c. If moved, location from which and to which the livestock are moved, including the name of the auction, feedlot, arena, slaughter establishment, pasture, or other premises, and physical location;
  - d. Name of transporter;
  - e. Number, description, and identification of each sheep or goat as prescribed in R3-2-413;
  - f. Number, description, and identification of each calf, cow, heifer, steer, or bull and back tag numbers of culled dairy cattle;
  - g. Brand number and expiration date, if available, and brand location;
  - h. Name, address, and telephone number of buyer or agent, and signature if present at sale;
  - i. Number of head of cattle sold for which Beef Council fees are payable under A.R.S. §§ 3-1236 and 3-1238; and
  - j. Number of head of livestock for which an inspection fee is payable under A.R.S. § 3-1337(D).

2. The owner or owner's agent of livestock or the owner or operator of a dairy or feedlot shall complete a self-inspection certificate, except when livestock are subject to inspection by a Division employee under R3-2-701, and distribute copies of the certificate as follows:
    - a. One copy and any fees that are owed under subsections (C)(1)(i) and (C)(1)(j) shall be sent to the Department within 10 days after the end of the month in which the livestock are moved or ownership is transferred;
    - b. If the livestock are shipped, the original certificate shall accompany the livestock whenever they are in transit and one copy shall be retained by the person transporting the livestock; or
    - c. If ownership of the livestock is transferred without shipment, two copies shall be provided to the new owner or agent; and one copy shall be retained by the seller.
  3. A certificate may be used once to either transfer livestock ownership or to move livestock to a specific destination. If the livestock are diverted to a destination other than that stated on the self-inspection certificate, the certificate is void. The owner, agent, or operator shall complete a new certificate and send both the voided and new certificates to the Department within 10 days after the end of the month in which the certificates are issued or voided.
  4. An owner, agent, or operator shall use a self-inspection certificate only with a shipment of livestock matching the description for which the certificate is issued and only for the self-inspection issued date. If any of the information on the self-inspection certificate changes, the certificate is void and the owner, agent, or operator shall complete a new certificate.
  5. An altered, erased, completed but unused, or defaced self-inspection certificate is void. A voided certificate shall be returned to the Department within 10 days after the end of the month in which it is voided.
  6. Upon request, unused certificates shall be returned to the Department by the owner, agent, or operator. If a commercial operation licensed for self-inspection is sold, leased, transferred, or otherwise disposed of, the owner, agent, or operator shall notify the Department and return all self-inspection certificates to the Department within 30 days of the transaction.
- D. Sale of livestock.** A seller shall document a sale by completing a self-inspection certificate as prescribed in subsection (C) and providing a bill of sale to the purchaser as required under A.R.S. § 3-1291.
- E. Feedlot receiving form.**
1. The operator of a feedlot shall document receipt of incoming cattle on a form obtained from the Department. The operator shall include the following information on the form:
    - a. Name of feedlot and location;
    - b. Month and year for which report is made;
    - c. Number of cattle received, date received, and name and address of owner;
    - d. Description of the cattle;
    - e. If not Arizona native cattle, the import permit and health certificate numbers;
    - f. If native Arizona cattle, self-inspection form number or Department inspection certificate number; and
    - g. Pen number to which cattle are initially assigned.
  2. The operator shall return the completed form within 10 days after the end of the month of the reporting period.
- F. Quarantine.** Livestock under quarantine by the Department shall not be shipped or sold by use of a self-inspection certificate.
- G. Violations.** The Department shall process violations of this Section as prescribed under A.R.S. § 3-1203(D).
- Historical Note**  
 Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-702 renumbered from Section R3-9-702 (Supp. 91-4). Section R3-2-702 repealed; new Section R3-2-702 adopted effective February 4, 1998 (Supp. 98-1).  
 Amended by final rulemaking at 9 A.A.R. 513, effective April 6, 2003 (Supp. 03-1).
- R3-2-703. Seasonal Self-inspection Certificate**
- A. Exhibition cattle, sheep, and goats.**
1. An applicant for a seasonal self-inspection certificate prescribed under A.R.S. § 3-1346 shall call the Department at (602) 542-6407 to request a seasonal self-inspection certificate. The applicant shall provide the answers to the following questions, as applicable:
    - a. Name, mailing address, physical address if different from mailing address, telephone number, and fax;
    - b. Name of 4-H or FFA group, and group leader;
    - c. Social security number;
    - d. Description and identification of the animal;
    - e. Permit number and health certificate number for an animal imported from another state; and
    - f. Name of seller and self-inspection certificate number for an animal purchased from an Arizona seller.
  2. The Department employee who records the information required in subsection (A)(1) shall advise the applicant of the required fee prescribed under A.R.S. § 3-1346(A). The Department shall issue a seasonal self-inspection certificate upon receipt of the fee.
  3. An exhibitor shall provide the following information, as applicable, on a seasonal self-inspection certificate whenever an animal subject to seasonal self-inspection is moved or ownership is transferred:
    - a. Name, address, telephone number, and signature;
    - b. Date of movement;
    - c. Name of exhibition and location;
    - d. Final disposition of the animal (sale, death, or retention) and date of occurrence; and
    - e. If the animal is sold, name of purchaser (person or slaughter plant).
  4. The holder of a seasonal self-inspection certificate shall return the certificate to the Department within two weeks of the sale or slaughter of the animal or at the end of the show season if the animal is retained.
- B. Exhibition swine.** The requirements prescribed at R3-2-411 apply to exhibition swine.
- Historical Note**  
 Adopted effective November 27, 1987 (Supp. 87-4). Section R3-2-703 renumbered from Section R3-9-703 (Supp. 91-4). Section R3-2-703 repealed; new Section R3-2-703 adopted effective February 4, 1998 (Supp. 98-1). Section repealed; new Section made by final rulemaking at 9 A.A.R. 513, effective April 6, 2003 (Supp. 03-1).
- R3-2-704. Repealed**
- Historical Note**  
 Adopted effective February 4, 1998 (Supp. 98-1). Section repealed by final rulemaking at 9 A.A.R. 513, effective April 6, 2003 (Supp. 03-1).

**R3-2-705. Repealed****Historical Note**

Adopted effective February 4, 1998 (Supp. 98-1).  
Amended by final rulemaking at 8 A.A.R. 3628, effective August 7, 2002 (Supp. 02-3). Section repealed by final rulemaking at 9 A.A.R. 513, effective April 6, 2003 (Supp. 03-1).

**R3-2-706. Repealed****Historical Note**

Adopted effective February 4, 1998 (Supp. 98-1). Section repealed by final rulemaking at 9 A.A.R. 513, effective April 6, 2003 (Supp. 03-1).

**R3-2-707. Ownership and Hauling Certificate for Equines; Fees**

The fee for a new, transferred, or replacement Ownership and Hauling Certificate for Equines as prescribed under A.R.S. §§ 3-1344(B) and 3-1345(B) is \$10 per certificate.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 3932, effective August 22, 2002 (Supp. 02-3).

**R3-2-708. Equine Rescue Facility Registration**

- A.** “Arizona Equine Rescue Standards” means the American Association of Equine Practitioners Care Guidelines for Equine Rescue and Retirement Facilities, 2004 Edition. This material, which includes the Veterinary Checklist for Rescue/Retirement Facilities, is incorporated by reference, does not include any later amendments or editions, and is available for inspection at the Department of Agriculture, 1688 W. Adams St., Phoenix, Arizona 85007. A copy of this material may also be obtained from the American Association of Equine Practitioners web site at [http://www.aaep.org/pdfs/rescue\\_retirement\\_guidelines.pdf](http://www.aaep.org/pdfs/rescue_retirement_guidelines.pdf). The American Association of Equine Practitioners is located at 4075 Iron Works Parkway, Lexington, Kentucky 40511.
- B.** An equine rescue facility shall pay the annual registration fee and file the following documents with the Department’s Animal Services Division for the facility to be included on the Department’s registry of equine rescue facilities:
1. An application form containing the facility’s name, address, and contact person and the contact person’s phone number.
  2. A copy of documents filed with the Arizona Corporation Commission demonstrating the facility’s current status as a nonprofit corporation in good standing in this state.
  3. A letter from a licensed veterinarian, dated within 15 days of filing, certifying that the facility is not inadequate with respect to any of the Arizona Equine Rescue Standards and attaching a signed copy of the completed Arizona Equine Rescue Standards’ veterinary checklist.
- C.** Registration is valid for one year. Registration may be renewed annually by complying with subsection (B).
- D.** The annual registration fee is \$75.
- E.** A nonprofit corporation owning multiple equine rescue facilities must file the letter and checklist described in subsection (B)(3) and pay the annual registration fee for each location it wants included on the registry.
- F.** The Department shall remove a facility from the registry if it determines that the facility is not presently incorporated as a nonprofit corporation in this state or is inadequate with respect to any of the Arizona Equine Rescue Standards.

**Historical Note**

New Section made by final rulemaking at 16 A.A.R. 876, effective July 3, 2010 (Supp. 10-2).

**ARTICLE 8. DAIRY AND DAIRY PRODUCTS CONTROL****EMERGENCY RULEMAKING****R3-2-801. Definitions**

In addition to the definitions in A.R.S. §§ 3-601 and 3-661, the following terms apply to this Article:

“3-A Sanitary Standards” and “3-A Accepted Practices,” as published by the International Association for Food Protection, amended May 31, 2002, means the criteria for cleanliness of dairy processing equipment. This material is incorporated by reference, does not include any later amendments or editions, and is on file with the Department at 1688 W. Adams St., Phoenix, AZ 85007 and is also available at <http://www.3-A.org>.

“C-I-P” means a procedure by which equipment, pipelines, and other facilities are cleaned-in-place as prescribed in the 3-A Accepted Practices.

“Converted” means the process by which a frozen dessert is changed from a frozen to semi-frozen form without any change in the ingredients.

“Fluid trade product” means any trade product as defined in A.R.S. § 3-661(5) that resembles or imitates milk, lowfat milk, chocolate milk, half and half, or cream.

“Food establishment” means any establishment, except a private residence, that prepares or serves food for human consumption, regardless of whether the food is consumed on the premises.

“Frozen desserts mix” or “mix” means any frozen dessert before being frozen.

“Grade A raw milk” means raw milk produced on a dairy farm that conforms to Section 7 of the PMO and the requirements of R3-2-805.

“Parlor” and “milk room” mean the facilities used for the production of Grade A raw milk for pasteurization.

“Plant” means any place, premise, or establishment, or any part, including specific areas in retail stores, stands, hotels, restaurants, and other establishments where frozen desserts are manufactured, processed, assembled, stored, frozen, or converted for distribution or sale, or both. A plant may consist of rooms or space where utensils or equipment is stored, washed, or sanitized and where ingredients used in manufacturing frozen desserts are stored. Plant includes:

“Manufacturing plant” means a location where frozen desserts are manufactured, processed, pasteurized, and converted.

“Handling plant” means a location that is not equipped or used to manufacture, process, pasteurize, or convert frozen desserts, but where frozen desserts are sold or offered for sale other than at retail.

“Plate line” means a horizontal structural member, such as a timber, that provides the bearing and anchorage for the trusses of a roof or the rafters.

“PMO” means the Grade A Pasteurized Milk Ordinance, 2013 Revision. This material is incorporated by reference, does not include any later amendments or editions, and is on file with the Department at 1688 W. Adams St., Phoenix, AZ 85007. A copy of the incorporated material may also be viewed at <http://www.fda.gov>.

“Retail food store” means any establishment offering packaged or bulk goods for human consumption for retail sale.

**Historical Note**

Amended by final rulemaking at 20 A.A.R. 1134, effective May 2, 2014, for 180 days (Supp. 14-2).

**R3-2-801. Definitions**

In addition to the definitions in A.R.S. §§ 3-601 and 3-661, the following terms apply to this Article:

“3-A Sanitary Standards” and “3-A Accepted Practices,” as published by the International Association for Food Protection, amended May 31, 2002, means the criteria for cleanliness of dairy processing equipment. This material is incorporated by reference, does not include any later amendments or editions, and is on file with the Department at 1688 W. Adams St., Phoenix, AZ 85007 and is also available at <http://www.3-A.org>.

“C-I-P” means a procedure by which equipment, pipelines, and other facilities are cleaned-in-place as prescribed in the 3-A Accepted Practices.

“Converted” means the process by which a frozen dessert is changed from a frozen to semi-frozen form without any change in the ingredients.

“Fluid trade product” means any trade product as defined in A.R.S. § 3-661(5) that resembles or imitates milk, lowfat milk, chocolate milk, half and half, or cream.

“Food establishment” means any establishment, except a private residence, that prepares or serves food for human consumption, regardless of whether the food is consumed on the premises.

“Frozen desserts mix” or “mix” means any frozen dessert before being frozen.

“Grade A raw milk” means raw milk produced on a dairy farm that conforms to Section 7 of the PMO and the requirements of R3-2-805.

“Parlor” and “milk room” mean the facilities used for the production of Grade A raw milk for pasteurization.

“Plant” means any place, premise, or establishment, or any part, including specific areas in retail stores, stands, hotels, restaurants, and other establishments where frozen desserts are manufactured, processed, assembled, stored, frozen, or converted for distribution or sale, or both. A plant may consist of rooms or space where utensils or equipment is stored, washed, or sanitized and where ingredients used in manufacturing frozen desserts are stored. Plant includes:

“Manufacturing plant” means a location where frozen desserts are manufactured, processed, pasteurized, and converted.

“Handling plant” means a location that is not equipped or used to manufacture, process, pasteurize, or convert frozen desserts, but where frozen desserts are sold or offered for sale other than at retail.

“Plate line” means a horizontal structural member, such as a timber, that provides the bearing and anchorage for the trusses of a roof or the rafters.

“PMO” means the Grade A Pasteurized Milk Ordinance – 1978 Recommendations of the United States Public Health Service/Food and Drug Administration, 2005 Revision. This material is incorporated by reference, does not include any later amendments or editions, and is on file with the Department at 1688 W. Adams St., Phoenix, AZ 85007 and the Department of Health and Human Services, Public Health Ser-

vices, Food and Drug Administration, Dairy and Egg Branch (HFS-316), 5100 Paint Branch Parkway, College Park, MD 20740-3835.

“Retail food store” means any establishment offering packaged or bulk goods for human consumption for retail sale.

**Historical Note**

Former Regulations 1-11. Section R3-2-801 renumbered from R3-5-01 (Supp. 91-4). R3-2-801 renumbered to R3-2-803; new Section R3-2-801 adopted effective December 2, 1998 (Supp. 98-4). Amended by final rulemaking at 7 A.A.R. 2215, effective May 9, 2001 (Supp. 01-2). Amended by final rulemaking at 9 A.A.R. 2089, effective August 2, 2003 (Supp. 03-2). Amended by final rulemaking at 12 A.A.R. 3030, effective September 30, 2006 (Supp. 06-3). Amended by final rulemaking at 14 A.A.R. 889, effective May 3, 2008 (Supp. 08-1).

**R3-2-802. Milk and Milk Products Standards**

Unless specifically mentioned in A.R.S. Title 3, Chapter 4, Article 1, or in this Article, all milk and milk products, except frozen desserts, sold or distributed for human consumption shall meet the PMO standards for production, processing, storing, handling, and transportation.

**Historical Note**

Former Regulations 1, 2. Section R3-2-802 renumbered from R3-5-02 (Supp. 91-4). Section repealed; new Section adopted effective December 2, 1998 (Supp. 98-4).

**R3-2-803. Milk and Milk Products Labeling**

- A. The manufacturer or processor shall ensure that milk and milk products listed in A.R.S. § 3-601(10), and Sections 1 and 2 of the PMO are designated by the name of the product and shall conform to its definition.
- B. The manufacturer or processor of milk and milk products shall conform with the labeling requirements in A.R.S. §§ 3-601.01 and 3-627, Section 4 of the PMO, and 21 CFR 101, 131, and 133, amended April 1, 2002. This CFR material is incorporated by reference, does not include any later amendments or editions, and is on file with the Department and the Office of the Secretary of State.
- C. The name of the manufacturer or processor shall be on all cartons or closures where it can be easily seen. A manufacturer or processor that has plants in other states shall use a code number or letter to designate the state in which a carton or closure is manufactured or processed. If a manufacturer or processor has a plant within Arizona, the Dairy Supervisor shall issue a code number or letter for each plant and shall keep a record of the number or letter issued. Manufacturers and processors shall include the Arizona code, 04, with the plant code assigned by the Dairy Supervisor.
- D. If milk or milk products are manufactured or processed and packaged at a plant for other retailers and the container or closure is not labeled the same as the manufacturer’s or processor’s like product, the manufacturer or processor shall include the statement “Manufactured or Processed at (name and address of plant or code number or letter)” on the carton or closure. The carton or closure may also contain the statement, “Distributed by: (name of person or firm).”
- E. Any person planning to use a new or modified label on a container shall submit the proposed label to the Dairy Supervisor for review.
  1. If the proposed label does not meet labeling standards specified in subsection (B), the Dairy Supervisor shall note the required changes on the proposed label, and sign and return the proposed label to the applicant.

2. A person who requests additional time to use the inventory amounts of slow moving cartons or closures before using a modified label shall submit a written request to the Dairy Supervisor. The Dairy Supervisor may approve continued use of the existing cartons and closures if:
  - a. The use does not present a public health issue, and
  - b. The information on the cartons and closures is not misleading.

#### Historical Note

Former Regulations 1 - 21; Amended effective August 4, 1978 (Supp. 78-4). Section R3-2-803 renumbered from R3-5-03 (Supp. 91-4). R3-2-803 renumbered to R3-2-804; new Section R3-2-803 renumbered from R3-2-801 and amended effective December 2, 1998 (Supp. 98-4). Amended by final rulemaking at 9 A.A.R. 2089, effective August 2, 2003 (Supp. 03-2).

#### R3-2-804. Trade Products

- A. Any fluid trade product containing milk solids shall be regulated as a fluid milk product.
- B. Advertising, display, and sale:
  1. Any retail food store may submit its methods and techniques for the advertising, display, and sale of trade products and real products to the Dairy Supervisor to determine compliance with this Section.
  2. No food establishment shall sell or provide any patron or employee, for use as food, any trade product or food whose main ingredient is a trade product, unless one of the following disclosures is posted for each trade product, in a prominent place on the premises, or is plainly visible on each menu where other food items are described:
    - a. “\_\_\_\_\_ served here  
(brand or common name of trade product)  
instead of \_\_\_\_\_  
(common name of dairy product)”
    - b. “Nondairy products served here.”
  3. No food establishment shall advertise or otherwise represent to the public that it serves, or uses in the preparation of a food, a real product when it actually serves or uses a trade product.
- C. Labeling: Except as follows, all labels shall comply with the PMO and 21 CFR 101, 131, and 133.
  1. The Dairy Supervisor shall approve a new or modified trade product label before the label is used. The applicant shall file a written request with duplicate copies of the proposed label and any supporting materials necessary to establish the truthfulness, reasonableness, relevancy, and completeness of the label.
  2. Unless each ingredient of a trade product is homogenized or pasteurized, the whole product shall not be labeled or advertised as an homogenized or pasteurized product. Individual ingredients that are homogenized or pasteurized may be identified as homogenized or pasteurized in the listing of ingredients.
  3. Except for combined ingredients constituting less than 1% of the whole product or unless each ingredient of a trade product qualifies as grade A, the whole product shall not be labeled or advertised as a grade A product. Ingredients that qualify as grade A may be identified as grade A in the listing of ingredients.
  4. Any trade product produced outside the state and labeled as prescribed in R3-2-802, may be sold within the state provided that the product meets the requirements of A.R.S. §§ 3-663 and 3-665.

#### Historical Note

Former Regulations 1 - 8; Amended effective December

7, 1976 (Supp. 76-5). Correction, subsection (A)(2) through (H) omitted, Supp. 76-5 (Supp. 79-4). Section R3-2-804 renumbered from R3-5-04 (Supp. 91-4). R3-2-804 renumbered to R3-2-805; new Section R3-2-804 renumbered from R3-2-803 and amended effective December 2, 1998 (Supp. 98-4).

#### R3-2-805. Grade A Raw Milk For Consumption

- A. All cattle from which Grade A raw milk is produced shall be tested and found free of tuberculosis before any milk is sold. All herds shall be tested for tuberculosis at least every 12 months. All cattle from which Grade A raw milk is produced shall be tested and found free of brucellosis before any milk is sold, and shall be tested every 12 months or have negative ring tests for brucellosis, or both, as determined by the State Veterinarian.
- B. Grade A raw milk shall be cooled immediately after completion of milking to 45° F or less and shall be maintained at that temperature until delivery.
- C. Grade A raw milk shall be bottled on the farm where it is produced. Bottling and capping shall be done in a sanitary manner on approved equipment. Hand-capping is prohibited. Caps and cap stock shall be kept in sanitary containers until used.
- D. All vehicles used for the distribution of Grade A raw milk shall prominently display the distributor's name.
- E. Grade A raw milk shall be labeled as prescribed in R3-2-803.

#### Historical Note

Former Regulations 1, 2. Section R3-2-805 renumbered from R3-5-05 (Supp. 91-4). Section R3-2-805 repealed; new Section R3-2-805 renumbered from R3-2-804 and amended effective December 2, 1998 (Supp. 98-4).

#### R3-2-806. Parlors and Milk Rooms

- A. Construction Plans.
  1. Any person constructing or extensively altering a parlor or milk room shall submit the plans and specifications to the Dairy Supervisor for written approval before work begins. The Dairy Supervisor shall approve or deny the plans within 10 business days.
  2. Plans shall consist of a scaled plot design with elevations and pertinent dimensions.
  3. Any deviations from the requirements in this Section and from approved plans and specifications may be made only after written approval of the Dairy Supervisor.
- B. Site.
  1. The parlor and milk room shall be located in a place free from contaminated surroundings.
  2. Feed racks, calf pens, bull pens, hog pens, poultry pens, horse stables, horse corrals, and shelter sheds shall not be closer than 100 feet to the milk room or closer than 50 feet to the parlor.
- C. Surroundings.
  1. Dirt or unpaved corrals and unpaved lanes shall not be closer than 25 feet to the parlor or closer than 50 feet to the milk room; corrals shall be constructed to remove runoff from the lowest point of the grade. A minimum 3% slope shall be maintained in unpaved corrals where the available space for each animal is 400 square feet or less but may be reduced proportionately to 1 1/2% slope if 800 square feet or more is provided for each animal.
  2. A paved (concrete or equivalent) ramp or corral shall be provided to allow the animals to enter and leave the parlor. This paved area shall be curbed at least six inches high and six inches wide and sloped to a paved drain area. The paved area shall provide access to permanent feed racks or mangers and to water troughs. Water troughs shall be provided with an apron of concrete or equivalent

at least 10 feet wide at the drinking area. The cow standing platform at permanent feed racks shall be paved with concrete or equivalent for at least 10 feet back of the stanchion line. The stanchion line shall have a curb at least one foot in height.

- D. Floor level elevations of all structures shall be at least 15 inches above surrounding ground level and shall carry drainage 50 feet from the parlor and at least 100 feet from the milk room. Instead of natural drainage, automatic pumps or other means shall be provided for drainage disposal.

E. Milk room.

1. The milk room shall not be more than 15 feet from the parlor and may be located under the same roof (extended) as the parlor. The milk room shall consist of one or more rooms for the handling of the milk and the cleaning, sanitization, and storage of the milk-handling equipment. Hot and cold running water outlets shall be available in each room. There shall be a minimum of five feet between a farm milk tank at the widest point and the milk room wall where the wash vats are installed. Except for currently installed milk tanks, there shall be at least three feet between any farm tank or farm tank appurtenance and the milk room walls.
2. Passageway. The passageway between the milk room and parlor shall have at least a 3-foot clearance for ingress and egress and have ceiling or roof ventilation. Equipment such as milk receivers, dump tanks, or coolers that are part of an enclosed milk line system may be installed in the passageway if:
  - a. A 3-foot clearance is allowed for the walkway;
  - b. Space is provided between walls and equipment to permit the disassembly of equipment for cleaning or inspection;
  - c. The passageway between the parlor and the milk room may be closed at one end. The parlor may be separated from the passageway by a pipe rail fence if the slope of the parlor floor is away from the passageway. If the slope of the parlor floor is toward the passageway, a concrete wall between the passageway and parlor floor of at least 12 inches in height shall be provided.
  - d. Rustless pipe sleeves with tight-fitting flanges and protective closures shall be installed where the milk lines, hoses for tankers, and wash lines go through the walls or stationary doors of the passageway.
3. Floors.
  - a. The floors of the milk room, and passageway, if provided, shall be constructed of four-inch thick concrete, or other impervious material troweled smooth. The milk room floor shall slope at least 1/4 inch per 12 inches to a vented trapped drain. The passageway floor shall slope at least one inch per 10 feet toward a drain or gutter. All floor and wall junctions shall have at least a two-inch radius cove. Concrete floors built on soils other than sandy loams shall have a sand or rock cushion at least six inches deep.
  - b. Drainage from the milk room may be independent from or connected to the parlor drainage. Floor drains shall be vented, have a water trap, and a clean-out plug. All floor drains and pipes under the milk room and parlor floor shall have leakproof connections and meet all applicable plumbing codes.
4. Walls and ceilings.
  - a. All walls and ceilings shall be constructed of a light colored, impervious material with a smooth finish. If concrete block or masonry construction is used, all

voids below the floor line shall be filled with concrete.

- b. The main ceiling height shall be at least nine feet above the floor and not less than the height of the farm tank plus two feet. New or extensively altered ceiling shall be at least three feet above the tank. The ceiling may follow the rafters to the plate line which shall be at least 7 feet 3 inches above the floor.
5. Doors and windows.
- a. Each room of the milk room shall have at least one glass or other light-transmitting material. The total window area in each room shall be equivalent to at least 1/10 of the floor area. All opening windows shall have at least 16-inch mesh screen.
  - b. Exterior doors of the milk room shall open outward, be solid, self-closing, and tight fitting. Any door from the passageway shall be a solid door, metal covered on both sides of the bottom half. Wooden door jambs or frames shall terminate six inches above the floor, and the concrete floor cove shall extend to the jambs or frames.
  - c. All working areas in the milk room shall contain at least 30 foot-candles of lighting.
6. Ventilation. At least two wall ventilators shall be installed horizontally not more than 10 inches nor less than four inches above the floor in each milk room. The wall ventilators shall provide openings equivalent to 2% of the floor areas. Wall-vent openings shall be equipped with metal framed insect screens. The milk room shall contain ceiling vents. In the absence of forced draft ventilation, the ceiling vents shall be shafted to a roof peak vent that is at least 12 inches in diameter to ventilate the room and exclude dust, rain, birds, insects, and trash. Ceiling vents shall provide high ventilation equivalent to an opening of 2% or more of the floor area. Ceiling vents shall not be installed directly above bulk milk storage tanks. Oil or gas water heaters shall be vented outside above the roof edge.
7. Tanker loading area. A tanker-loading area, at least 10 feet by 12 feet, paved, curbed, and sloped to drain, shall be provided adjacent to the milk room where milk is transferred from a farm tank to a milk tanker. If a tanker is used instead of a farm tank, a tanker shelter shall be provided that complies with the construction, light, drainage, and general maintenance requirements of the milk room.
8. Farm tank installations. All farm tanks for the cooling and storing of milk shall be installed in the milk room. Bulk milk tanks equipped with agitator shaft opening seals may, if approved by the Dairy Supervisor, be bulk-headed through a wall.
- F. Parlor.
1. Floors.
    - a. The floors, curbs and quarters shall be constructed of four-inch thick concrete or other, light-colored, impervious material, finished smooth. The floors, alleys, gutters, mangers, and curbs shall slope lengthwise at least 1 1/2 inches per 10 feet toward a drain or gutter. The cow standing platform in the elevated stall parlor shall slope at least 1 1/2 inches toward the floor gutter.
    - b. Floor and wall junctions shall have at least a two-inch radius cove and shall be an integral part of the floor.
    - c. The cow standing platform litter alley, feed alley, and gutter shall be given a true, even surface. The

- cow standing platform, litter alley, holding corral and concrete lane shall be treated to prevent slipping. Concrete floors built on soils other than sandy loams shall have a sand or rock cushion at least six inches deep.
2. Walls. All walls shall be constructed of a light-colored, impervious material that shall extend at least four feet above the ground floor. All walls shall be finished smooth on the inside with the top ledge rounded on open walls. If a parlor wall forms a part of the holding corral or an entrance or exit lane, it shall be finished smooth on the outside. If a concrete block or masonry construction is used, all voids below the floor line shall be filled with concrete. In elevated stall parlors, the wall under the cow standing platform adjacent to the milking area shall be finished smooth and designed to prevent drippage.
  3. Plate line. The plate line in the floor level parlor shall be at least 7 feet 3 inches above the floor. In elevated stall parlors, the plate line shall be at least 6 feet 6 inches above the cow standing platform.
  4. Superstructure. The exposed superstructure of the parlor or ceiling shall be constructed of smooth material. The roof sheathing in an exposed superstructure shall be applied directly to the rafters.
  5. Stalls. The cow standing platform and floor level parlors shall be at least three feet wide for each cow and shall be at least four feet 10 inches and not more than six feet from the stanchion line to the gutter, depending on the size of the cattle and the design of the manger. If stanchions are not used, the cow standing platform shall be at least 7 feet in length. The cow stall in a tandem elevated stall shall be eight feet in length. A tandem stall and a herringbone stall shall have a smooth, flat, non-absorbent splash panel behind each cow.
  6. Light and airspace. The parlor shall have at least 400 cubic feet of air space for each stall. Window space, with or without glass, shall be equivalent to at least 6% of the floor area. Light-transmitting material in the roof may be substituted for window spaces. Artificial light shall be at least 30 footcandles at the floor level and located to minimize shadows in the milking area.
  7. Alleys.
    - a. The litter alley, exclusive of gutter, shall be at least 4 feet 9 inches wide behind a single string of cows. In a 2-string head-out parlor, the litter alley shall be at least eight feet wide between gutters.
    - b. In a floor level parlor, the feed alley in single and 2-single head-out types, shall be at least 5 feet 9 inches wide between stanchion line and wall. In 2-string head-in parlors, there shall be at least 10 feet between stanchions.
    - c. The milking alley in the 2-string tandem elevated stall parlor shall be at least eight feet wide but may be reduced to five feet at the narrowest point if automatic feeders are installed and used. The width of the milking alley in the 2-string herringbone parlor may be reduced to five feet at the narrowest point.
    - d. In the single-string elevated parlor, the milking alley shall be at least eight feet wide.
  8. Gutters.
    - a. All parlors shall have gutters to catch the defecation of cows while in the stall and for any water used for rinsing.
    - b. Gutters in the floor level parlor may be either trench or step-off. The gutter shall be at least 14 inches wide and two inches deep at the cow standing platform. The gutter floor shall slope down away from the cow standing platform 1/2 inch across its width. The gutter shall have a uniform depth for its entire length.
    - c. The gutters in an elevated stall parlor shall be grate-covered in the stall and trenched along the outside wall. The stall gutter shall be located to catch defecation of cows in the stall. The stall gutter shall be at least 500 square inches in area and at least 20 inches wide and four inches deep. A herringbone parlor may have the stall gutter width reduced to 14 inches provided a 500 square inch area containing the animal is maintained. The wall gutter shall be at least eight inches wide and three inches deep and the bottom may be rounded. A trench gutter may be eliminated in an exit alley if the alley is curbed and sloped to drain.
    - d. Pipe used for parlor gutter drainage shall be at least four inches in diameter and meet applicable plumbing codes.
  9. Curbs.
    - a. In elevated stall parlors, the cow standing platform shall be curbed on the side next to the milking alley and the curb shall be at least six inches in height with the top rounded to retain the elevated stall floor washings. This curb may be lowered to not less than two inches at the area where the milking machines are applied. Metal curbs shall be free of voids and sealed to stall and floor or wall.
    - b. Floor level parlors shall contain a curb under the stanchion line at least six inches wide, 12 inches high from the stall floor, except if metal mangers are used the top of this curb shall be rounded.
  10. Stanchions.
    - a. The stanchion shall be metal or other impervious, easily cleanable material. The lower horizontal line of the stanchion shall be at least two inches above the curb and at least 14 inches above the floor if no curb is provided.
    - b. In floor level parlors, the manger shall have:
      - i. A width of at least 27 inches with a back wall at least 12 inches above the floor;
      - ii. Rounded corners;
      - iii. The low point of the manger at least eight inches out from the stanchion line and three inches above the floor; and
      - iv. A lengthwise slope of at least 1 1/2 inches per 10 feet toward a drain or gutter.
    - c. Mangers and feed boxes in all types of parlors shall be constructed of impervious materials, finished smooth, and provided with drainage outlets at low points.
  11. Ventilation.
    - a. Ventilation shall be provided in the parlor, holding corral, and wash area, if roofed.
    - b. Continuous open 18-inch ridge vents that rise at least six inches above the roof area are permitted. Any ridge vent continuing over the feed room shall be tightly screened.
    - c. If a stack vent is used, single string parlors shall have a 12-inch diameter opening, and multi-string parlors shall have a 14-inch diameter opening with not more than 10 feet between vent and wall, and vent and vent.
    - d. A flat ceiling shall have at least two vents, two feet by two feet or equivalent, shafted to a roof peak vent



with not less than a 12-inch opening. The ceiling vents may be located directly over the cow standing platform or the milking pit. The vents shall be located not more than 10 feet between vent and wall, and vent and vent.

12. The lower half of the parlor doors shall be covered on both sides with corrosion-resistant metal.

- G. Roof drainage from parlors, milk rooms, or shelters shall not drain into a corral unless the corral is paved and properly drained.
- H. If animals are fed in the parlor, feed storage facilities shall be provided. Feed storage rooms, when installed, shall be partitioned from the parlor and shall be fly and rodent proof. The feed discharge area of the bulk feed storage shall be concrete or other impervious material that is curbed and drained. Bulk feed may discharge directly into the parlor. A bulk feed tank located opposite the passageway shall be at least six feet from the milk room. Overhead feed storage is permissible if it is fly, rodent, and dust tight. Feed shall be conveyed to the manger or feed box in a tightly closed dust-free system. Overhead metal feed tanks may be used.
- I. Facilities to store dairy supplies shall be provided. Only supplies that come in contact with the milk or milk contact surface of the milk-handling equipment may be stored in the milk room and shall be protected from toxic materials, vectors, and dust.

#### Historical Note

Former Regulations 1 - 11. Section R3-2-806 renumbered from R3-5-06 (Supp. 91-4). Section amended effective December 2, 1998 (Supp. 98-4).

#### R3-2-807. Frozen Dessert Plant and Processing Standards

##### A. Plant and Processing Standards.

1. The plant area shall be clean, orderly and free from refuse, rubbish, smoke, dust, air pollution and strong or foul odors originating on the premises. A drainage system shall be provided for the rapid drainage of water away from the building. If unsatisfactory conditions occur in the plant area, with respect to smoke, dust, air pollution, or odors, provision shall be made to protect the frozen desserts and ingredients from contamination.
2. Sewage and industrial waste shall be disposed in accordance with the provisions of the state or county environmental laws. Refuse, unless in appropriate containers, shall not accumulate on the premises.
3. Roads, driveways, yards, and parking areas adjacent to the plant shall be paved or treated to prevent dust and shall be smooth and well drained to prevent accumulation of stagnant liquid.
4. Buildings.
  - a. The building exterior and interior shall be kept clean and in good repair.
  - b. In processing and packaging areas, outside doors, windows, skylights, transoms, or other openings shall be protected and operated to preclude the entrance of dust, insects, vermin, rodents, and other animals. Outside doors shall be self-closing wherever practical. Window sills on new construction shall slope inward at least 45-degrees. Outside conveyor openings and other outside openings shall be protected by doors, screens, flaps, fans, or tunnels. Pipes shall be sealed where they extend through exterior walls. Outside pipe openings shall be covered when not in use.
  - c. Rooms. All rooms, compartments, coolers, freezers, and dry storage space in which any raw material,

packaging or ingredient supplies, or finished products are handled, processed, manufactured, packaged, or stored shall be constructed to ensure clean and orderly operations.

- i. Boiler and tool rooms shall be separate from rooms where milk products are received, where processing and packaging is done, or where equipment, facilities, and containers are washed and stored.
- ii. Toilets and dressing rooms shall be conveniently located and toilets shall not open directly into any room where milk products, ingredients, or frozen desserts are handled, processed, packaged, or stored. Toilet and dressing room doors shall be self-closing. Toilets and dressing rooms shall be well vented to the outer air, and contain hand-washing facilities, hot and cold running water, soap, single-service towels or air dryers. Hand-washing signs shall be posted. Fixtures shall be kept clean and in good repair.
- iii. Rooms for receiving milk and other raw ingredients and materials shall be separated from the processing area to avoid contamination of frozen desserts in the processing operations, except that products in cans or other closed containers may be received and transferred to a cooler or other storage without being received in a separate room.
- iv. If tank truck deliveries of milk, milk products, or frozen desserts mix are made, other than occasional deliveries, a tank truck room large enough to accommodate the entire truck shall be provided with equipment for cleaning. A covered outside unloading pad may be used for truck tankers with filter dome vents, if washing and sanitizing facilities are provided. If a tank truck room is not located on the premises of an existing plant, facilities for washing and sanitizing tank trucks shall be provided at another location where the washing and sanitizing facility is free from dust and extreme weather conditions.
- v. Except for existing processing and packaging rooms, there shall be at least three feet clearance between installations and the wall to prevent overcrowding and to facilitate cleaning. Existing facilities not meeting this requirement shall be permitted if cleaning can be accomplished and permission is obtained from the Dairy Supervisor or the Dairy Supervisor's designee. All processing and packaging rooms shall be equipped with hand-washing facilities including hot and cold running water, soap, single-service towels, or air-dryer.
- vi. Refrigeration rooms and units shall be constructed of impervious material and shall be kept clean and sanitary.
- vii. Separate rooms shall be provided so that the manufacturing, processing, and packaging are separate from the cleaning and sterilizing of utensils and containers.
- viii. No person shall reside or sleep in a frozen desserts plant or in any room connected with it. No animal shall be kept or permitted in a frozen desserts plant.

- d. Walls and ceilings shall be constructed of smooth, washable, impervious material. They shall be light-colored, kept clean and sanitary, and refinished when discolored. A darker color material may be used to a height not exceeding 60 inches from the floor.
  - e. Floors shall be an impervious, smooth-surfaced material that may be flushed clean with water. Except for hardening rooms, floors shall slope 3/16 to 1/4 inch per foot to one or more trapped outlets. No open channel drainage is permitted in new construction or in extensive remodeling of existing plants. Floor drains are not required in freezers used for storing frozen desserts or frozen ingredients. However, the floors shall be sloped to drain to at least one exit and shall be kept clean. Floors in new construction or extensive remodeling shall be joined and coved with the walls to form water-tight joints. Smooth wood floors may only be permitted in rooms where there will be no spillage of product or ingredients, such as rooms where wrapped or packaged frozen products are packed in multiple-pack containers. Toilets and dressing rooms shall have impervious floors and smooth walls.
  - f. Plumbing shall be installed to prevent back-up of sewage or odors into the plant.
  - g. All rooms and compartments, including storage space for materials, ingredients, and packages, and toilets and dressing rooms, shall be ventilated to maintain sanitary conditions, and to minimize or eliminate condensation and odors.
  - h. Lighting, whether natural or artificial, shall be well distributed in all rooms and compartments. Light bulbs and fluorescent tubes shall be protected so that broken glass cannot fall into any product or equipment.
    - i. Rooms where frozen desserts are handled, processed, manufactured, or packaged, or where equipment or utensils are washed, shall have at least 30 footcandles of light on all working surfaces;
    - ii. Areas where dairy products are examined for condition and quality shall have at least 50 footcandles of light; and
    - iii. All other rooms shall have at least 20 footcandles of light 30 inches above the floor.
  - i. Containers for collecting and holding waste other than dry waste paper and other dry packaging material shall be constructed of metal or other impervious material, covered with tight-fitting lids or covers, and emptied or disposed of daily or at least once during the shift. Clothing, tools, equipment, and other material not used with the frozen desserts operations shall not accumulate in the work areas or in the storage rooms.
  - j. A room or other space separate from any room or space where milk products or frozen desserts are received, handled, processed, packaged, or stored, shall be provided where employees may change and store clothing. This area shall contain hand-washing facilities, with hot and cold running water, soap or other detergents, and single-service towels or air dryers. Self-closing containers shall be provided for used towels and other wastes.
  - k. Approval of plans. The Dairy Supervisor may allow variances to the requirements in this Section, if protection from contamination is provided for all products handled.
- 5. Water and steam.
    - a. Potable hot and cold water shall be available in sufficient quantity for all plant operations and facilities. Non-potable water may be used for boiler feed and condenser water, if the water lines are separated from the water lines carrying the potable water supply and the equipment is constructed to preclude contamination of any product or product contact surface. If water for washing frozen desserts equipment and utensils and for use in rehydration or as an ingredient in any frozen desserts is obtained from other than a regulated municipal supply, a bacteriological examination shall be made of the water supply at least once every six months by a bacteriologist to determine potability. If the examination indicates contamination of the water supply, a device shall be installed to eliminate the contamination.
    - b. If steam is used, it shall be provided in sufficient volume and pressure for the operation of equipment or for sterilization, or both. Steam that comes in contact with frozen desserts, ingredients, or with the product contact surface, shall be steam of culinary quality as prescribed in Appendix H, Part III, Culinary Steam – Milk and Milk Products, of the PMO.
  - 6. Equipment and utensils.
    - a. New equipment shall meet applicable 3-A Sanitary Standards. All equipment, including connections, coming in contact with frozen desserts or ingredients during processing, manufacturing, handling, or packaging, shall be made of stainless steel. No equipment shall be permitted that is rusted, corroded, or in any other condition that may result in contamination of the frozen desserts. Non-metallic parts with product contact surfaces shall consist of material that meets 3-A Sanitary Standards for Plastic or Rubber and Rubber-like Materials or shall be of plastic approved by the United States Food and Drug Administration. Equipment, apparatus, and piping shall be easily accessible for cleaning and shall be kept in good repair and free from cracks and corroded surfaces. Stationary equipment, including welded sanitary lines and apparatus that permit in-place-cleaning, may be used if prior approval from the Dairy Supervisor has been obtained. C-I-P piping and welded sanitary pipeline systems shall be permitted if engineered and installed according to 3-A Accepted Practices for Permanently Installed Sanitary Product and Solution Pipelines and Cleaning Systems. If rigid pipelines are not practical, plastic pipelines listed in the 3-A Accepted Practices may be used. Product pumps shall be sanitary and easily dismantled for cleaning or shall be constructed to allow C-I-P procedures. All parts of interior surfaces of equipment, pipes (except C-I-P piping), or fittings, including valves and connections shall be accessible for inspection. The Dairy Supervisor may require other equipment, apparatus or piping if stationary equipment, apparatus or piping cannot or is not being effectively cleaned-in-place.
    - b. Equipment for storage and distribution of liquid sweetening agents shall be constructed of metals, alloys, or other material that will withstand corrosive action by the ingredient. The equipment and the ingredients shall be protected from contamination.

- c. Pasteurizing equipment shall meet the standards prescribed in 3-A Accepted Practices for Sanitary Construction, Installation, Testing and Operation of High-Temperature-Short-Time Pasteurizers and 3-A Sanitary Standards for Non-Coiled Type Batch Pasteurizers. Batch-type pasteurizers shall be provided with close-coupled outlet valves protected against leakage and shall be equipped with thermometers that record the information of each day's operation on separate charts. Air space thermometers and indicating thermometers shall be provided to check the recording thermometers. The recording thermometer chart shall contain the date, the identity of the pasteurizing number, the batch and product name, and the signature of the employee responsible for this information. The record shall be kept on file at the plant for at least six months. The accuracy of the thermometer shall be checked weekly and the date and name of the person responsible for the weekly accuracy check shall be recorded.
  - d. Every plant shall contain hardening rooms, refrigerating rooms, or refrigerated cabinets with space for storage of frozen desserts and perishable ingredients.
  - e. All utensils used in the receiving, storing, processing, manufacturing, packaging, and handling of frozen desserts or any ingredients shall be of smooth, stainless steel, or plastic listed in the 3-A Accepted Practices and shall have flush seams. Utensils that are badly worn, rusted, or corroded or that cannot be rendered clean and sanitary by washing shall not be used. Lead solder shall not come in contact with milk or milk products or frozen desserts.
7. Cleaning and sanitizing.
- a. Cleaning and sanitizing. Equipment, sanitary piping and utensils used in receiving, storing, processing, manufacturing, packaging, and handling frozen desserts and ingredients, and all product contact surfaces of homogenizers, high pressure pumps, packing glands on agitators, pumps and vats, and lines shall be kept clean. Before use, all equipment coming in contact with milk products or frozen desserts shall have a bactericidal or sanitizing treatment. Equipment not designed for C-I-P cleaning shall be disassembled, thoroughly cleaned and sanitized. Biodegradable dairy cleaners, wetting agents, detergents, sanitizing agents, or other similar material that does not adversely affect or contaminate the frozen desserts or ingredients may be used. Steel wool or metal sponges shall not be used to clean any equipment or utensils with product contact surfaces. C-I-P cleaning shall be used only on equipment and pipeline systems designed, engineered, and installed for that type of cleaning. Other equipment and areas in the plant shall be thoroughly cleaned with a commercial vacuum cleaner or other means and the material obtained shall be burned or disposed of so that any insects are destroyed and milk products and frozen desserts will not be contaminated. Exhaust stacks, elevators and elevator pits, conveyors and similar facilities shall be inspected and cleaned regularly.
  - b. Equipment shall be sanitized by using one of the following methods:
    - i. Using 180° F water for at least two minutes.
    - ii. Using steam under pressure for at least two minutes or until all parts of the equipment being sanitized have reached 180° F, or the condensate off the equipment remains at 180° F for at least two minutes.
    - iii. Using chlorine with a residual of at least 50 ppm after one minute contact with equipment, or if sprayed, with a residual of at least 100 ppm after five minutes.
    - iv. Using any other sanitizing substance prescribed in Appendix F of the PMO.
8. Pasteurization and cooling.
- a. All frozen desserts mix, except for flavoring agents used in frozen desserts, shall be pasteurized.
  - b. Frozen desserts mix shall be pasteurized by heating every particle to:
    - i. 155° F for 30 minutes,
    - ii. 160° F for 15 minutes,
    - iii. 165° F for 10 minutes,
    - iv. 175° F for 25 seconds,
    - v. 180° F for 15 seconds,
    - vi. 200° F for three seconds, or
    - vii. 210° F with no holding time.
  - c. High-temperature-short-time pasteurizers shall have the thermal limit controller set and sealed so that forward flow of the product cannot start unless the temperature at the controller sensor is above the required temperature and forward flow of the product cannot continue during descending temperatures if the temperature is below the required temperature. The seal shall be applied by the Dairy Supervisor or the Supervisor's designee after testing and shall not be removed without immediately notifying the Dairy Supervisor or the Supervisor's designee. The system shall be designed so that no product can bypass the controller sensor. The controller sensor shall not be removed from its proper position during the pasteurization process.
  - d. After pasteurization all mix shall be cooled immediately to 45° F or less and shall be maintained at that temperature until frozen. Milk, cream, and other fluid milk products other than sterilized, evaporated or sweetened condensed milk in hermetically sealed containers shall be stored at 45° F or less.
    - i. Refrigerated vehicles or approved insulated containers shall be used when transporting frozen desserts mix from the manufacturing or other plant to a retail manufacturer, and
    - ii. Mix shall be moved from coolers or refrigeration units in a manufacturing plant to freezers by using pipes, tubing, or other means listed in the Permanently Installed Product and Solution Pipelines and Cleaning Systems Used in Milk and Milk Product Processing Plants section of the 3-A Accepted Practices.
9. Storage.
- a. Utensils and equipment. Utensils and portable equipment used in processing, handling, or packaging of frozen desserts shall be stored above the floor in clean, dry locations and in a self-draining position on racks constructed of impervious, corrosion-resistant material.
  - b. Supplies and containers. Whenever possible, supplies shall be kept in a room separate from the processing, handling, and packaging of frozen desserts and under conditions that result in keeping the mate-

- rials clean and free from dust, moisture, insects, rodents, or other possible contamination. Supplies shall be arranged to permit cleaning of the area and easy inspection and access. Insecticides and rodenticides shall be plainly labeled, segregated, and stored in a separate room or cabinet away from the edible material or packaging supplies. Caps, parchment papers, wrappers, liners, gaskets, and single-service sticks, spoons, covers, and containers for frozen desserts or ingredients shall be stored only in sanitary tubes, wrappings, or cartons and kept in a clean, dry place until used and shall be handled in a sanitary manner.
- c. Raw milk products. Raw products for use in frozen desserts that are conducive to bacterial growth shall be handled and stored to minimize bacterial growth. When stored, raw products shall be maintained at 45° F or lower until processing commences.
  - d. Non-refrigerated products. Products such as non-fat dry milk and other frozen desserts ingredients that do not require refrigeration for proper storing shall be placed in dry storage to be easily accessible for inspection and removal, and for adequate cleaning of the room. Dunnage, pallets or other similar method of elevation shall be used. Frozen desserts or ingredients shall not be stored with any product that would damage them or impair their quality. Opened containers of ingredients shall be protected from contamination.
  - e. Refrigerated products. All products that require refrigeration shall, except as otherwise specified, be stored under conditions of temperature and humidity that best maintain quality and condition. Products shall not be stored directly on wet floors or be exposed to foreign odors or conditions such as dripping or condensation that may cause package or product damage.
10. Notification of change in products to be manufactured. Any person manufacturing only frozen desserts with butterfat, or only frozen desserts with fats other than butterfat, and uses the other type of fat shall first notify the Dairy Supervisor.
  11. Clearing lines and equipment. If the same equipment is used for processing, pasteurizing, and packaging frozen desserts made with dairy products and frozen desserts made with vegetable fats, oils, or proteins, any remaining product shall be completely removed from the lines and equipment and sanitized before introducing another product into the lines and equipment. All equipment and lines shall be sanitized either at the end or beginning of each day's operations.
  12. Packaging and containers.
    - a. Frozen desserts shall be packaged in commercial containers using packaging material that protects the product from contamination. The packaging, cutting, molding, dispensing, and other handling or preparation of frozen desserts and their ingredients shall be in a sanitary manner. Frozen dessert containers shall be filled at the place of pasteurization using approved mechanical equipment. Existing manual processes may be permitted if done in a manner that prevents all contact surface contamination and is approved by the Dairy Supervisor.
    - b. Multi-use containers for frozen desserts shall be kept clean and dry. If used for transporting frozen desserts, the containers shall be:
      - i. Rinsed immediately after emptying,
      - ii. Cleaned upon return to the plant, and
      - iii. Protected from contamination during storage.
    - c. Metal cans and containers shall be free from rust and corrosion.
    - d. Paper and plastic containers, liners, covers, or other materials coming in contact with frozen desserts shall be free from contamination.
    - e. Single-service containers shall not be reused.
- B. Personnel.**
1. Plant employees shall wash their hands before beginning work and upon returning to work after using toilet facilities, eating, smoking, or otherwise soiling their hands. Employees shall keep their hands clean and follow good hygienic practices while on duty. Expecting or using tobacco in rooms or compartments where frozen desserts or ingredients are exposed is prohibited. Clean, white, or light-colored, washable outer garments shall be worn by all employees engaged in handling dairy products, mix or frozen desserts. Hair coverings for head and facial hair shall be worn by all employees engaged in the processing, pasteurizing, packaging, handling, and storage of frozen desserts, product containers, and utensils.
  2. Frozen desserts shall be handled so that there is no direct contact between an employee's hands and the product.
  3. A person who has a discharging or infected wound, sore or lesion on hands, arms or other exposed portions of the body shall not work in any plant processing or packaging room or in any capacity resulting in contact with milk products or frozen desserts or equipment used in the processing or handling of milk products or frozen desserts. An employee returning to work following illness from a communicable disease shall provide a certificate from a physician attesting to the employee's complete recovery before processing or handling milk products or frozen desserts.
- C. Quality standards.**
1. Milk products used in the manufacture of frozen desserts shall meet the following standards:
 

Product	Standard Plate Count Not to Exceed
Raw Milk	500,000 per ml.
Pasteurized Milk	50,000 per ml.
Raw Cream	500,000 per ml.
Pasteurized Cream	100,000 per ml.
  2. Butter, 80% cream, plastic cream, mixtures of butterfat, sugar or sweetening agent, moisture and flavoring, condensed milk, mixes and all other similar products shall meet the following standards:
 

Bacterial Standards	Not to Exceed
Standard Plate Count	50,000 per gram
Coliform Count	20 per gram
Yeast	50 per gram
Mold	50 per gram
  3. Powdered non-fat dry milk, dry whey, and dry buttermilk shall meet the PMO standards.
  4. Fats and oils other than from milk shall meet the standards of the United States Food, Drug and Cosmetic Act as amended, or those of any applicable state regulation for fats and oils of food grade standards.
  5. Frozen desserts in broken or opened containers or in containers from which the product has been partially used may be returned to the plant for examination but shall not be used or sold for making frozen desserts.
  6. All reconstituted frozen desserts shall be pasteurized before packaging.
- D. Labeling.**

1. All packages of frozen desserts, including cans or other containers of frozen desserts mix but not including frozen desserts packaged in accordance with a customer's request and in the presence of the customer, shall be labeled as prescribed in the federal Food, Drug and Cosmetic Act, as amended.
  2. Each frozen dessert package shall contain:
    - a. The code number assigned by the Dairy Supervisor, identifying the specific manufacturing plant; or
    - b. The name and address of the frozen dessert manufacturer.
- E. License suspension.** The Dairy Supervisor may suspend the license of a frozen dessert plant whenever the bacteria count, coliform determination, yeast or mold count exceeds the quality standards for frozen desserts in three out of the last five samples taken on separate days. In addition, the Dairy Supervisor may suspend the permit of a frozen dessert plant for failure to comply with any of the provisions of this Section.

#### Historical Note

Adopted effective December 7, 1976 (Supp. 76-5).  
 Amended effective December 5, 1977 (Supp. 77-6). Section R3-2-807 renumbered from R3-5-07 (Supp. 91-4).  
 Amended effective December 2, 1998 (Supp. 98-4).

### R3-2-808. Frozen Desserts Reconstituted from Powdered Mixes

Except for R3-2-807(A)(8), retail establishments that reconstitute frozen desserts from powdered mixes and dispense the desserts on the premises shall comply with the requirements prescribed in R3-2-807 and the following standards:

1. All equipment, containers, and utensils shall be washed and air-dried after each use and shall be sanitized before each use, in accordance with the sterilization standards established in subsection R3-2-807(A)(7)(b).
2. When not in use, all equipment, utensils, and containers shall be stored above the floor in a clean, dry location free from dust, moisture, insects, rodents, or other possible sources of contamination.
3. Excess quantities of the reconstituted frozen dessert shall not be made from the powdered mix in advance and stored outside the dispensing machine.
4. Frozen desserts shall be reconstituted according to the directions provided by the powdered mix manufacturer.

#### Historical Note

Adopted effective May 11, 1977 (Supp. 77-3). Section R3-2-808 renumbered from R3-5-08 (Supp. 91-4). Section R3-2-808 renumbered to Section R3-2-809; new Section R3-2-808 adopted effective December 2, 1998 (Supp. 98-4).

### R3-2-809. Medicinal, Chemical, and Radioactive Residues in Milk

- A.** All dairies shall comply with the following procedures to exclude medicinal, chemical, and radioactive residues from milk intended for human consumption:
1. Identify all cows that have been treated with or have consumed medicinal, chemical, and radioactive agents capable of being secreted in milk;
  2. Maintain a written record of the date of treatment, type, and quantity of the medicine or chemical administered to each cow;
  3. Milk all treated cows last, or with separate equipment to prevent contamination of the wholesome milk supply;
  4. Clean and sanitize all equipment, utensils, and containers used in the handling of milk from the treated cows before the equipment is used in the handling of any milk intended for human consumption; and

5. Discard all milk from the treated cows for the period of time recommended by the attending veterinarian or as indicated on the package or label of the medicine used in the treatment of the cow.

**B. Enforcement.**

1. When the residue of a chemical, medicinal, or radioactive agent is found in the milk of a dairy and the Dairy Supervisor determines that the residue may be deleterious to human health, the Director shall immediately suspend the dairy from further selling, offering for sale, or distributing milk for human consumption until:
  - a. The Dairy Supervisor determines that the practice causing the contamination of the milk has been corrected and the dairy is in compliance with the procedures established in subsection (A);
  - b. Any milk that has not been excluded from human consumption as required by subsection (A) is appropriately discarded; and
  - c. The first milk shipment following suspension indicates negative test results for medicinal, chemical, or radioactive residues.
2. If the Dairy Supervisor determines that a dairy is not in compliance with the procedures established in subsection (A), the Dairy Supervisor may suspend the dairy until the prescribed procedures are observed.

#### Historical Note

Section R3-2-809 renumbered from R3-2-808 and amended effective December 2, 1998 (Supp. 98-4).

### R3-2-810. License Fees

During fiscal year 2015, an applicant shall pay the following fee to obtain or renew a dairy license:

1. For a license to operate a milk distributing plant or business: \$300 plus \$2,500 per pasteurizer.
2. For a license to operate a manufacturing milk processing plant: \$100.
3. For a license to engage in the business of producer-distributor as an interstate milk shipper listed facility: \$150 plus \$2,500 per pasteurizer.
4. For a license to engage in the business of producer-distributor: \$150.
5. For a license to engage in the business of producer-manufacturer: \$25.
6. For a license to engage in the manufacture of trade products: \$100.
7. For a license to engage in the business of selling at wholesale milk or dairy products, or both: \$100.
8. For a license to sample milk or cream: an initial fee of \$50 and a renewal fee of \$30.

#### Historical Note

New Section made by exempt rulemaking at 16 A.A.R. 1331, effective June 29, 2010 (Supp. 10-2). Amended by exempt rulemaking at 17 A.A.R. 1756, effective July 20, 2011 (Supp. 11-3). Amended by exempt rulemaking at 18 A.A.R. 2060, effective August 2, 2012 (Supp. 12-3). Amended by exempt rulemaking at 18 A.A.R. 2060, effective August 2, 2012 (Supp. 12-3). Amended by exempt rulemaking at 19 A.A.R. 3127, effective September 14, 2013 (Supp. 13-3). Amended by exempt rulemaking at 20 A.A.R. 2449, effective July 24, 2014 (Supp. 14-3).

**EMERGENCY RULEMAKING****R3-2-811. Dairy Farm Permit**

- A. A dairy farm, as defined in the PMO, may apply for a PMO milk producer permit by submitting the following information about the dairy farm on a form provided by the Department:
1. Legal name,
  2. Physical and mailing address,
  3. Telephone number,
  4. Owner's name,
  5. Herd size,
  6. Daily milk production,
  7. Water source,
  8. Waste water disposal system,
  9. Number of bulk storage tanks, and
  10. Certification that the dairy farm facilities comply with Grade A requirements.
- B. An applicant for a dairy farm permit shall demonstrate compliance with the minimum standards set out in the PMO by a Department inspection.
- C. A permittee shall maintain compliance with the minimum standards set out in the PMO and shall be subject to inspection by the Department in accordance with the PMO.
- D. The Department may suspend a permit for a permittee's failure to comply with the minimum standards and may revoke a permit if the permittee fails to correct deficiencies within a reasonable time.
- E. Dairy farm permits are not transferable.

**Historical Note**

New Section made by emergency rulemaking at 20 A.A.R. 1134, effective May 2, 2014, for 180 days (Supp. 14-2).

**ARTICLE 9. EGG AND EGG PRODUCTS CONTROL****R3-2-901. Definitions**

In addition to the definitions provided in A.R.S. §§ 3-701, 3-702, 3-703 and 3-704, the following shall apply to this Article:

"Lot" means any quantity of two or more eggs.

"Spot-check" sample means any sample less than a representative sample described in the chart in R3-2-903(B).

"United Egg Producers Animal Husbandry Guidelines" means the United Egg Producers Animal Husbandry Guidelines for U.S. Egg Laying Flocks, 2008 Edition. This material is incorporated by reference, does not include any later amendments or editions, and is available for inspection at the Department of Agriculture, 1688 W. Adams St., Phoenix, AZ 85007, or the United Egg Producers at 1720 Windward Concourse, Ste. 230, Alpharetta, GA 30005.

"United Egg Producers Certified" means a company that has achieved United Egg Producers Certified status pursuant to the requirements prescribed by the United Egg Producers Animal Husbandry Guidelines.

"United Egg Producers Certified logo" means the official symbol and accompanying language used to identify eggs produced by United Egg Producers Certified companies.

**Historical Note**

Former Rule 1; Amended as an emergency effective November 18, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-6). Former Section R3-6-01 amended as an emergency now adopted and amended as a permanent rule effective February 19, 1982. Section renumbered as R3-2-901 (Supp. 82-1). Section R3-6-101 renumbered to R3-2-901 (Supp. 91-4). Section repealed, new Section adopted effective July 13, 1995 (Supp. 95-3).

Amended by final rulemaking at 15 A.A.R. 863, effective October 1, 2009 (Supp. 09-2).

**R3-2-902. Standards, Grades, and Weight Classes for Shell Eggs**

All standards, grades, and weight classes for shell eggs shall be as prescribed in AMS 56, United States Standards, Grades, and Weight Classes for Shell Eggs, revised as of July 20, 2000. This material is incorporated by reference, does not include any later amendments or editions, and is on file with the Department at 1688 W. Adams St., Phoenix, AZ 85007 and the United States Department of Agriculture, Agricultural Marketing Service, Poultry Programs, STOP 0259, Room 3944-South, 1400 Independence Ave., S.W., Washington, DC 20250-0259, or online at [www.ams.usda.gov/poultry/standards/index.htm](http://www.ams.usda.gov/poultry/standards/index.htm). "AMS" means Agricultural Marketing Service, United States Department of Agriculture.

**Historical Note**

Former Rule 2; Amended as an emergency effective November 18, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-6). Former Section R3-6-02 amended as an emergency now adopted and amended as a permanent rule effective February 19, 1982. Section renumbered as R3-2-902 (Supp. 82-1). Section R3-6-102 renumbered to R3-2-902 (Supp. 91-4). Section repealed, new Section adopted effective July 13, 1995 (Supp. 95-3). Amended by final rulemaking at 9 A.A.R. 2089, effective August 2, 2003 (Supp. 03-2). Amended by final rulemaking at 14 A.A.R. 892, effective May 3, 2008 (Supp. 08-1).

**R3-2-903. Sampling: Schedule and Methods for Evidence**

- A. An inspector may conduct random spot-check sampling of a lot of eggs to determine whether the lot meets minimum quality and weight standards and is in compliance with R3-2-907(B).
- B. Representative egg sampling, under A.R.S. § 3-710(G), shall be based on the following table. A lot that does not meet minimum quality or weight standards or is not in compliance with R3-2-907(B) shall receive a warning notice hold tag.

Minimum Number of Cases and Cartons Comprising a Representative Sample			
Lot size of cartons	Minimum eggs for inspection	Lot size of 30 doz. per case	Minimum cases for inspection <sup>1</sup>
1 - 4 cartons	All	1 case	1 case
5 - 30 cartons inclusive	50	2 - 10 cases inclusive	2 cases
31 - 120 cartons inclusive	100	11 - 25 cases inclusive	3 cases
120 - 210 cartons inclusive	200	26 - 50 cases inclusive	4 cases
211 - 315 cartons inclusive	300	51 - 100 cases inclusive	5 cases
		101 - 200 cases inclusive	8 cases
		201 - 300 cases inclusive	11 cases
		301 - 400 cases inclusive	13 cases
		401 - 500 cases inclusive	14 cases
		501 - 600 cases inclusive	16 cases

		For each additional 50 cases or fraction of a case in excess of 600 cases	1 case
<sup>1</sup> An inspector shall take 100 eggs from each case for inspection.			

1. An inspector may draw additional samples to determine whether the lot meets the minimum requirements.
2. When loose eggs are out of the case, the sample shall be based on a carton.
3. Eggs shall be sampled on a 30-dozen-case basis. When eggs are packed in other lot quantities, an inspector shall convert the quantity of eggs to the equivalent 30-dozen-case basis to establish the official sample size.

#### Historical Note

Former Rule 3; Amended effective March 17, 1976 (Supp. 76-2). Amended as an emergency effective November 18, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-6). Former Section R3-6-03 amended as an emergency now adopted and amended as a permanent rule effective February 19, 1982. Section renumbered as R3-2-903 (Supp. 82-1). Section R3-6-103 renumbered to R3-2-903 (Supp. 91-4). Section repealed, new Section R3-2-903 renumbered from R3-2-906 and amended effective July 13, 1995 (Supp. 95-3). Amended by final rulemaking at 9 A.A.R. 2089, effective August 2, 2003 (Supp. 03-2). Amended by final rulemaking at 15 A.A.R. 863, effective October 1, 2009 (Supp. 09-2).

#### R3-2-904. Quarterly Report Periods

Quarterly reports are due as prescribed in A.R.S. § 3-716(D). The quarterly report periods for inspection fees are:

1. July 1 to September 30,
2. October 1 to December 31,
3. January 1 to March 31, and
4. April 1 to June 30.

#### Historical Note

Former Rule 4; Amended effective March 17, 1976 (Supp. 76-2). Amended as an emergency effective November 18, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-6). Former Section R3-6-04 amended as an emergency now adopted and amended as a permanent rule effective February 19, 1982. Section renumbered as R3-2-904 (Supp. 82-1). Section R3-6-104 renumbered to R3-2-904 (Supp. 91-4). Section repealed, new Section R3-2-904 renumbered from R3-2-907 and amended effective July 13, 1995 (Supp. 95-3).

#### R3-2-905. Inspection Fee Rate

- A. All dealers, producer-dealers, manufacturers, and producers shall pay an inspection fee at the rate of 3.0 mills (.00300) per dozen on all shell eggs sold as prescribed in A.R.S. § 3-716(A).
- B. All dealers, producer-dealers, manufacturers, and producers shall pay an inspection fee at the rate of 3.0 mills (.00300) per pound on all egg products sold as prescribed in A.R.S. § 3-716(A).

#### Historical Note

Former Rule 5; Former Section R3-6-05 renumbered as Section R3-2-905 (Supp. 82-1). Section R3-6-105 renumbered to R3-2-905 (Supp. 91-4). Section repealed, new Section R3-2-905 renumbered from R3-2-908 and amended effective July 13, 1995 (Supp. 95-3). Amended by emergency rulemaking at 12 A.A.R. 4063, effective October 1, 2006 for 180 days (Supp. 06-4). Emergency

renewed at 13 A.A.R. 1509, effective April 9, 2007 for 180 days (Supp. 07-2). Amended by final rulemaking at 13 A.A.R. 1639, effective June 30, 2007 (Supp. 07-2).

#### R3-2-906. Violations and Penalties

- A. A dealer, producer-dealer, manufacturer, producer, or retailer, at each individual location, is subject to the penalties in subsection (B) for any of the following violations:

1. Category A:
  - a. Making a false or misleading statement relating to advertising or selling eggs and egg products;
  - b. Acting as a dealer, producer-dealer, producer, or manufacturer without a valid license;
  - c. Selling shell eggs with an incorrect or incomplete expiration date, or without an expiration date;
  - d. Selling grade AA or grade A eggs after the expiration date on the carton, case, or container, unless the eggs are exempt under A.R.S. § 3-715(K);
  - e. Failing to maintain records and reports required by this Article;
  - f. Failing to label a carton, case, or container with one size, one grade, one brand name, or, if applicable under R3-2-907(B), the United Egg Producer Certified logo;
  - g. Moving eggs or an egg case, carton, or container with a warning tag or notice, or removing a warning tag or notice without permission from the Director;
  - h. Refusing to submit egg or egg product, an egg case, carton, container, subcontainer, lot, load, or display of eggs to inspection; or
  - i. Refusing to stop, at the request of an authorized representative of the Department, any vehicle transporting eggs or egg products.
  - j. Selling eggs that have not been produced in accordance with the standards prescribed under R3-2-907(B).
  - k. Failing to raise egg-laying hens in this state in accordance with the standards prescribed under R3-2-907(A).
2. Category B:
  - a. Extending the expiration date of shell eggs as defined in A.R.S. § 3-701(10); or
  - b. Advertising, representing, or selling out-of-state eggs as local eggs.
3. Category C:
  - a. Failing to ensure that shell eggs for human consumption are kept refrigerated at an ambient temperature not higher than 45° F;
  - b. Failing to ensure that frozen egg products for human consumption, labeled for storage at 0° F or below, are kept under refrigeration at a temperature of 0° F or lower; or
  - c. Failing to ensure that liquid egg products for human consumption are kept refrigerated at a temperature not higher than 40° F.

- B. Any violation of this Article or of A.R.S. Title 3, Chapter 5, Article 1 not listed in subsection (A) is subject to a Category A civil penalty.

- C. Under A.R.S. § 3-739, the civil penalty for a violation of subsection (A) is:

Number of Violations	Category A	Category B	Category C
1	Warning	Warning	Warning
2	\$50	\$50	\$100
3	\$100	\$100	\$200

4	\$150	\$400
5	\$200	\$500
6	\$250	
7	\$300	

**Historical Note**

Former Rule 6; Amended effective February 19, 1982. Former Section R3-6-06 renumbered as Section R3-2-906 (Supp. 82-1). Section R3-6-106 renumbered to R3-2-906 (Supp. 91-4). Former Section R3-2-906 renumbered to R3-2-903, new Section adopted effective July 13, 1995 (Supp. 95-3). Amended by final rulemaking at 5 A.A.R. 4058, effective October 7, 1999 (Supp. 99-4). Amended by final rulemaking at 9 A.A.R. 2089, effective August 2, 2003 (Supp. 03-2). Amended by final rulemaking at 15 A.A.R. 863, effective October 1, 2009 (Supp. 09-2).

**R3-2-907. Poultry Husbandry; Standards for Production of Eggs**

- A. All egg-laying hens in this state shall be raised according to United Egg Producers Animal Husbandry Guidelines.
- B. All eggs sold in this state produced by hens shall be from hens raised according to the United Egg Producers Animal Husbandry Guidelines. All eggs shall display the United Egg Producers Certified logo on their cases, cartons, and containers, or the egg dealer shall annually provide the Department with a copy of a current independent third-party audit that demonstrates that the eggs were produced by hens raised according to UEP Animal Husbandry Guidelines.
- C. This rule does not apply to egg producers operating or controlling the operation of one or more egg ranches each having fewer than 20,000 egg-laying hens producing eggs and also does not apply to any hens that are raised cage-free or any eggs produced by hens that are raised cage-free.

**Historical Note**

Former Rule 7; Former Section R3-6-07 renumbered as Section R3-2-907 (Supp. 82-1). Section R3-6-107 renumbered to R3-2-907 (Supp. 91-4). Section R3-2-907 renumbered to R3-2-904 effective July 13, 1995 (Supp. 95-3). New Section made by final rulemaking at 15 A.A.R. 863, effective October 1, 2009 (Supp. 09-2).

**R3-2-908. Sanitary Standards; Egg Processing**

All egg producers in this state shall meet the facility and sanitary operation requirements prescribed by the Regulations Governing the Voluntary Grading of Shell Eggs, 7 CFR 56, effective March 30, 2008. This material is incorporated by reference, does not include any later editions, and is available for inspection at the Department of Agriculture, 1688 W. Adams St., Phoenix, AZ 85007.

**Historical Note**

Former Rule 8; Amended effective October 1, 1979 (Supp. 79-5). Former Section R3-6-08 renumbered as Section R3-2-908 (Supp. 82-1). Amended effective January 1, 1985 (Supp. 84-6). Amended effective December 30, 1987 (Supp. 87-4). Amended effective March 23, 1990 (Supp. 90-1). Section R3-6-108 renumbered to R3-2-908 (Supp. 91-4). Section R3-2-908 renumbered to R3-2-905 effective July 13, 1995 (Supp. 95-3). New Section made by final rulemaking at 15 A.A.R. 863, effective October 1, 2009 (Supp. 09-2).

**R3-2-909. Repealed****Historical Note**

Former Rule 9; Former Section R3-6-09 renumbered as Section R3-2-909 (Supp. 82-1). Section R3-6-109 renumbered to R3-2-909 (Supp. 91-4). Section repealed effective

July 13, 1995 (Supp. 95-3).

**ARTICLE 10. AQUACULTURE****R3-2-1001. Definitions**

In addition to the definitions provided in A.R.S. § 3-2901, the following shall apply unless the context otherwise requires:

1. "Certificate of Aquatic Health" is an official document from an issuing state or an equivalent form published by the United States Fish and Wildlife Service or the United States Department of Agriculture attesting that the live aquatic animals described thereon have been inspected and are free of the diseases and causative agents set forth in R3-2-1009.
2. "Department" means the Arizona Department of Agriculture.

**Historical Note**

Adopted effective May 3, 1993 (Supp. 93-2).

**R3-2-1002. Fees for Licenses; Inspection Authorization and Fees**

- A. License fees are established as follows:
  1. Aquaculture facility: \$100 annually.
  2. Fee fishing facility: \$100 annually.
  3. Aquaculture processor: \$100 annually.
  4. Aquaculture transporter: \$100 annually.
  5. Special licenses: \$10 annually.
- B. An expired license may be renewed within 90 days after expiration by payment of a \$50 late fee.
- C. Upon request of the licensee, the Department shall assess the licensed facility and, if applicable, certify the facility is free from infectious diseases and causative agents listed in R3-2-1009 before issuing a Certificate of Aquatic Health. All expenses properly incurred in the certification procedure of the inspection, including time, travel, and laboratory expenses, shall be paid to the Department by the licensee requesting certification.

**Historical Note**

Adopted effective May 3, 1993 (Supp. 93-2). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3).

**R3-2-1003. General Licensing Provisions**

- A. An applicant for a license to operate an aquaculture facility or a fee fishing facility, or to operate as an aquaculture processor or aquaculture transporter shall provide the following information on a form furnished by the Department:
  1. Whether the applicant is an individual, corporation, partnership, cooperative, association, or other type of organization;
  2. The name and address of the applicant;
  3. A corporation shall specify the date and state of incorporation;
  4. The principal name of the business, and all other business names that may be used;
  5. The name, mailing address, and telephone number of the applicant's authorized agent;
  6. The street address or legal description of the location of the facility to be licensed; and
  7. The signature of the person designated in subsection (A)(5), and the date the application is completed for submission to the Department.
- B. The Department shall grant a license when all conditions are met and assign a Department establishment number to each facility.
- C. All licenses expire on December 31 for the year issued.



- D. A licensee shall advise the Department in writing of any change in the information provided on the application during the license year. This information shall be provided within 30 calendar days of the change.
- E. To prevent the spread of diseases and causative agents listed in R3-2-1009, the Department may inspect and take samples from any facility or shipment being transported. A licensee shall notify the Department within 72 hours of becoming aware of the presence of any disease or causative agent listed in R3-2-1009. Aquatic animals found to be infected with a disease or causative agent listed in R3-2-1009 are prohibited from interstate or intrastate movement without prior written Department approval.
- F. The Department shall quarantine or seize aquatic animals, alive or dead, plants, or products for examination or diagnostic study when there is a potential for spread of a disease or causative agent listed in R3-2-1009, or any other disease or causative agent that could constitute a threat to aquatic animals or plants of the state. The Department shall issue a written notice to the licensee specifying:
  - 1. The reason for the Department's action; and
  - 2. The licensee's right to request a hearing as prescribed in A.R.S. § 3-2906.
- G. A licensee shall conspicuously mark all quarantined aquatic products and quarantined areas in a manner specified by the Department.
- H. A licensee shall pay all diagnostic, quarantine, and destruction costs.

**Historical Note**

Adopted effective May 3, 1993 (Supp. 93-2). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3).

**R3-2-1004. Specific Licensing Provisions; Aquaculture Facility; Fee Fishing Facility; Special License Facility**

- A. In addition to the application requirements in R3-2-1003, an applicant for a license to operate an aquaculture facility, a fee fishing facility, or a special license facility under A.R.S. § 3-2908(A) shall provide the following information on a form provided by the Department:
  - 1. Water sources, transmission, and conveyances;
  - 2. Method used to dispose of tailing waters and solid wastes;
  - 3. Number and size of ponds, raceways, and tanks, if applicable;
  - 4. Whether hatchery facilities are included;
  - 5. A list of all animals and plants to be authorized under the license by genus, species, and common name.
- B. An application to culture or possess an aquatic animal or plant that has not previously occurred in the drainage where the facility is located shall be accompanied by a written proposal. The applicant's proposal shall include:
  - 1. Anticipated benefits from introducing the species;
  - 2. Anticipated adverse effects from introducing the species, as it may affect indigenous or game fish, including hybridization;
  - 3. Anticipated diseases inherent to introducing the species;
  - 4. Suggestions for post-introduction evaluation of status and impacts of the introduced species; and
  - 5. Structural and operational methods implemented to prevent escape of the species, if applicable.
- C. Each body of water serving a facility shall be contained within the boundaries of the land owned or leased by the licensee.
- D. A facility using public waters having natural or artificial inlets, rivers, creeks, washes, or canals shall provide mechanical screening approved by the Department to prevent live aquatic

animals and plants, including eggs and fry, from escaping beyond the aquaculture facility boundaries or into public bodies of water.

- E. An applicant for a special license under A.R.S. § 3-2908(A) shall also provide the following information to the Department at the time of application:
  - 1. A written narrative describing the project in detail, the project purpose, the hypothesis, and the project duration; and
  - 2. The proposed disposition of the aquatic animals or plants upon completion of the project.
- F. The Department shall consider the recommendations of the Arizona Game and Fish Department, under A.R.S. § 3-2903, when determining whether to issue a license or an import permit under R3-2-1010. The Department may issue a license excluding some of the aquatic animal or plant species listed in the application.

**Historical Note**

Adopted effective May 3, 1993 (Supp. 93-2). Amended by final rulemaking at 10 A.A.R. 673, effective April 3, 2004 (Supp. 04-1).

**R3-2-1005. Fee Fishing Facility**

A licensee shall not allow an aquatic animal to be removed from a fee fishing facility unless:

- 1. The aquatic animal is dead, and
- 2. The licensee provides the person removing the aquatic animal with written proof of sale identifying the:
  - a. Facility, by name, address, and Department establishment number issued under R3-2-1003(B);
  - b. Date of harvest; and
  - c. Number and species of aquatic animals transported from the facility.

**Historical Note**

Adopted effective May 3, 1993 (Supp. 93-2). Amended by final rulemaking at 10 A.A.R. 673, effective April 3, 2004 (Supp. 04-1).

**R3-2-1006. Processor License**

- A. In addition to complying with the application requirements of R3-2-1003, applicants for a license to operate as an aquaculture processor as defined in A.R.S. § 3-2901(12) shall provide the following information on a form furnished by the Department:
  - 1. Water sources, transmission, conveyances, and annual consumption in gallons or acre feet;
  - 2. Method used to dispose of tailing waters and solid wastes;
- B. A processing facility shall operate in a clean and sanitary condition during all periods of operation. The following are the minimum requirements for such establishments.
  - 1. Each establishment shall have sanitary floors and walls impervious to water.
  - 2. All outside windows and doors shall be screened.
  - 3. There shall be a supply of potable water.
  - 4. There shall be a sewage disposal system of such a type as not to be a breeding place for insects and not to constitute a hazard or to endanger public health.

**Historical Note**

Adopted effective May 3, 1993 (Supp. 93-2).

**R3-2-1007. Transporter License; Transport; Delivery**

- A. In addition to the application requirements in R3-2-1003, an applicant for a license to operate as an aquaculture transporter of live aquatic animals as defined in A.R.S. § 3-2901(15) shall, on a form provided by the Department:

1. Designate whether the license is for interstate or intrastate transport, or both;
  2. List aquatic transporting equipment to be used, including tanks and vehicles, and vehicle license number; and
  3. State prior year volume or anticipated annual tonnage of live aquatic animals transported.
- B.** A transporter shall ensure that the aquatic transporting equipment has adequate water and oxygen at a temperature and in a quantity normal for the health of the live aquatic animals and shall be clearly marked, "Live Fish."
- C.** In addition to a copy of the Certificate of Aquatic Health, a transporter shall transport each container of live aquatic animals within the state with a document identifying:
1. Consignor's name, address, and telephone number;
  2. Consignee's name, address, and telephone number;
  3. Quantity and size of the aquatic animal being transported;
  4. Genus, species, and common name of the aquatic animal being transported;
  5. Date of shipment; and
  6. Department establishment number.
- D.** A transporter shall deliver live aquatic animals only to a retail outlet, as prescribed in A.R.S. § 3-2907(J) or to a person listed in R3-2-1010(B).

**Historical Note**

Adopted effective May 3, 1993 (Supp. 93-2). Amended by final rulemaking at 10 A.A.R. 673, effective April 3, 2004 (Supp. 04-1).

**R3-2-1008. Repealed****Historical Note**

Adopted effective May 3, 1993 (Supp. 93-2). Section repealed by final rulemaking at 10 A.A.R. 673, effective April 3, 2004 (Supp. 04-1).

**R3-2-1009. Disease Certification**

- A.** A licensee requesting and receiving a Certificate of Aquatic Health shall have their facility inspected and all live aquatic animals, fertilized eggs and milt shall be found free of, but not limited to, the following diseases and causative agents:
1. Causative agent: Egtved Virus. Disease: VHS, Viral Hemorrhagic Septicemia of Salmonids.
  2. Causative agent: Infectious Hematopoietic Necrosis Virus. Disease: IHN, Infectious Hematopoietic Necrosis of Salmonids.
  3. Causative agent: Infectious Pancreatic Necrosis Virus. Disease: IPN, Infectious Pancreatic Necrosis of Salmonids.
  4. Causative agent: *Ceratomyxa shasta*. Disease: Ceratomyxosis of Salmonids.
  5. Causative agent: *Rhabdovirus carpio*. Disease: Spring Viremia of carp. Certification is required in this case only when the original origin of the shipment is from outside the United States.
  6. Causative agent: *Renibacterium salmoninarum*. Disease: BKD, Bacterial Kidney Disease of Salmonids.
  7. Causative agent: *Aeromonas salmonicida*. Disease: Furunculosis.
  8. Causative agent: *Myxobolus cerebralis*. Disease: Whirling Disease of Salmonids.
- B.** The Department may require inspection for any disease or causative agent not listed in subsection (A) when there is evidence that the disease or causative agent may constitute a threat to aquatic animals or plants, aquatic wildlife or the aquaculture industry. The Department shall send written notice to all licensees pursuant to this Chapter when implementing this subsection, naming the disease or causative agent of con-

cern. Action to quarantine or seize aquatic animals or plants pursuant to this subsection shall not be subject to delay pending such written notice.

**Historical Note**

Adopted effective May 3, 1993 (Supp. 93-2).

**R3-2-1010. Importation of Aquatic Animals**

- A.** The owner, or owner's agent, importing live aquatic animals into the state shall ensure the animals are accompanied by the following:
1. A Certificate of Aquatic Health as defined in R3-2-1001, based upon an inspection of the originating facility within the 12 months preceding the shipment;
  2. A transporter license issued under R3-2-1007; and
  3. An import permit number issued by the Department under this Section, legibly written or typed on the certificate of aquatic health.
- B.** The owner, or owner's agent, of live aquatic animals, except those imported by a retail outlet as prescribed in A.R.S. § 3-2907(J), shall ensure that the animals are consigned to or in the care of:
1. An Arizona resident;
  2. An aquaculture facility, fee fishing facility, or special license holder licensed by the Department;
  3. A holder of an aquatic wildlife stocking permit issued by the Arizona Game and Fish Department; or
  4. A holder of any aquatic animal license issued by the Arizona Game and Fish Department.
- C.** The owner, or owner's agent, may obtain an import permit number from the Department, Office of the State Veterinarian, by providing the following information:
1. Consignor's name, address, and telephone number;
  2. Consignee's name, address, and telephone number;
  3. Consignee's Department establishment number issued by the Department or a copy of an aquatic wildlife stocking permit or the license issued by the Arizona Game and Fish Department;
  4. Origin of the shipment;
  5. Genus, species, and common name of aquatic animals to be imported; and
  6. Quantity and size classification of aquatic animals to be imported.
- D.** An import permit number remains valid for 15 calendar days from the date of issuance by the Department.
- E.** The Department shall refuse entry to any shipment that does not comply with this rule.
- F.** The Department shall quarantine and require destruction of any shipment, after its arrival, that it determines is infected with or was previously exposed to any causative agent or disease listed in R3-2-1009.

**Historical Note**

Adopted effective May 3, 1993 (Supp. 93-2). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3).

**ARTICLE 11. EXPIRED****R3-2-1101. Expired****Historical Note**

Section R3-2-1101 recodified from R3-2-101 (Supp. 97-1). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 3755, effective May 10, 2002 (Supp. 02-3).

**R3-2-1102. Expired****Historical Note**

Section R3-2-1102 recodified from R3-2-102 (Supp. 97-

1). Amended effective October 8, 1998 (Supp. 98-4).  
Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 3755, effective May 10, 2002 (Supp. 02-3).

**R3-2-1103. Expired**

**Historical Note**

Section R3-2-1103 recodified from R3-2-103 (Supp. 97-1).  
Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 3755, effective May 10, 2002 (Supp. 02-3).

**R3-2-1104. Expired**

**Historical Note**

Section R3-2-1104 recodified from R3-2-104 (Supp. 97-1). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 3755, effective May 10, 2002 (Supp. 02-3).

**R3-2-1105. Expired**

**Historical Note**

Section R3-2-1105 recodified from R3-2-105 (Supp. 97-1). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 3755, effective May 10, 2002 (Supp. 02-3).

**R3-2-1106. Expired**

**Historical Note**

Section R3-2-1106 recodified from R3-2-106 (Supp. 97-1). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 3755, effective May 10, 2002 (Supp. 02-3).

**R3-2-1107. Expired**

**Historical Note**

Section R3-2-1107 recodified from R3-2-107 (Supp. 97-1). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 3755, effective May 10, 2002 (Supp. 02-3).

**R3-2-1108. Expired**

**Historical Note**

Section R3-2-1108 recodified from R3-2-108 (Supp. 97-1). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 3755, effective May 10, 2002 (Supp. 02-3).

**R3-2-1109. Expired**

**Historical Note**

Section R3-2-1109 recodified from R3-2-109 (Supp. 97-1). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 3755, effective May 10, 2002 (Supp. 02-3).

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# Chapter Divider Page

# Chapter Divider Page

**TITLE 3. AGRICULTURE**  
**CHAPTER 3. DEPARTMENT OF AGRICULTURE**  
**ENVIRONMENTAL SERVICES DIVISION**

Authority: A.R.S. §§ 3-341 et seq. and 3-3101 et seq.

*Title 3, Chapter 3, Article 1, Section R3-3-101 renumbered from Title 3, Chapter 10, Article 1, Section R3-10-101; Title 3, Chapter 3, Article 2, Sections R3-3-201 through R3-3-212 renumbered from Title 3, Chapter 10, Article 2, Sections R3-10-201 through R3-10-212; Title 3, Chapter 3, Article 3, Sections R3-3-301 through R3-3-314 renumbered from Title 3, Chapter 10, Article 2, Sections R3-10-301 through R3-10-314; Title 3, Chapter 3, Article 4, Sections R3-3-401 through R3-3-404 renumbered from Title 3, Chapter 10, Article 4, Sections R3-10-401 through R3-10-404; Title 3, Chapter 3, Article 5, Sections R3-3-501 through R3-3-506 renumbered from Title 3, Chapter 10, Article 5, Sections R3-10-501 through R3-10-506; Title 3, Chapter 3, Article 6, Sections R3-3-601 through R3-3-617 renumbered from Title 3, Chapter 10, Article 6, Sections R3-10-601 through R3-10-617; Title 3, Chapter 3, Article 7, Sections R3-3-701 through R3-3-712 renumbered from Title 3, Chapter 3, Article 1, Sections R3-3-01 through R3-3-12; Title 3, Chapter 3, Article 8, Sections R3-3-801 through R3-3-812 renumbered from Title 3, Chapter 3, Article 2, Sections R3-3-21 through R3-3-32; Title 3, Chapter 3, Article 9, Sections R3-3-901 through R3-3-916 renumbered to Title 3, Chapter 3, Article 3, Sections R3-3-41 through R3-3-56 (Supp. 91-4).*

*New Sections R3-10-101, R3-10-201 through R3-10-212, R3-10-301 through R3-10-306, R3-10-308 through R3-10-312, R3-10-401 through R3-10-403, R3-10-501 through R3-10-505, and R3-10-601 through R3-10-617 adopted effective November 20, 1987.*

*Former Sections R3-10-01, R3-10-03, R3-10-20 through R3-10-25, R3-10-40 through R3-10-42, R3-10-42.01, R3-10-43 through R3-10-62, R3-10-64 through R3-10-66, R3-10-70, R3-10-71, R3-10-73 through R3-10-75, R3-10-77 through R3-10-87, R3-10-89, and R3-10-91 repealed effective November 20, 1987.*

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R3-3-205.	Custom Applicator License; Examination; Fee; Renewal
R3-3-206.	Tag; Fee
R3-3-207.	Agricultural Pest Control Advisor License; Examination; Fee; Renewal; Exemption
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**ARTICLE 6. REPEALED**

*Article 6, consisting of Sections R3-3-601 through R3-3-617, repealed effective April 11, 1994 (Supp. 94-2).*

**ARTICLE 7. PESTICIDE**

*Title 3, Chapter 3, Article 1, Sections R3-3-01 through R3-3-12 renumbered to Title 3, Chapter 3, Article 7, Sections R3-3-701 through R3-3-712 (Supp. 91-4).*

Section	
R3-3-701.	Definitions
R3-3-702.	Pesticide Registration; Fee
R3-3-703.	General Provisions
R3-3-704.	Labels
R3-3-705.	Renumbered
R3-3-706.	Renumbered
R3-3-707.	Renumbered
R3-3-708.	Renumbered
R3-3-709.	Renumbered
R3-3-710.	Renumbered
R3-3-711.	Renumbered

R3-3-712. Renumbered

**ARTICLE 8. FERTILIZER MATERIALS**

*Title 3, Chapter 3, Article 2, Sections R3-3-21 through R3-3-32 renumbered to Title 3, Chapter 3, Article 8, Sections R3-3-801 through R3-3-812 (Supp. 91-4).*

## Section

- R3-3-801. Definitions
- R3-3-802. Licensure; Specialty Fertilizer Registration; Fees
- R3-3-803. Tonnage Reports; Inspection Fee
- R3-3-804. General Provisions
- R3-3-805. Repealed
- R3-3-806. Repealed
- R3-3-807. Repealed
- R3-3-808. Repealed
- R3-3-809. Repealed
- R3-3-810. Repealed
- R3-3-811. Repealed
- R3-3-812. Renumbered

**ARTICLE 9. COMMERCIAL FEED**

*Title 3, Chapter 3, Article 3, Sections R3-3-41 through R3-3-56 renumbered to Title 3, Chapter 3, Article 9, Sections R3-3-901 through R3-3-916 (Supp. 91-4).*

## Section

- R3-3-901. Definitions
- R3-3-902. Licensure; Fee; Ammoniation
- R3-3-903. Tonnage Reports; Inspection Fee
- R3-3-904. Milk and Milk Products Decharacterized for Use as Commercial Feed
- R3-3-905. Labeling; Precautionary Statements
- R3-3-906. Non-protein Nitrogen
- R3-3-907. Repealed
- R3-3-908. Repealed
- R3-3-909. Repealed
- R3-3-910. Drug and Feed Additives
- R3-3-911. Repealed
- R3-3-912. Repealed
- R3-3-913. Sampling Methods
- R3-3-914. Repealed
- R3-3-915. Repealed
- R3-3-916. Repealed

**ARTICLE 10. AGRICULTURAL SAFETY**

(Authority: A.R.S. § 3-3101 et seq.)

*Title 3, Chapter 8, Article 2, Sections R3-8-201 through R3-8-208 renumbered to Title 3, Chapter 3, Article 10, Sections R3-3-1001 through R3-3-1008 (Supp. 91-4).*

*New Article 7 adopted effective July 13, 1989. (Supp. 89-3).*

*Article 2, consisting of Sections R3-2-201 through R3-8-208, transferred from the Industrial Commission, Title 4, Chapter 13, Article 7, Sections R4-13-701 through R4-13-708, pursuant to Laws 1990, Ch. 374, § 445 (Supp. 91-3).*

*Laws 1981, Ch. 149, effective January 1, 1982, provided for the transfer of the Office of Fire Marshal from the Industrial Commission to the Department of Emergency and Military Affairs, Division of Emergency Services (Supp. 82-2).*

## Section

- R3-3-1001. Definitions
- R3-3-1002. Worker Protection Standards
- R3-3-1003. Pesticide Safety Training
- R3-3-1004. Notification Requirements for Farm Labor Contractors

- R3-3-1005. Container Used for Mixing or Applying Pesticides
- R3-3-1006. Agricultural Emergency
- R3-3-1007. Violations and Civil Penalties
- R3-3-1008. Penalty Adjustments
- R3-3-1009. Failure to Abate
- R3-3-1010. Calculation of Additional Penalties For Unabated Violations
- R3-3-1011. Repeated or Willful Violations
- R3-3-1012. Citation; Posting

**ARTICLE 11. ARIZONA NATIVE PLANTS**

*Article 11, consisting of Sections R3-3-1101 through R3-3-1111 and Appendix A, recodified from 3 A.A.C. 4, Article 6 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1).*

## Section

- R3-3-1101. Definitions
- R3-3-1102. Protected Native Plant Destruction by a Private Landowner
- R3-3-1103. Disposal and Salvage of Protected Native Plants by a State Agency
- R3-3-1104. Protected Native Plant Permits; Tags; Seals; Fees
- R3-3-1105. Scientific Permits; Noncommercial Salvage Permits
- R3-3-1106. Protected Native Plant Survey; Fee
- R3-3-1107. Movement Permits; Tags, Seals, and Cord Use
- R3-3-1108. Recordkeeping; Salvage Assessed and Harvest Restricted Native Plants
- R3-3-1109. Arizona Native Plant Law Education
- R3-3-1110. Permit Denial
- R3-3-1111. Repealed
- Appendix A. Protected Native Plants By Category

**ARTICLE 1. GENERAL PROVISIONS****R3-3-101. Definitions**

In addition to the definitions in A.R.S. §§ 3-341 and 3-361, the following terms apply to Articles 1 through 5 of this Chapter:

“Acute toxicity” means adverse physiological effects that result from a single dose or single exposure to a chemical; or any poisonous effect produced by a single dose or single exposure to a chemical within a short period of time, usually less than 96 hours.

“Adulterate” means to change a pesticide so that:

Its strength or purity falls below the standard of quality stated on the labeling under which it is sold,

Any substance has been substituted wholly or in part for the pesticide, or

Any constituent of the pesticide has been wholly or in part abstracted.

“Agricultural aircraft pilot” means any individual licensed by the Department who pilots an agricultural aircraft to apply a pesticide.

“Agricultural commodity” means any plant, animal, plant product, or animal product produced for commercial or research purposes.

“Agricultural establishment” means any farm, forest, nursery, or greenhouse.

“Agricultural purpose” means use of a pesticide on an agricultural commodity. It excludes the sale or use of pesticides, in properly labeled packages or containers, for either of the following:

Home use, or

Use in swimming pools or spas.



“Aircraft” means any mechanism used in flight, excluding a remote-controlled mechanism.

“ALJ” means an individual or the Director who sits as an administrative law judge, who conducts administrative hearings in a contested case or an appealable agency action, and who makes decisions regarding the contested case or appealable agency action. A.R.S. § 41-1092(1)

“Animal” means all vertebrate and invertebrate species, including, but not limited to, humans and other mammals, birds, fish and shellfish. A.R.S. § 3-341(3)

“Application site” means the specific location, crop, object, or field to which a pesticide is or is intended to be applied.

“Applicator” means any individual who applies, or causes to have applied, any pesticide on an agricultural establishment or golf course.

“Authorized activities” means, for compliance with A.R.S. § 3-365(D), any organized activities scheduled at a school or child care facility that use the school or child care facility or the school or child care grounds and for which the sponsors or organizers of the activity have received the written approval of a responsible administrative official of the school or child care facility.

“Buffer zone” means an area of land that allows pesticide deposition and residues to decline to a level that poses a reasonable certainty of no harm to a defined area.

“Bulk release” means the release of any pesticide or mixture of pesticides that poses a potential risk to property, human health, or the environment in volumes greater than those prescribed by the pesticide label for the application site. A pesticide dripping from a spray nozzle or minor splashing during mixing is not a bulk release.

“Certified applicator” means any individual who is certified by the Department to use or supervise the use of any restricted use pesticide or to use any pesticide on a golf course.

“CEU” means continuing education unit.

“Child care facility” means any facility in which child care is regularly provided for compensation for five or more children not related to the proprietor and is licensed as a child care facility by the Arizona Department of Health Services. A.R.S. § 36-881(3). Child care facilities are commonly known as day care centers.

“Commercial applicator” means a certified applicator (whether or not the applicator is a private applicator with respect to some uses) who uses or supervises the use of a restricted use pesticide for any purpose or on any property other than property owned or controlled by:

The applicator;

The applicator’s employer; or

Another person, if the application is performed without compensation, other than trading of personal services between producers of agricultural commodities.

“Contamination” means a concentration of pesticide sufficient to violate state or federal water, soil, food, feed, or air contamination standards, except if legally applied.

“Continued pesticide application” means the continuance of an interrupted application of the same pesticide to the same application site within the same section, township, and range within the same reporting period.

“Custom application equipment” means aircraft, remote-controlled equipment, and ground equipment used for pesticide application by a custom applicator.

“Custom applicator” means any person, except a person regulated by the OPM, who applies pesticides for hire or by aircraft.

“Defoliation” means killing or artificially accelerating the drying of plant tissue with or without causing abscission.

“Device” means any instrument or contrivance that is intended to be used for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life, other than a human being and a bacterium, virus, or other microorganism on or in a living human being or other living animal. Device does not include firearms, mechanical traps, or equipment used for the application of pesticides if the application equipment is sold separately.

“Diluent” means any substance added to a pesticide before application to reduce the concentration of the active ingredient in the mixture.

“Direct release” means to apply a pesticide outside the boundaries of an application site, at the time of application, while the valve controlling the normal flow of pesticide from the application device is in the open position and the application device is not within the confines of the application site. Direct release does not mean the drift or discharge of a pesticide caused by a mechanical malfunction of the application device that is beyond the control of the operator. Direct release does not mean a release caused by accident, or done to avoid an accident that would have resulted in greater harm than that caused by the pesticide release.

“Disposal” means discarding a pesticide or pesticide container that results in the deposit, dumping, burning, or placing of the container or unused pesticide on land or into the air or water.

“Drift” means the physical movement of pesticide through the air at the time of a pesticide application from the application site to any area outside the boundaries of the application site. Drift does not include movement of a pesticide or associated degradation compounds to any area outside the boundaries of an application site if the movement is caused by erosion, run off, migration, volatility, or windblown soil particles that occur after application, unless specifically addressed on the pesticide label with respect to drift control requirements.

“EPA” means the United States Environmental Protection Agency.

“Experimental use permit” means a permit issued by the EPA, or the Department pursuant to A.R.S. § 3-350.01, to a person for the purpose of experimentation, which includes the accumulation of information necessary for the registration of a pesticide.

“Exposure” means the inhalation or ingestion of a pesticide, or eye or skin contact with a pesticide.

“Family member” means spouse, child, sibling, parent, grandparent, grandchild, stepparent, or stepchild.

“FFDCA” means the Federal Food, Drug and Cosmetic Act, as amended.

“FIFRA” means the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. § 136 et seq.

“Fumigant” means a substance or mixture of substances that produces gas vapor or smoke intended to control a pest in stored agricultural commodities or to control burrowing rodents.

“Golf applicator” means a certified applicator who uses a pesticide for the maintenance of a golf course that is owned or controlled by the applicator or the applicator’s employer.

“Health care institution” means any institution that provides medical services, nursing services, health screening services, and other health-related services, and is licensed by the Arizona Department of Health Services.

“Highly toxic pesticide” means a pesticide with an acute oral LD<sub>50</sub> of 50 milligrams per kilogram of body weight or less, dermal LD<sub>50</sub> of 200 milligrams per kilogram of body weight or less, or inhalation LD<sub>50</sub> of 0.2 milligrams per liter of air or less, and the label bears the signal words “danger” and “poison” and shows a skull and crossbones.

“Individual” means a human being.

“Insect” means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, usually winged forms, as for example, beetles, bugs, bees, and flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as for example, spiders, mites, ticks, centipedes and wood lice. A.R.S. § 3-341(14)

“Integrated Pest Management” or “IPM” means a sustainable approach to managing pests that uses any combination of biological, chemical, cultural, genetic, manual, or mechanical tools or techniques in a way that minimizes health, environmental, and economic risks.

“Label” means the written, printed or graphic matter on, or attached to, the pesticide or device, or the immediate container thereof, and the outside container or wrapper of the retail package, if there is any, of the pesticide or device. A.R.S. § 3-341(15)

“Labeling” means all labels and other written, printed or graphic matter:

*Upon the pesticide or device or any of its containers or wrappers.*

*Accompanying the pesticide or device at any time.*

*To which reference is made on the label or in literature accompanying the pesticide or device, except when accurate, non-misleading reference is made to current official publications of the United States departments of agriculture or interior, the United States public health service, state experiment stations, state agricultural colleges or other similar federal institutions or official agencies of the state or other states authorized by law to conduct research in the field of pesticides. A.R.S. § 3-341(16).*

“LD<sub>50</sub>” means a single dose of pesticide that will kill at least 50 percent of laboratory test animals as determined by an EPA- approved procedure.

“Livestock” means clovenhoofed animals, horses, mules, or asses.

“OPM” means the Office of Pest Management.

“PCA” or “agricultural pest control advisor” means any individual licensed by the Department who, as a requirement of, or incidental to, the individual’s employment or occupation:

Offers a written recommendation to a regulated grower or to any public or private agency concerning the control of any agricultural pest,

Claims to be an authority or general advisor on any agricultural pest or pest condition, or

Claims to be an authority or general advisor to a regulated grower on any agricultural pest.

“Person” means any individual, partnership, association, corporation or organized group of persons whether incorporated or not. A.R.S. § 3-341(19)

“Pest” means:

*Any weed, insect, vertebrate pest, nematode, fungus, virus, bacteria or other pathogenic organisms.*

*Any other form of terrestrial or aquatic plant or animal life, except virus, bacteria or other microorganism on or in living humans or other living animals, which the director declares to be a pest for the purpose of enforcement of this Article. A.R.S. § 3-341(20)*

“Pesticide” means any substance or mixture of substances intended to be used for defoliating plants or for preventing, destroying, repelling or mitigating insects, fungi, bacteria, weeds, rodents, predatory animals or any form of plant or animal life which is, or which the director may declare to be, a pest which may infest or be detrimental to vegetation, humans, animals or households or which may be present in any environment. A.R.S. § 3-361(6)

“Pesticide container” means any container with an interior surface that is in direct contact with a pesticide.

“Pesticide use” means the sale, processing, storing, transporting, handling or applying of a pesticide and disposal of pesticide containers. A.R.S. § 3-361(7)

“Private applicator” means a certified applicator who uses or supervises the use of a restricted use pesticide for producing an agricultural commodity on property owned or controlled by:

The applicator;

The applicator’s employer; or

Another person, if the pesticide is applied without compensation, other than trading of personal services between producers of agricultural commodities.

“Property boundary” means the legal boundary of the land on which a child care facility, health care institution, residence, or school sits, unless another boundary is established by a written agreement with the owner of the child care facility, health care institution, residence, or school. Under a written agreement, the parties shall not establish a boundary that is less than ten feet from the child care facility, health care institution, residence, or school.

“Ready-to-use” means a registered pesticide, in the manufacturer’s original container, that does not require dilution by the end user.

“Regulated grower” means a person who acquires or purchases pesticides or contracts for the application of pesticides to agricultural commodities, onto an agricultural establishment, or onto a golf course as a part of the person’s normal course of employment or activity as an owner, lessee, sublessee, sharecropper, or manager of the land to which the pesticide is applied.

“Reporting period” means no later than the Thursday following the calendar week in which an application is completed.

“Residence” means a dwelling place where one or more individuals are living.

“Responsible individual” means an individual at a seller’s location who has passed the core examination prescribed in R3-3-202 and is designated by the seller under R3-3-203.

“Restricted use pesticide” means a pesticide classified as such by the EPA. A.R.S. § 3-361(8).

“School” means a public institution established for the purposes of offering instruction to pupils in programs for pre-

*school children with disabilities, kindergarten programs or any combination of grades one through twelve.* A.R.S. § 15-101(19). School includes a private institution with membership in the North Central Association of Colleges and Schools serving students in kindergarten programs or any combination of grades one through twelve.

“Seller” means any person selling or offering for sale a restricted use pesticide or other type of pesticide intended to be used for an agricultural purpose.

“Service container” means a container used to temporarily hold, store, or transport a pesticide concentrate or a registered, ready-to-use pesticide other than the original labeled container, measuring device, or application device.

“Small scale test” means a test using a pesticide on land or water acreage as described at 40 CFR 172.3(c)(1) or (2).

“Spot application” means a treatment in an area other than a greenhouse or nursery operation that is restricted to an area of a field that is less than the entire field.

“Tag” means a custom application equipment license issued by the Department to a custom applicator licensee.

“Triple rinse” means to flush out a container at least three times, each time using a volume of water, or other diluent as specified on the label, equal to a minimum of 10 percent of the container’s capacity or a procedure allowed by the label that produces equivalent or better results.

“Unreasonable adverse effect” means any unreasonable risk to a human being or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide, or a human dietary risk from residues that result from a use of a pesticide in or on any food as documented by the Department through its investigation.

“Weed” means any plant which grows where not wanted. A.R.S. § 3-341(24)

#### Historical Note

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-101 (Supp. 91-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Amended by exempt rulemaking at 19 A.A.R. 3130, effective September 16, 2013 (Supp. 13-3).

#### R3-3-102. Licensing Time-frames

- A. Overall time-frame. The Department shall issue or deny a license within the overall time-frames listed in Table 1 after receipt of the complete application. The overall time-frame is the total of the number of days provided for the administrative completeness review and the substantive review.

#### B. Administrative completeness review.

1. The administrative completeness review time-frame established in Table 1 begins on the date the Department receives the application. The Department shall notify the applicant in writing within the administrative completeness review time-frame whether the application or request is incomplete. The notice shall specify what information is missing. If the Department does not provide notice to the applicant within the administrative completeness review time-frame, the Department considers 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 date the Department mails the notice of missing information to the applicant until the date the Department receives the information.
3. If the applicant fails to submit the missing information before the expiration of the completion request period, the Department shall close the file, unless the applicant requests an extension. An applicant whose file has been closed may obtain a license by submitting a new application.

#### C. Substantive review. The substantive review time-frame established in Table 1 shall begin after the application is administratively complete.

1. If the Department makes a comprehensive written request for additional information, the applicant shall submit the additional information identified by the request within the additional information period provided in Table 1. The substantive review time-frame is suspended from the date of the Department request until the information is received by the Department. If the applicant fails to provide the information identified in the written request within the additional information period, the Department shall deny the license.
2. The Department shall issue a written notice granting or denying a license within the substantive review time-frame. If the application is denied, the Department 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.

#### Historical Note

Adopted effective October 8, 1998 (Supp. 98-4).

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

License	Authority	Administrative Completeness Review	Response to Completion Request	Substantive Completeness Review	Response to Additional Information	Overall Time-frame
Regulated Grower Permit	A.R.S. § 3-363	14	14	56	14	70
Seller Permit	A.R.S. § 3-363	14	14	56	14	70
Agricultural Aircraft Pilot License	A.R.S. § 3-363	14	14	56	14	70
Custom Applicator License	A.R.S. § 3-363	14	14	63	14	77
Application Equipment Tag	A.R.S. § 3-363	14	14	56	14	70
Agricultural Pest Control Advisor (PCA) License	A.R.S. § 3-363	14	14	63	14	77
Commercial Applicator Certification (PUC)	A.R.S. § 3-363	14	14	63	14	77

Private Applicator Certification (PUP)	A.R.S. § 3-363	14	14	63	14	77
Private Fumigation Certification	A.R.S. § 3-363	14	14	63	14	77
Golf Applicator Certification (PUG)	A.R.S. § 3-363	14	14	63	14	77
Experimental Use Permit	A.R.S. § 3-350.01	14	14	28	14	42
Pesticide Registration	A.R.S. § 3-351	14	14	91	14	105
License to Manufacture or Distribute Commercial Feed	A.R.S. § 3-2609	14	14	42	14	56
Commercial Fertilizer License	A.R.S. § 3-272	14	14	42	14	56
Specialty Fertilizer Registration		14	14	56	14	70
Agricultural Safety Trainer Certification	A.R.S. § 3-3125	28	14	28	14	56
<b>ARIZONA NATIVE PLANTS</b>						
Notice of Intent	A.R.S. § 3-904	14	14	14	14	28
Confirmation Notice of Intent						
• Salvage Assessed Native Plant Permits	A.R.S. § 3-906	14	14	14	14	28
• Salvage Restricted Native Plant Permits		14	14	14	14	28
• Scientific Permits		14	14	14	14	28
Movement Permits	A.R.S. § 3-906	14	14	14	14	28
Annual Permits for Harvest-Restricted Native Plants	A.R.S. § 3-907	14	14	14	14	28

**Historical Note**

Adopted effective October 8, 1998 (Supp. 98-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Amended by final rulemaking at 10 A.A.R. 2663, effective June 8, 2004 (Supp. 04-2). Amended by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1). Amended by exempt rulemaking at 19 A.A.R. 3130, effective September 16, 2013 (Supp. 13-3).

**ARTICLE 2. PERMITS, LICENSES, AND CERTIFICATION****R3-3-201. Regulated Grower Permit; Fee**

- A.** A regulated grower shall not order, purchase, take delivery of, use, or recommend the use of any pesticide for an agricultural purpose or golf course without a valid regulated grower permit, issued by the Department.
- B.** A person applying for a regulated grower permit, initial or renewal, shall provide the following information on a form obtained from the Department:
1. Name, signature, and social security or employer's identification number of the applicant;
  2. Date of the permit application;
  3. Name, address, e-mail address, if applicable, and daytime telephone number of the company or farm where the applicant may be reached;
  4. Permit renewal period; and
  5. Sections, townships, ranges, and acres of the land where pesticides may be applied.
- C.** The applicant shall submit the completed application to the Department accompanied by a \$20 fee for each year or portion of the year during which the permit is valid.
- D.** A regulated grower permit is not transferable, expires on December 31, and is valid for one or two years depending on the renewal period selected by the applicant.

**Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Amended by exempt rulemaking at 19 A.A.R. 3130, effective September 16, 2013 (Supp. 13-3).

**R3-3-202. Core Examination**

- A.** In addition to other requirements prescribed by this Article, an individual seeking any of the following shall obtain a score of at least 75 percent on a written core examination administered by the Department:
1. Designation as a responsible individual;
  2. An initial license as:
    - a. An agricultural aircraft pilot;
    - b. A custom applicator;
    - c. An agricultural pest control advisor; or
  3. An initial certification as:
    - a. A private applicator;
    - b. A commercial applicator; or
    - c. A golf applicator.
- B.** The Department shall administer examinations by appointment at every Environmental Services Division office. The Department shall ensure that the examination tests the knowledge and understanding of the following subjects that are described in more detail at Appendix A, subsections (A) and (C):
1. Pesticide use, safety, and toxicity;
  2. Pesticide labels and labeling;
  3. Pesticide terminology;
  4. Common causes of accidents;
  5. Necessity for protective equipment;
  6. Poisoning symptoms;
  7. Practical first aid; and
  8. Statutes and rules relating to the sale, application, and use of pesticides.
- C.** An individual who fails the examination may retake the examination no more than three times in a 12-month period and

shall not retake an examination until at least seven days have elapsed from the date of the last examination.

#### Historical Note

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-201 (Supp. 91-4). Former Section R3-3-202 renumbered to R3-3-203; new R3-3-202 made by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Amended by exempt rulemaking at 19 A.A.R. 3130, effective September 16, 2013 (Supp. 13-3).

#### R3-3-203. Seller Permit; Fee; Responsible Individual

- A. A person shall not act as a seller without a valid seller permit, issued by the Department.
- B. A seller shall obtain a seller permit for each physical location where the seller sells or offers for sale any restricted use pesticide or pesticide for an agricultural purpose within the state.
- C. A person applying for a seller permit, initial or renewal, shall provide the following information on a form obtained from the Department:
  1. Name and signature of the responsible individual, and license number, if applicable;
  2. Date of the permit application;
  3. Name, physical address, mailing address, e-mail address, if applicable, and daytime telephone number of the location selling a restricted use pesticide or a pesticide for an agricultural purpose;
  4. Permit renewal period;
  5. Name, e-mail address, and daytime telephone number of the Arizona contact for each out-of-state seller, if applicable;
  6. Address where records required to be maintained under R3-3-401 will be kept;
  7. Whether the applicant has had a similar license, permit, or certification revoked, suspended, or denied in this or any other jurisdiction during the three years before the date of application; and
  8. If applicable, the number of the license or certificate of the responsible individual, and current seller permit number.
- D. The applicant shall submit the completed application to the Department accompanied by a \$100 fee for each year or portion of the year during which the permit is valid.
- E. A seller permit is not transferable, expires on December 31, and is valid for one or two years, depending on the permit renewal period selected by the applicant. The Department shall not renew a seller permit unless the seller is in compliance with the provisions established in subsection (F), if applicable.
- F. A seller shall designate a different responsible individual for each physical location in this state that sells or offers for sale any restricted use pesticide.
  1. If a responsible individual terminates employment at an assigned location, the seller shall designate another responsible individual within 30 calendar days and notify the Department of the replacement.
  2. For a responsible individual who is not a commercial applicator or a PCA:
    - a. The core examination expires December 31, unless the initial examination is passed in the last quarter of a calendar year, in which case the expiration is December 31 of the following year; and
    - b. The responsible individual shall retake and pass the core examination every year, unless the responsible individual completes three CEUs annually before the renewal date.

#### Historical Note

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-203 (Supp. 91-4). Former Section R3-3-203 renumbered to R3-3-204; new R3-3-203 renumbered from R3-3-202 and amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

#### R3-3-204. Agricultural Aircraft Pilot License; Examination; Fee; Renewal

- A. An individual shall not act as an agricultural aircraft pilot without:
  1. A valid agricultural aircraft pilot license issued under this Section, and
  2. A valid commercial applicator certification issued under R3-3-208.
- B. The Department shall not issue or renew an agricultural aircraft pilot license, and an existing agricultural aircraft pilot license is invalid unless the applicant or license holder has a valid commercial pilot's certificate issued by the Federal Aviation Administration and a valid commercial applicator certification.
- C. An individual applying for an agricultural aircraft pilot license, initial or renewal, shall provide the following information on a form obtained from the Department:
  1. Name, social security number, and signature of the applicant;
  2. Date of application;
  3. Address, e-mail address, if applicable, and daytime telephone number of the applicant;
  4. License renewal period;
  5. Name, physical address, mailing address, e-mail address, if applicable, and daytime telephone number of the applicant's employer, if applicable;
  6. Copy of the applicant's commercial pilot certificate issued by the Federal Aviation Administration, if not previously filed with the Department;
  7. Applicant's commercial applicator certification number; and
  8. Whether the applicant has had a similar certification or license revoked, suspended, or denied in this or any other jurisdiction during the three years before the date of application and the nature of the violation.
- D. The applicant shall submit the completed application to the Department, accompanied by a \$50 fee for each year or portion of the year during which the license is valid.
- E. An agricultural aircraft pilot license is not transferable, expires on December 31, and is valid for one or two years depending on the renewal period selected by the applicant.
- F. Examinations.
  1. The Department shall administer examinations by appointment at every Environmental Services Division office. In addition to the core examination required in R3-3-202, an applicant shall demonstrate knowledge and understanding of the following by scoring at least 75 percent on the written examination administered by the Department:
    - a. Safe flight and application procedures, including steps to be taken before starting a pesticide application, such as survey of the area to be treated, and considering the possible hazards to public health;
    - b. Calibration of aerial application equipment; and
    - c. Operation and application in the vicinity of schools, child care facilities, health care institutions, and residences.
  2. An individual who fails the examination may retake it no more than three times in a 12-month period and shall not

retake an examination until at least seven days have elapsed from the date of the last examination.

**G. Renewal; expired license.**

1. An applicant may renew an expired license without retaking the written examinations in subsection (F) under the following conditions:
  - a. The applicant submits the completed application and fee within 30 days after the expiration date, and
  - b. The applicant does not provide any pesticide-related service after the date the license expired until the date the renewal is effective.
2. All other applicants for renewal shall retake the written examinations prescribed in subsection (F).

**Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4).  
Renumbered from R3-10-204 (Supp. 91-4). Former Section R3-3-204 renumbered to R3-3-205; new R3-3-204 renumbered from R3-3-203 and amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

**R3-3-205. Custom Applicator License; Examination; Fee; Renewal**

- A.** A person shall not act as a custom applicator without a valid custom applicator license issued by the Department.
- B.** A person applying for a custom applicator license, initial or renewal, shall provide the following information on a form obtained from the Department:
  1. Name and signature of the applicant;
  2. Date of the license application;
  3. Name, physical address, mailing address, e-mail address, if applicable, and daytime telephone number of the business under subsection (C);
  4. Tax identification number of the business;
  5. License renewal period;
  6. Whether the application is for ground or air custom application, or both;
  7. Names and current certification numbers of the commercial applicators employed by the business, as prescribed in subsection (C)(1);
  8. Evidence of insurance coverage, showing the name of the insurance carrier, policy number, policy term, policy limits, and any applicable exclusions; and
  9. Whether the applicant has had a similar license revoked, suspended, or denied in this or any other jurisdiction during the last three years, and the nature of the violation.
- C.** The Department shall not issue or renew a custom applicator license and an existing custom applicator license is invalid unless the applicant or license holder:
  1. Is a commercial applicator or employs at least one individual who is certified as a commercial applicator under R3-3-208;
  2. Maintains or the business that employs the applicator or license holder maintains public liability, drift, and property damage insurance coverage with an aggregate amount of at least \$300,000 during the licensing period. The applicant or license holder shall provide evidence of insurance coverage to the Department upon initial application, for each renewal, or upon request of the Department; and
  3. Files with the Department a copy of the commercial applicator's valid Federal Aviation Administration commercial agricultural aircraft operator's certificate, if using aircraft. If not already on file with the Department, an applicant or license holder shall submit a copy of the certificate with the completed application form.
- D.** A custom applicator license holder may:

1. Temporarily relinquish a custom applicator license if the custom applicator:
  - a. Advises the Department of termination of the insurance prescribed in subsection (C)(2), and the effective date of termination; and
  - b. Ceases to act as a custom applicator on the termination date.
2. Reinstatement the custom applicator license within the same licensing time period, without again paying the fee as prescribed in subsection (E), if the custom applicator:
  - a. Purchases insurance as prescribed in subsection (C)(2), and
  - b. Notifies the Department of the effective date of the insurance.
- E.** The applicant shall submit the completed application to the Department, accompanied by a \$100 fee for each year, or portion of the year during which the license is valid.
- F.** A custom applicator license is not transferable, expires on December 31, and is valid for one or two years, depending on the renewal period selected by the applicant.
- G.** Examinations.
  1. The Department shall administer examinations by appointment at every Environmental Services Division office. In addition to the core examination required in R3-3-202, an applicant shall demonstrate knowledge and understanding of the following by scoring at least 75 percent on the written examination administered by the Department:
    - a. Calibration of application equipment;
    - b. Aerial application procedures, if applicable; and
    - c. Ground application procedures, if applicable.
  2. An individual who fails the examination may retake it no more than three times in a 12-month period and shall not retake an examination until at least seven days have elapsed from the date of the last examination.
- H.** Renewal; expired license.
  1. An applicant may renew an expired license without retaking the written examinations in subsection (G) under the following conditions:
    - a. The applicant submits the completed application and fee within 30 days after the expiration date, and
    - b. The applicant does not provide any pesticide-related service after the date the license expired until the date the renewal is effective.
  2. All other applicants for renewal shall retake the written examinations prescribed in subsection (G).

**Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4).  
Renumbered from R3-10-205 (Supp. 91-4). Former Section R3-3-205 renumbered to R3-3-206; new R3-3-205 renumbered from R3-3-204 and amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

**R3-3-206. Tag; Fee**

- A.** A custom applicator shall not use custom application equipment unless the equipment has a valid tag. The custom applicator licensee shall place and maintain a valid tag so that it is prominently displayed on the pesticide application equipment.
- B.** A person applying for a tag shall provide the following information on a form obtained from the Department:
  1. Name and signature of the applicant;
  2. Date of the application;
  3. Address, e-mail address, if applicable, and daytime telephone number of the applicant;

4. Name, physical address, mailing address, e-mail address, if applicable, and daytime telephone number of the business, if applicable; and
  5. Manufacturer, make, model and serial number, and if an aircraft, the aircraft registration number ("N" number) of the application equipment.
- C.** The Department shall not issue or renew a tag and an existing tag is invalid if the custom applicator license is invalid.
- D.** An applicant shall submit the completed application to the Department, accompanied by a \$25 fee for each piece of equipment, for each year or portion of the year during which the tag is valid.
- E.** A tag expires on December 31, and is valid for the same time period as the custom applicator license.
- F.** A custom applicator licensee shall not transfer a tag except as follows:
1. If a licensed piece of equipment is destroyed, rendered unusable, or transferred out of the state, the custom applicator licensee may transfer the tag to another piece of equipment.
  2. If a licensed piece of equipment is leased, sold, or traded, the custom applicator licensee shall transfer the tag with the equipment to the lessee or new owner.
  3. Before transferring a tag, the custom applicator licensee shall notify the Department that the tag is being transferred and identify the person to whom the tag is being transferred or identify the piece of equipment to which the tag is being transferred, or the tag is invalid.

#### Historical Note

Adopted effective November 20, 1987 (Supp. 87-4).  
 Renumbered from R3-10-206 (Supp. 91-4). Former Section R3-3-206 renumbered to R3-3-207; new R3-3-206 renumbered from R3-3-205 and amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

#### R3-3-207. Agricultural Pest Control Advisor License; Examination; Fee; Renewal; Exemption

- A.** An individual shall not act as a PCA without a valid PCA license issued by the Department. To advise in any of the categories listed in subsection (I), a PCA shall pass the specific examination associated with the category.
- B.** An individual applying for a PCA license shall provide the following information on a form obtained from the Department:
1. The applicant's name, address, e-mail address, daytime telephone number, social security number, and signature;
  2. Date of the application;
  3. License renewal period;
  4. Name, physical address, mailing address, e-mail address, and daytime telephone number of the applicant's employer, if applicable;
  5. Examinations that the applicant has passed by category; and
  6. Whether the applicant has had a similar license revoked, suspended, or denied in this or any other jurisdiction during the last three years, and the nature of the violation resulting in the revocation, suspension, or denial.
- C.** An individual applying for a PCA license, except an individual who holds or has held a PCA license in this state within the previous five years shall meet one of the following five sets of qualifications:
1. College degree.
    - a. Possess a bachelor's degree (B.A. or B.S.), master's degree or doctorate degree in any subject; and
  2. Have completed 42 semester hours (63 quarter units) of college-level curricula as specified in subsection (D).
  3. Master's degree in a biological science.
    - a. Possess a master's degree in a biological science;
    - b. Have 12 months of work experience related to a core area listed in subsection (D); and
    - c. Have a letter from the institution, a faculty member, or a supervisor where the individual obtained the work experience certifying the time spent and describing the type of experience obtained by the individual.
  4. Doctorate degree in a biological science.
    - a. Possess a doctorate degree in a biological science; and either
    - b. Meet the qualifications in subsection (C)(2)(b) and (C)(2)(c); or
    - c. Have a letter of recommendation from the faculty member that supervised the dissertation or the division head of the discipline.
  5. Other education with unlicensed experience.
    - a. Have completed 42 semester hours (63 quarter units) of college-level curricula as specified in subsection (D);
    - b. Have 24 months of work experience related to a core area listed in subsection (D); and
    - c. Have a letter from the institution, a faculty member, or a supervisor where the individual obtained the work experience certifying the time spent and describing the type of experience obtained by the individual.
  6. Other education with licensed experience.
    - a. Be currently licensed as a pest control advisor (PCA) or equivalent in another state; and
    - b. Have completed 42 semester hours (63 quarter units) of college-level curricula as specified in subsection (D), except that each year of verifiable licensed experience under subsection (C)(5)(a) within the previous 5 years qualifies for two semester hours up to 10 hours. The semester hours based on licensed experience do not reduce the minimum hours required from each individual core area.
    - c. The applicant shall provide proof of the equivalency of a license from another state.
- D.** The 42 semester hours (63 quarter units) of college-level curricula specified in subsection (C) shall come from the core areas shown in the following table, with at least the minimum indicated hours (or units) coming from each individual core area. A single course shall not count toward the minimum hours of more than one core area. At least one course from the pest management systems and methods core area shall emphasize integrated pest management principles.

Core Area	Examples of Subjects	Sem. Hours	Qtr. Units
Physical, biological, and earth sciences, and mathematics	Inorganic chemistry; organic chemistry; biochemistry; plant biology or botany; general ecology; biology; genetics; plant physiology; zoology; post-algebra mathematics	12	18

Crop health	Soils and irrigation; vegetation management or weed science; plant pathology; entomology; plant nutrition or fertility; nematology; vertebrate management	6	9
Pest management systems and methods	Applied courses in entomology, plant pathology, vegetation management or weed science, and other pest management disciplines; pesticides or use of pesticides; pest control equipment systems; alternative cropping systems; sustainable or organic agricultural systems; biological control	3	4.5
Production systems	Horticulture; viticulture; forestry; agronomy; crop, vegetable, fruit or animal sciences; other production systems (e.g., wildlife production, cattle production)	3	4.5

**E. Alternative curricula credits.**

1. A current crop advisor certificate issued by the American Society of Agronomy qualifies for three semester hours in one of the following core areas: physical, biological and earth sciences and mathematics; crop health; or production systems.
2. Non-traditional courses such as a senior project, an internship, cooperative work experience, independent study, a dissertation or a thesis qualify for three semester hours in one of the core areas of crop health, pest management systems and methods, or production systems, as applicable.
3. For applicants with a bachelor's, master's, or doctorate degree, at least one year of full-time related work experience qualifies for three semester hours in one of the core areas of pest management systems and methods or production systems, as applicable.

**F. In addition to the information required by subsection (B), an applicant shall submit to the Department:**

1. An official transcript verifying the courses completed and the degrees granted to the applicant.
2. Documentation verifying alternative curricula relied on under subsection (E). Documentation of subsection (E)(2) and (E)(3) shall include a letter certifying completion and describing the activity from the institution, a faculty member or supervisor.
3. If applicable, the letter required for licensure under subsection (C).
4. A \$50 fee.

**G. A PCA license is not transferable, expires on December 31, and is:**

1. Issued for up to one year as an initial license;
2. Renewed every one or two years, depending on the renewal period selected by the applicant; and
3. Renewed for all categories of license under subsection (I) for the same renewal period.

**H. Renewal.**

1. The continuing education requirement in subsection (H)(5) is not applicable to an individual who passes the examination prescribed in subsection (I) and who applies for a PCA license between October 1 and December 31 of the test year.
2. Upon renewal, a PCA license is valid for one or two years, depending on the renewal period selected by the applicant, provided the applicant meets the criteria prescribed under subsection (H).
3. An applicant shall submit the completed application, accompanied by a \$50 fee for each licensing year or portion of the year during which the license is valid.
4. Renewal; expired license.
  - a. An applicant may renew an expired license without retaking the written examinations under subsection (I) provided the applicant:
    - i. Complies with the CEU requirements in subsection (H)(5),
    - ii. Submits a completed application and fee within 30 days after the expiration date, and
    - iii. Does not provide any pest control-related service from the date the license expired until the date the renewal is effective.
  - b. All other applicants for renewal shall retake the applicable written examinations prescribed in subsection (I).
5. The Department shall not renew a PCA license unless, before the expiration of the current license, the licensee completes 15 CEUs for each year of the renewal period or passes any applicable examination prescribed in subsection (I). The licensee shall complete CEU credit during the calendar years the current license is in effect. CEUs earned that are in excess of the requirements do not carry forward for use with future renewals.
6. To obtain credit, the applicant shall provide the Department with documentation of completion of the CEU course.

**I. Examinations.**

1. The Department shall administer examinations by appointment at every Environmental Services Division office. In addition to the core examination required in R3-3-202, an applicant shall demonstrate knowledge and understanding of integrated pest management in any of the following categories by scoring at least 75 percent on a written examination:
  - a. Weed control,
  - b. Invertebrate control,
  - c. Nematode control,
  - d. Plant pathogen control,
  - e. Vertebrate pest control,
  - f. Plant growth regulators, or
  - g. Defoliation.
2. An individual who fails the examination may retake it no more than two times in a 12-month period and shall not retake an examination until at least seven days have elapsed from the date of the last examination.

**J. Exemption.** An individual operating in an official capacity for a college or university, providing recommendations in a not-for-profit capacity, or merely furnishing information concerning general and labeling usage of a registered pesticide is not considered an authority or general advisor for the purposes of this Chapter.**Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4).  
 Renumbered from R3-10-207 (Supp. 91-4). Former Section R3-3-207 repealed; new R3-3-207 renumbered from



R3-3-206 and amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 3855, effective January 28, 2014 (Supp. 13-4).

### **R3-3-208. Applicator Certification; Examination; Fee; Renewal**

- A.** An individual shall not act as a private applicator, golf applicator, or commercial applicator unless the individual is certified by the Department.
- B.** Application. An individual applying for either commercial, golf, or private applicator certification shall pay the applicable fee and submit a completed application to the Department containing the following information on a form obtained from the Department:
  1. The applicant's name, address, e-mail address if applicable, daytime telephone number, Social Security number, and signature;
  2. Date of the application;
  3. Name, physical address, mailing address, e-mail address, if applicable, and daytime telephone number of the applicant's employer, if applicable;
  4. Whether the application is for a commercial, golf, or private applicator certification;
  5. If applicable, an indication the applicant seeks private applicator or golf applicator fumigation certification;
  6. If applicable, an indication the applicant seeks golf applicator aquatic certification or golf restricted use pesticide certification;
  7. For commercial certification, the categories in which the applicant seeks to be certified;
  8. Whether the applicant has had a similar certification revoked, suspended, or denied in this or any other jurisdiction during the last three years, and the nature of the violation; and
  9. Certification renewal period.
- C.** Fumigation certification.
  1. Fumigation certification requires certification as a private applicator, a golf applicator, or a commercial applicator.
  2. Fumigation certification allows a private applicator or a commercial applicator acting as a private applicator to use, apply, or supervise the use or application of a fumigant to an on-farm raw agricultural commodity or on-farm burrowing rodent problem.
  3. Fumigation certification allows a golf applicator to use and apply a fumigant to a golf course burrowing rodent problem.
- D.** Golf applicator aquatic certification allows a golf applicator to use or apply an aquatic pesticide to a body of water on a golf course to control an aquatic pest problem.
- E.** Golf restricted use pesticide certification allows a golf applicator to use or apply restricted use pesticides to an ornamental and turf area of a golf course.
- F.** Examinations. The Department shall administer examinations by appointment at every Environmental Services Division office. An applicant shall achieve a passing score of 75 percent in the applicable subject area in order to receive initial certification.
  1. Commercial applicator certification (PUC). In addition to the core examination required by R3-3-202, an applicant shall demonstrate knowledge and understanding of the subjects listed in Appendix A, subsection (B) for each commercial certification category sought.
  2. Commercial certification categories. An individual may apply for commercial applicator certification in any of the following categories:
    - a. Agricultural pest control;
    - b. Forest pest control;
    - c. Seed-treatment;
    - d. Aquatic pest control;
    - e. Right-of-way pest control;
    - f. Public health pest control;
    - g. Regulatory pest control: M-44 or rodent, if a government employee; or
    - h. Demonstration and research pest control.
3. Private applicator (PUP) and golf applicator (PUG) certification. An applicant shall demonstrate knowledge and understanding of the core examination subjects listed in R3-3-202.
  - a. Fumigation certification. An applicant seeking private applicator or golf applicator fumigation certification shall also pass a separate fumigation examination.
  - b. Golf aquatic certification. An applicant seeking aquatic certification shall also pass a separate aquatic examination.
  - c. Golf restricted use pesticide certification. An applicant seeking golf restricted use pesticide certification shall also pass a separate ornamental and turf examination.
4. An individual who fails an examination may retake it no more than three times in a 12-month period, and shall not retake an examination until at least seven days have elapsed from the date of the last examination.
- G.** Fee.
  1. An applicant for private or commercial certification shall pay a \$50 fee per year of certification.
  2. An applicant for golf certification shall pay a \$100 fee per year of certification.
- H.** Applicator certification is not transferable, expires on December 31, and is:
  1. Issued for the remainder of the calendar year as an initial certification;
  2. Renewed for one or two years, depending on the renewal period selected by the applicant; and
  3. Renewed for all categories of certification for the same renewal period.
- I.** Renewal.
  1. An applicant for renewal of an applicator certification shall select a one or two-year renewal period.
  2. An applicant shall submit the completed application accompanied by the applicable fee for a one-year renewal or double the fee for a two-year renewal.
  3. CEU requirements.
    - a. The Department shall not renew a private applicator or golf applicator certification unless, prior to the expiration of the current certification, the applicator completes three CEUs for each year of the renewal period.
    - b. The Department shall not renew a commercial applicator certification unless, prior to expiration of the current certification, the applicator completes six CEUs for each year of the renewal period.
    - c. The Department shall not renew a fumigation certification unless, prior to the expiration of the current certification, the applicant qualifies to renew the applicant's private, golf, or commercial applicator certification under this subsection and completes three additional CEUs per year of the renewal period.
    - d. The Department shall not renew a golf aquatic certification unless, prior to the expiration of the current certification, the applicant qualifies to renew the

applicant's golf applicator certification under this subsection and completes three additional CEUs per year of the renewal period. The three additional CEUs per year may also be used to simultaneously satisfy the three additional CEUs per year requirement in subsection (I)(3)(c).

- e. An applicator shall complete CEU credit while the current certification period is in effect. CEU credits earned in excess of the requirements do not carry forward for use in subsequent renewals.
- f. To obtain credit, the applicant shall provide the Department with documentation of completion of the CEU course.
- g. The CEU requirements are not applicable to an individual renewing an initial certification issued between October 1 and December 31.

- 4. Examination exception. An applicator who fails to complete the CEUs required for renewal may renew a certification, prior to expiration, for one year by submitting the completed application accompanied by the applicable fee and retaking and passing the applicable certification examination prescribed in this Section.

**J. Renewal; expired certification.**

- 1. An applicant may renew an expired certification without retaking the written examinations provided the applicant:
  - a. Has satisfied the CEU requirements,
  - b. Submits a completed application and fee within 30 days after the expiration date, and
  - c. Does not provide any pesticide-related service from the date the certification expired until the date the renewal is effective.
- 2. All other applicants for renewal shall complete the requirements for initial certification, including retaking and passing the written examinations prescribed in this Section.

**Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-208 (Supp. 91-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Amended by final rulemaking at 18 A.A.R. 2481, effective November 10, 2012 (Supp. 12-3). Amended by exempt rulemaking at 19 A.A.R. 3130, effective September 16, 2013 (Supp. 13-3).

**R3-3-209. License and Fee Exemptions**

- A. A person who applies pesticides in buildings or for structural pest control purposes is not required to apply for or possess any license or certification from the Department.
- B. A person who sells, offers for sale, delivers, or offers for delivery a general use pesticide, to be used for private, noncommercial use in or around the home or a person who sells general use pesticides for swimming pool or spa maintenance is not required to apply for or possess a seller's permit from the Department.
- C. A state, federal, or other governmental employee who makes pest control recommendations or applies or supervises the use of restricted use pesticides while engaged in the performance of official duties shall meet the requirements of this Article, but is not required to pay a fee for either a PCA license or a commercial applicator certification.
- D. A person who only furnishes information concerning label requirements governing a registered pesticide is not required to apply for or possess a PCA license from the Department.

**Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-209 (Supp. 91-4). Amended by

final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

**R3-3-210. Additional Grounds for Revocation, Suspension, or Denial of a License, Permit, or Certification**

- A. The Director has the authority to deny, or after an administrative hearing, suspend or revoke a license, permit, or certification of any person who:
  - 1. Fails to demonstrate sufficient reliability, expertise, integrity, and competence in engaging in pesticide use;
  - 2. Submits an inaccurate application for a license, permit, or certification; or
  - 3. Has had a similar license, permit, or certification revoked, suspended, or denied in this or any other jurisdiction during the three years before the date of application.
- B. Upon notice of a denial, the applicant may request, in writing, that the Director provide an administrative hearing under A.R.S. Title 41, Chapter 6, Article 10 to appeal the denial of the license, permit, or certification.

**Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-210 (Supp. 91-4). Former Section R3-3-210 repealed; new R3-3-210 renumbered from R3-3-211 and amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

**R3-3-211. CEU Course Approval; Subject Approval**

- A. CEU course approval.
  - 1. A person who wishes to have the Department determine whether a course qualifies for CEU credit shall submit the following information to the Department:
    - a. Name, address, e-mail address, if applicable, and telephone number of the course's sponsor;
    - b. Signature of the sponsor or the sponsor's representative;
    - c. Course outline, listing the subjects and indicating the amount of time allocated for each subject;
    - d. Brief description of the information covered within each subject;
    - e. Brief biography of the presenter, demonstrating the presenter's qualifications;
    - f. Fees charged for attending the course;
    - g. Date and location of each session; and
    - h. Whether the course is open to the public.
  - 2. A person who requires prior notification of the number of CEUs that can be earned by completing an approved course before it is held shall submit the information required in subsection (A)(1) to the Department at least 14 business days before the course is held.
  - 3. The Department may modify the number of CEUs earned for a CEU course if the CEU course varies significantly in content or length from the approved curriculum. If the Department modifies the number of CEUs earned, the Department shall send a letter of modification to the course organizer, who shall be requested to inform all individuals who attended the course.
- B. Subject approval. The Department shall grant one hour of CEU credit for every 50 minutes of actual instruction in an approved program relating to agricultural pest control or any of the following subjects:
  - 1. Those listed in R3-3-208(F)(1),
  - 2. IPM, or
  - 3. Any other pesticide or pesticide use subject approved by the Associate Director.

**Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-211 (Supp. 91-4). Former Section R3-3-211 renumbered to R3-3-210; new R3-3-211 renumbered from R3-3-212 and amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

**R3-3-212. Experimental Use Permit**

- A.** Small scale pesticide testing. For a person exempted by Section 5 of FIFRA or 40 CFR 172.3 from the requirement of a federal experimental use permit the following apply:
1. The person shall, in addition to meeting the requirements in R3-3-303, provide to the Associate Director a statement of purpose and an affidavit verifying that the pesticide will be applied to an application site that does not exceed the total area described in 40 CFR 172.3(c); and
  2. If testing on the grounds of a college or university agricultural center or campus, or company-owned research facility, the testing is exempt from subsection (A)(1) and the reporting requirements in R3-3-303.
- B.** A person engaged in a small scale test, except a person exempt under subsection (A)(2), shall comply with the requirements prescribed in R3-3-302, if applicable.

**Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-212 (Supp. 91-4). Former Section R3-3-212 renumbered to R3-3-211; new R3-3-212 made by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

**APPENDIX A  
TESTING CATEGORIES**

- A.** Commercial Applicator Certification, 40 CFR 171.4(b)(i)-(viii).
1. Label & labeling comprehension.
    - a. The general format and terminology of pesticide labels and labeling;
    - b. The understanding of instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labels;
    - c. Classification of the product, general or restricted; and
    - d. Necessity for use consistent with the label.
  2. Safety. Factors including:
    - a. Pesticide toxicity and hazard to man and common exposure routes;
    - b. Common types and causes of pesticide accidents;
    - c. Precautions necessary to guard against injury to applicators and other individuals in or near treated areas;
    - d. Need for and use of protective clothing and equipment;
    - e. Symptoms of pesticide poisoning;
    - f. First aid and other procedures to be followed in case of a pesticide accident; and
    - g. Proper identification, storage, transport, handling, mixing procedures and disposal methods for pesticides and used pesticide containers, including precautions to be taken to prevent children from having access to pesticides and pesticide containers.
  3. Environment. The potential environmental consequences of the use and misuse of pesticides as may be influenced by such factors as:
    - a. Weather and other climatic conditions;
    - b. Types of terrain, soil or other substrate;

- c. Presence of fish, wildlife and other non-target organisms; and
  - d. Drainage patterns.
4. Pests. Factors such as:
    - a. Common features of pest organisms and characteristics of damage needed for pest recognition;
    - b. Recognition of relevant pests; and
    - c. Pest development and biology as it may be relevant to problem identification and control.
  5. Pesticides. Factors such as:
    - a. Types of pesticides;
    - b. Types of formulations;
    - c. Compatibility, synergism, persistence and animal and plant toxicity of the formulations;
    - d. Hazards and residues associated with use;
    - e. Factors which influence effectiveness or lead to such problems as resistance to pesticides; and
    - f. Dilution procedures.
  6. Equipment. Factors including:
    - a. Types of equipment and advantages and limitations of each type; and
    - b. Uses, maintenance and calibration.
  7. Application techniques. Factors including:
    - a. Methods of procedure used to apply various formulations of pesticides, solutions, and gases, together with a knowledge of which technique of application to use in a given situation;
    - b. Relationship of discharge and placement of pesticides to proper use, unnecessary use, and misuse; and
    - c. Prevention of drift and pesticide loss into the environment.
  8. Laws and regulations. Applicable State and Federal laws and regulations.
- B.** Commercial Certification Categories, 40 CFR 171.4(c)(1) through (6) and (8) through (10).
1. Agricultural pest control.
    - a. Plant. Applicators must demonstrate practical knowledge of crops grown and the specific pests of those crops on which they may be using restricted use pesticides. The importance of such competency is amplified by the extensive areas involved, the quantities of pesticides needed, and the ultimate use of many commodities as food and feed. Practical knowledge is required concerning soil and water problems, pre-harvest intervals, re-entry intervals, phytotoxicity, and potential for environmental contamination, non-target injury and community problems resulting from the use of restricted use pesticides in agricultural areas.
    - b. Animal. Applicators applying pesticides directly to animals must demonstrate practical knowledge of such animals and their associated pests. A practical knowledge is also required concerning specific pesticide toxicity and residue potential, since host animals will frequently be used for food. Further, the applicator must know the relative hazards associated with such factors as formulation, application techniques, age of animals, stress and extent of treatment.
  2. Forest pest control. Applicators shall demonstrate practical knowledge of types of forests, forest nurseries, and seed production in this state and the pests involved. They shall possess practical knowledge of the cyclic occurrence of certain pests and specific population dynamics as a basis for programming pesticide applications. A practi-

cal knowledge is required of the relative biotic agents and their vulnerability to the pesticides to be applied. Because forest stands may be large and frequently include natural aquatic habitats and harbor wildlife, the consequences of pesticide use may be difficult to assess. The applicator must therefore demonstrate practical knowledge of control methods which will minimize the possibility of secondary problems such as unintended effects on wildlife. Proper use of specialized equipment must be demonstrated, especially as it may relate to meteorological factors and adjacent land use.

3. Seed-treatment. Applicators shall demonstrate practical knowledge of types of seeds that require chemical protection against pests and factors such as seed coloration, carriers, and surface active agents which influence pesticide binding and may affect germination. They must demonstrate practical knowledge of hazards associated with handling, sorting and mixing, and misuse of treated seed such as introduction of treated seed into food and feed channels, as well as proper disposal of unused treated seeds.
4. Aquatic pest control. Applicators shall demonstrate practical knowledge of the secondary effects which can be caused by improper application rates, incorrect formulations, and faulty application of restricted use pesticides used in this category. They shall demonstrate practical knowledge of various water use situations and the potential of downstream effects. Further, they must have practical knowledge concerning potential pesticide effects on plants, fish, birds, beneficial insects and other organisms which may be present in aquatic environments. These applicators shall demonstrate practical knowledge of the principles of limited area application.
5. Right-of-way pest control. Applicators shall demonstrate practical knowledge of a wide variety of environments, since rights-of-way can traverse many different terrains, including waterways. They shall demonstrate practical knowledge of problems on runoff, drift, and excessive foliage destruction and ability to recognize target organisms. They shall also demonstrate practical knowledge of the nature of herbicides and the need for containment of these pesticides within the right-of-way area, and the impact of their application activities in the adjacent areas and communities.
6. Public health pest control. Applicators shall demonstrate practical knowledge of vector-disease transmission as it relates to and influences application programs. A wide variety of pests is involved, and it is essential that they be known and recognized, and appropriate life cycles and habitats be understood as a basis for control strategy. These applicators shall have practical knowledge of a great variety of environments ranging from streams to those conditions found in buildings. They shall also have practical knowledge of the importance and employment of such non-chemical control methods as sanitation, waste disposal, and drainage.
7. Regulatory pest control. Applicators shall demonstrate practical knowledge of regulated pests, applicable laws relating to quarantine and other regulation of pests, and the potential impact on the environment of restricted use pesticides used in suppression and eradication programs. They shall demonstrate knowledge of factors influencing introduction, spread, and population dynamics of relevant pests. Their knowledge shall extend beyond that required by their immediate duties, since their services are frequently required in other areas of the country where

emergency measures are invoked to control regulated pests and where individual judgments must be made in new situations.

8. Demonstration and research pest control. Persons demonstrating the safe and effective use of pesticides to other applicators and the public will be expected to meet comprehensive standards reflecting a broad spectrum of pesticide uses. Many different pest problems situations will be encountered in the course of activities associated with demonstration, and practical knowledge of problems, pests, and population levels occurring in each demonstration situation is required. Further, they shall demonstrate an understanding of a pesticide-organism interaction and the importance of integrating pesticide use with other control methods. In general, it would be expected that applicators doing demonstration pest control work possess a practical knowledge of all of the standards detailed in (G)(1). In addition, they shall meet the specific standards required for subsections (c)(1) through (7) of this subsection as may be applicable to their particular activity.
- C. Private Certification, 40 CFR 171.5(a)(1) through (5).
1. Recognize common pests to be controlled and damage caused by them.
  2. Read and understand the label and labeling information, including the common name of pesticides the applicator applied; pest(s) to be controlled, timing and methods of application; safety precautions; any pre-harvest or re-entry restrictions; and any specific disposal procedures.
  3. Apply pesticides in accordance with label instructions and warnings, including the ability to prepare the proper concentration of pesticide to be used under particular circumstances taking into account such factors as area to be covered, speed at which application equipment will be driven, and the quantity dispersed in a given period of operation.
  4. Recognize local environmental situations that must be considered during application to avoid contamination.
  5. Recognize poisoning symptoms and procedures to follow in case of a pesticide accident.

#### Historical Note

New Appendix made by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Appendix A subsection (B) CFR citation corrected from 40 CFR.4 to 40 CFR 171.4 at the request of the Department, Office File No. M09-448, filed December 8, 2009 (Supp. 09-4).

### ARTICLE 3. PESTICIDE USE, SALES, AND EQUIPMENT

#### R3-3-301. General

- A. A person shall not use, apply, or instruct another to apply a pesticide in a manner or for a use inconsistent with the pesticide labeling except that:
1. A pesticide may be applied at a dosage, concentration, or frequency less than that specified on the pesticide labeling unless the labeling specifically prohibits deviation from the specified dosage, concentration, or frequency.
  2. A pesticide may be applied against any target pest not specified on the labeling if the application is to an application site specified on the pesticide labeling, unless the labeling specifically prohibits use against the pest.
  3. A pesticide may be applied by any method of application not prohibited by the pesticide labeling unless the labeling specifically states that the pesticide may be applied only by the methods specified on the labeling.
  4. A pesticide may be mixed with a fertilizer if the labeling does not prohibit the mixture.

5. A pesticide may be used in any manner that is consistent with Sections 5, 18, or 24 of FIFRA.
  - B. A person shall not use, apply, or store or instruct another to use, apply, or store a pesticide unless the pesticide is:
    1. Registered with the Department and the EPA, or
    2. Previously registered with the Department and the EPA and cancelled or suspended by the EPA with a current end-use provision in effect.
  - C. Subsection (B) does not apply to a:
    1. Pesticide registrant that temporarily stores pesticides produced for shipment out of the state;
    2. Person who has applied for registration or exemption in this state; or
    3. Person who is acting under an experimental use permit on the grounds of a college or university agricultural center or campus, or a company-owned research facility.
  - D. A person shall not allow drift that causes any unreasonable adverse effect.
  - E. A person shall not cause the direct release of a pesticide and an individual shall not instruct an applicator in a manner to cause the direct release of a pesticide causing any unreasonable adverse effect.
  - F. Regulated grower responsibility.
    1. After a pesticide is applied to a field on an agricultural establishment, the regulated grower shall not harvest a crop from the field, or permit livestock to graze in the field in violation of any provision of the pesticide labeling.
    2. Before a pesticide application, a regulated grower shall ensure that all individuals and livestock subject to the regulated grower's control are outside the application site.
  - G. Emergency pest control measures. A person acting under a government-sponsored emergency program, shall not apply, cause, or authorize another to apply or cause a pesticide to come into contact with an individual, animal, or property outside the boundaries of the application site.
  - H. If possible when applying pesticides by aircraft, a pilot shall fly crosswind, unless an obstacle does not permit it, and shall begin the application at the downwind side of the field so that the pesticide is dispersed on the return swathe.
  - I. A person shall not apply a highly toxic pesticide, other than a pesticide registered by the EPA for ultra low volume application, in a volume that is less than one gallon per acre in the final spray form. The content of that gallon shall be at least 50 percent water.
  - J. A buffer zone may receive direct application or drift of pesticides as permitted by law.
6. Whether the application site is within a pesticide management area under R3-3-304;
  7. Anticipated date of harvest;
  8. Restricted entry interval;
  9. Label days to harvest;
  10. Date recommended for the pesticide application;
  11. Specific application site being treated;
  12. Township, range, and section of the application site;
  13. Number of acres or application sites in each section being treated;
  14. Additional field description, if any;
  15. Brand name and EPA registration number of the pesticide to be applied or number of the pesticide regulated under Section 18 of FIFRA to be applied;
  16. Rate and unit of measure per acre or dilution per 100 gallons;
  17. Total quantity of pesticide concentrate to be applied;
  18. Total acres to be treated and total volume per acre or total number of application sites to be treated;
  19. Whether the application includes an active ingredient that appears on the Arizona Department of Environmental Quality groundwater protection list and is soil-applied as defined in A.A.C. R18-6-101;
  20. Whether a supplemental label is required;
  21. Method of pesticide application;
  22. Label restrictions or special instructions, if any;
  23. Name of the custom applicator making the application;
  24. Anticipated pesticide delivery location; and
  25. Signature and credential number of the regulated grower or PCA making the recommendation.
- B. A custom applicator shall not apply a pesticide unless the custom applicator has received a signed copy of the recommendation from the PCA or the regulated grower on the Form 1080 before the application. The custom applicator shall apply the pesticide according to the recommendation on the Form 1080 unless the recommendation conflicts with the pesticide label or labeling, in which case the custom applicator shall note these deviations on the Form 1080 and apply the pesticide according to the pesticide label or labeling, or as provided in R3-3-301(A).
  - C. Before the application of a pesticide recommended by a PCA, the PCA shall notify the regulated grower, or the regulated grower's representative, of the scheduled application date. If the application date or time changes from that scheduled with the regulated grower, the custom applicator shall notify the regulated grower of the revised date and time of the application.
  - D. After completing the application, the custom applicator shall sign the pesticide application report portion of Form 1080 to verify that the pesticide was applied according to the recommendation and provide the following information in writing on the form:
    1. Date and time of each application;
    2. Date and time of the first and last spot application and a general description of the location, if applicable;
    3. Wind direction and velocity;
    4. Tag number, if applicable;
    5. Name and credential number of the grower or custom applicator business;
    6. Signature and credential number of the applicator; or name of the application equipment operator, and if a restricted use pesticide is applied, the signature and credential number of the certified applicator; and
    7. Any deviation from the recommendation.
  - E. Reporting shall be as prescribed in R3-3-404.

#### Historical Note

Adopted effective November 20, 1987 (Supp. 87-4).  
 Renumbered from R3-10-301 (Supp. 91-4). Amended by  
 final rulemaking at 10 A.A.R. 276, effective March 6,  
 2004 (Supp. 04-1).

#### R3-3-302. Form 1080; Requirement for Written Recommendation

- A. A PCA or regulated grower shall provide the following information, as applicable, in writing on a Form 1080, sign the form, and provide a copy to the custom applicator before each pesticide application that is to be made by a custom applicator:
  1. Name and permit number of the seller;
  2. Date the recommendation is written;
  3. Name and permit number of the regulated grower upon whose application site the pesticide will be applied;
  4. County where the application site is located;
  5. Pest conditions present;

**Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4).  
 Renumbered from R3-10-302 (Supp. 91-4). Section  
 repealed; new Section made by final rulemaking at 10  
 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

**R3-3-303. Experimental Use**

- A.** A person supervising application of a pesticide under a federal experimental use permit shall provide the Department with the following information in writing at least five days before application of the experimental use pesticide:
1. A copy of the EPA-approved experimental use permit, as required by Section 5 of FIFRA;
  2. Name, address, e-mail address, if applicable, and daytime telephone number of the supervising technical individual for the experimental use;
  3. Application site to be treated, the location of the application site, the quantity of the commodity or the area of land to be treated, and the number of structures, if any;
  4. Total amount of active ingredient to be applied in this state;
  5. Rate of formulation applied per unit of measure;
  6. Method of application;
  7. Time period during which the application will be made; and
  8. Any special experimental use permit condition as determined by the Department or by the EPA.
- B.** If any information provided under subsection (A) changes, the person supervising the pesticide application under a federal experimental use permit shall notify the Department at least 24 hours before the application of the experimental use pesticide. If the notification of change is given verbally, the person supervising the pesticide application under a federal experimental use permit shall provide the Department with written confirmation within 15 days after the date of the change.
- C.** At least 24 hours before the application, the supervising technical individual shall provide the Department with the following information:
1. Name, address, e-mail address, if applicable, and daytime telephone number of the regulated grower and PCA, or the qualifying party if it is a structural pest control application, that are involved in the application of the experimental use pesticide;
  2. County, section, township, range, and field description, if needed, of the intended application site, or the street address if it is a structural pest control application as defined in A.R.S. § 32-2301(20);
  3. Name, address, e-mail address, if applicable, and telephone number of the applicator applying the pesticide; and
  4. Date and time of the intended application.
- D.** An applicator shall not apply an experimental use pesticide in a manner other than that specified by the experimental use permit or other Department-approved labeling that is provided to the applicator. The applicator shall ensure that the labeling is at the application site when the application occurs.

**Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4).  
 Renumbered from R3-10-303 (Supp. 91-4). Section  
 repealed; new Section renumbered from R3-3-306 and  
 amended by final rulemaking at 10 A.A.R. 276, effective  
 March 6, 2004 (Supp. 04-1).

**R3-3-304. Pesticide Management Areas; Criteria for Designation**

- A.** The Associate Director shall annually publish a list of all locations within the state that are designated as pesticide manage-

ment areas under A.R.S. § 3-366. The list is available at every Environmental Services Division office.

- B.** The Director shall designate a location as a pesticide management area if all of the following evaluation criteria are met:
1. The distance between the application site and the property boundary of any residence, school, child care facility, or health care institution is less than 1/4 mile;
  2. A pesticide is applied by aircraft;
  3. A pesticide complained about under subsection (B)(4) is highly toxic or odoriferous; and
  4. The Department receives complaints alleging pesticide misuse within a 12-month period from at least five or five percent, whichever is greater, of the residences located less than 1/4 mile from the application site or a complaint from any school, child care facility, or health care institution located less than 1/4 mile from the application site.
- C.** If, upon a written request from a person, or upon the Department's initiative, the Director determines that a pesticide management area no longer meets all of the criteria listed in subsection (B), the Director may remove the pesticide management area from the Department's annual list.
- D.** A person may petition the Department at any time to add or delete an area to or from the list of pesticide management areas. The petitioner shall address all of the criteria listed in subsection (B). The Director shall make a decision on each petition no later than 90 days from the date the petition was submitted.

**Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4).  
 Renumbered from R3-10-304 (Supp. 91-4). Section  
 repealed; new Section renumbered from R3-3-308 and  
 amended by final rulemaking at 10 A.A.R. 276, effective  
 March 6, 2004 (Supp. 04-1).

**R3-3-305. Pesticide Sales**

- A.** A seller shall not sell, offer for sale, deliver, or offer for delivery any restricted use pesticide or pesticide for an agricultural purpose without determining that the pesticide will be used by a person who:
1. Has a valid certification or regulated grower permit issued by the Department or OPM for use of the pesticide, or
  2. Works under the direct supervision of a person who has a valid certification or regulated grower permit issued by the Department or OPM for the use of the pesticide.
- B.** If a pesticide is sold for an agricultural purpose, the seller shall write the permit numbers of the seller and regulated grower on each sale and delivery ticket or invoice, and on each pesticide container or carton. If a pallet is delivered to an individual purchaser, the seller may write the seller and regulated grower numbers on the outside of the shrink-wrapped pallet.
- C.** A seller shall register with the Department the name and address of each salesperson and PCA employed for the purpose of selling pesticides in this state.

**Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4).  
 Renumbered from R3-10-305 (Supp. 91-4). Section  
 repealed; new Section renumbered from R3-3-309 and  
 amended by final rulemaking at 10 A.A.R. 276, effective  
 March 6, 2004 (Supp. 04-1). Amended by exempt  
 rulemaking at 19 A.A.R. 3130, effective September 16,  
 2013 (Supp. 13-3).

**R3-3-306. Receipt of Restricted Use Pesticides by Noncertified Persons**

- A.** A person shall not sell, offer for sale, deliver, or offer for delivery a restricted use pesticide to a person other than a certified applicator without having first obtained written documentation from a certified applicator or a noncertified recipient that the material is to be applied by or under the supervision of a certified applicator.
- B.** The seller shall obtain one of the following types of written documentation to satisfy the requirement in subsection (A):
  - 1. A photocopy or fax of the certificate issued to the certified applicator who will be applying or supervising application of the restricted use pesticide and:
    - a. A statement signed by the certified applicator, authorizing and identifying the noncertified individual to purchase or receive the restricted use pesticide for the certified applicator; or
    - b. A copy of a signed contract or agreement, authorizing and identifying the noncertified person to receive the restricted use pesticide for the certified applicator; or
  - 2. A form on file with the seller that contains the following information:
    - a. Name of any individual authorized to receive the restricted use pesticides for the certified applicator;
    - b. Relationship of an authorized individual to the certified applicator (partner, employee, co-worker, or family member);
    - c. List of the restricted use pesticides an authorized individual is allowed to receive, specifying the:
      - i. Trade name; and
      - ii. EPA registration number; or
      - iii. State special local need registration number issued by the Department; or
      - iv. Emergency exemption number, issued by the EPA under Section 18 of FIFRA, if applicable;
    - d. Signature of the authorized individual and the date signed; and
    - e. Certified applicator's signature, work address, work phone number, certification number, and certification categories (private fumigation or commercial and one or more of the following: agricultural pest, seed-treatment, right-of-way, forestry, aquatic, regulatory, or public health).
- C.** A seller shall request proof of identification from any noncertified individual accepting restricted use pesticides on behalf of a certified applicator if the individual is unknown to the seller.
- D.** A noncertified individual who receives a restricted use pesticide on behalf of a certified applicator shall sign all sale documents for restricted use pesticides.
- E.** If, at the time of the sale of the restricted use pesticide, the noncertified individual receiving the pesticide satisfies the requirements of subsection (B) by presenting a signed statement, contract, or agreement, the seller shall maintain on file a copy of the signed statement, contract, or agreement.
- F.** The seller shall retain records of all sales or deliveries made and maintain the documents required by this Section for at least two years from the date of sale.

**Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-306 (Supp. 91-4). Former Section R3-3-306 renumbered to R3-3-303; new R3-3-306 renumbered from R3-3-310 and amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

**R3-3-307. Aircraft and Agricultural Aircraft Pilots**

- A.** A person shall not operate an aircraft to apply pesticides in this state unless the aircraft has a valid Federal Aviation Administration airworthiness certificate and a valid tag issued under R3-3-206.
- B.** A custom applicator shall not permit an individual who does not hold a valid agricultural aircraft pilot license and a valid commercial applicator certification to apply pesticides by aircraft.

**Historical Note**

Adopted effective January 17, 1989 (Supp. 89-1). Renumbered from R3-10-307 (Supp. 91-4). Former Section R3-3-307 repealed; new R3-3-307 renumbered from R3-3-312 and amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

**R3-3-308. Pesticide Containers and Pesticides; Storage and Disposal**

- A.** Each person storing pesticides or non-triple rinsed pesticide containers shall:
  - 1. Provide a secure, well-ventilated storage location;
  - 2. Verify that the containers are nonleaking and closed if not in use; and
  - 3. Conspicuously post a sign at the entrance to the storage area warning others that pesticides are stored inside.
- B.** A person shall not place misleading wording or markings on a service container that are not related to the pesticide in the container.
- C.** A person using a service container to store or transport a pesticide concentrate or registered ready-to-use pesticide, shall place a durable and legible label or tag on the service container that lists:
  - 1. Name, e-mail address, if applicable, and telephone number of the applicator or custom applicator using the pesticide;
  - 2. Brand or trade name of the pesticide;
  - 3. EPA registration number;
  - 4. Name and percentage of the active ingredient;
  - 5. Dilution, if any, in the service container;
  - 6. EPA-assigned signal word (danger, warning, or caution) for the registered label; and
  - 7. The phrase "KEEP OUT OF REACH OF CHILDREN."
- D.** A person shall not store or transport any pesticide in a container that has been used for food, feed, beverages, drugs, or cosmetics, or, because of shape, size, or marking is identified with food, feed, beverages, drugs, or cosmetics.
- E.** A person shall not dump, negligently store, or leave unattended any pesticide, service container, or pesticide container or part of a container, at any place or under any condition that will create a hazard to an individual, an animal, or property.
- F.** A person shall not dispose of any pesticide or pesticide container except according to label directions and all applicable laws.
- G.** Before a person disposes of any pesticide container, the person shall ensure that the following steps are taken:
  - 1. After emptying each pesticide container other than a pressurized container, a paper bag, or a container designed for reuse with the same pesticide and described in R3-3-309, the container is triple rinsed and:
    - a. The rinsate is not discharged into the environment unless the discharge is performed according to label directions, and applicable laws;
    - b. The rinsate is placed into a service container or the application equipment for use on an application site, or the rinsate is disposed as allowed by the label;

- c. Each container is punctured or crushed after it is triple rinsed to render the container incapable of holding any material; and
- 2. A pesticide container that is a combustible bag or package is thoroughly emptied and either:
  - a. Folded and tied into bundles or otherwise secured, or
  - b. Enclosed securely in a secondary container that is labeled as containing pesticide residue.

**Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-308 (Supp. 91-4). Former Section R3-3-308 renumbered to R3-3-304; new R3-3-308 renumbered from R3-3-313 and amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

**R3-3-309. Returnable, Reusable, Recyclable, and Reconditionable Pesticide Containers**

- A. A pesticide container, as defined in R3-3-101, labeled as a returnable, reusable container, or for which the label contains provisions for recycling or reconditioning, may be shipped according to label directions to a dealer, distributor, formulator, or a reconditioning or recycling facility that is operated in accordance with applicable laws.
- B. If a pesticide container is being held for shipment under subsection (A), the person holding the container shall, immediately after use, place it in a secure environment, inaccessible for any use other than shipment according to label directions.

**Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-309 (Supp. 91-4). Former Section R3-3-309 renumbered to R3-3-305; new R3-3-309 renumbered from R3-3-314 and amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

**R3-3-310. Fumigation Use**

- A. An individual shall not perform a fumigation unless the individual is a certified fumigant applicator or a certified fumigant applicator is physically present in the immediate vicinity supervising the individual performing the fumigation.
- B. An individual storing, handling, or applying a fumigant shall follow all label requirements. If the label does not specify warning requirements, the individual shall comply with the following provisions:
  - 1. Before the fumigation begins, warning signs shall be posted in visible locations on or in the immediate vicinity of all entrances to and on every side of the space or area being fumigated.
  - 2. Warning signs shall be printed in red on white background and shall:
    - a. State the English and Spanish words “DANGER/PELIGRO”;
    - b. Contain a skull and crossbones symbol if shown on the product label;
    - c. State “Area or commodity under fumigation. DO NOT ENTER/NO ENTRE”;
    - d. State the name of the fumigant, the date and time the fumigant was injected, and the name, e-mail address, if applicable, and telephone number of the certified applicator.
- C. A certified fumigant applicator who engages in or who supervises another in the fumigation process shall ensure that the label requirements are followed, including requirements relat-

ing to the use of personal protective equipment and posting required warning signs.

**Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-310 (Supp. 91-4). Former Section R3-3-310 renumbered to R3-3-306; new R3-3-310 made by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

**R3-3-311. Repealed****Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-311 (Supp. 91-4). Section repealed by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

**R3-3-312. Renumbered****Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-312 (Supp. 91-4). Section renumbered to R3-3-307 by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

**R3-3-313. Renumbered****Historical Note**

Adopted effective January 17, 1989 (Supp. 89-1). Renumbered from R3-10-313 (Supp. 91-4). Section renumbered to R3-3-308 by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

**R3-3-314. Renumbered****Historical Note**

Adopted effective January 17, 1989 (Supp. 89-1). Renumbered from R3-10-314 (Supp. 91-4). Section renumbered to R3-3-309 by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

**ARTICLE 4. RECORDKEEPING AND REPORTING****R3-3-401. Pesticide Seller Records**

- A. A seller of any restricted use pesticide, device, or any pesticide sold for an agricultural purpose shall maintain all records showing the receipt, sale, delivery, or other disposition of the pesticide or device sold for at least two years from the date of sale. If a seller intends to change the location of the records, the seller shall file a signed statement with the Department before the move stating the new address.
- B. When any pesticide for agricultural purposes, or a restricted use pesticide regulated by the OPM, is sold, delivered, or otherwise disposed of, a seller shall maintain the following records and information:
  - 1. Bill of lading or other similar record of the receipt of the pesticide at the selling establishment;
  - 2. Seller's dated sales receipt, delivery receipt, or invoice of the transaction, delivery, or other disposition of the pesticide;
  - 3. Name and address of the purchaser;
  - 4. Regulated grower permit number, or the OPM license number of the purchaser, if applicable;
  - 5. State special local need registration number issued under Section 24 of FIFRA, if applicable;
  - 6. Emergency exemption permit number granted by the EPA under Section 18 of FIFRA, if applicable;
  - 7. Experimental use permit number, if applicable;
  - 8. Pesticide brand name and the EPA registration number; and
  - 9. Quantity of the pesticide sold to the purchaser.



- C. In addition to the information required in subsection (B), when a restricted use pesticide is sold, delivered, or otherwise disposed of for use by a certified applicator, a seller shall maintain records that contain the following information:
1. Name and address of the residence or principal place of business of each person to whom the restricted use pesticide is sold, delivered, or otherwise disposed of, and any records required under R3-3-306;
  2. Certified applicator's name, address, certification number, and the expiration date of the applicator's certification; and
  3. Categories in which the applicator is certified, if applicable.

#### Historical Note

Adopted effective November 20, 1987 (Supp. 87-4).  
Renumbered from R3-10-401 (Supp. 91-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Amended by exempt rulemaking at 19 A.A.R. 3130, effective September 16, 2013 (Supp. 13-3).

#### R3-3-402. Private and Golf Applicator Records; Restricted Use Pesticide

- A. Following an application to a field on an agricultural establishment of a restricted use pesticide, a pesticide registered under Section 18 of FIFRA, or an experimental use permitted pesticide, a private applicator shall complete an application record on a form approved by the Department, that includes the following:
1. Name of the private applicator and the applicator's certification number;
  2. Name and permit number of the seller;
  3. Name of the pesticide applied and its EPA registration number;
  4. Date and time of application;
  5. Name of regulated grower;
  6. Method of application;
  7. Crop name and the number of acres treated with the pesticide;
  8. Rate per acre of the active ingredient or formulation of the pesticide;
  9. Total volume of pesticide used per acre; and
  10. County, range, township, and section of the field that received the application.
- B. Following an application to a non-field of a restricted use pesticide, a pesticide registered under Section 18 of FIFRA, or an experimental use permitted pesticide, a private applicator or golf applicator shall complete an application record on a form approved by the Department, that includes the following:
1. The information requested under subsection (A)(1) through (A)(6);
  2. Item treated;
  3. Rate per item treated;
  4. Total volume used in the application; and
  5. Application site location by county, range, township, and section, or by physical address.
- C. A private applicator and golf applicator shall retain records required by this Section for at least two years from the date of the private application.

#### Historical Note

Adopted effective November 20, 1987 (Supp. 87-4).  
Renumbered from R3-10-402 (Supp. 91-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Amended by exempt rulemaking at 19 A.A.R. 3130, effective September 16, 2013 (Supp. 13-3).

#### R3-3-403. Bulk Release Report

- A. An applicator shall notify the Department at the Pesticide Hotline, 1-800-423-8876, as soon as practical after a bulk release, but no later than three hours after the bulk release. If the bulk release is on a public highway or railway, or results in the death of an individual, the applicator shall immediately report the release to the Arizona Department of Public Safety Duty Office.
- B. Within 30 days after a bulk release, the applicator shall provide a written report to the Department listing all details of the release, including:
1. Location and cause of the release;
  2. Disposition of the pesticide released;
  3. Measures taken to contain the bulk release;
  4. Name and EPA registration number of the pesticide released;
  5. Name, e-mail address, if applicable, and telephone number of the applicator's contact person;
  6. Date and time of the release;
  7. Specific environment into which the release occurred;
  8. Known human exposure to the pesticide, if observed; and
  9. Estimated amount of pesticide or pesticide mixture released.

#### Historical Note

Adopted effective November 20, 1987 (Supp. 87-4).  
Renumbered from R3-10-403 (Supp. 91-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

#### R3-3-404. Form 1080; Reports to the Department

- A. A custom applicator shall submit to the Department, by mail or fax, a completed and signed Form 1080, as prescribed in R3-3-302.
- B. A regulated grower shall submit to the Department, by mail or fax, a completed and signed Form 1080, as prescribed in R3-3-302, for application of a pesticide containing an active ingredient that appears on the Arizona Department of Environmental Quality groundwater protection list, and is soil-applied, as defined in A.A.C. R18-6-101.
- C. A custom applicator or regulated grower may report continued pesticide applications and spot applications within the same reporting period on a single Form 1080.
- D. A custom applicator or a regulated grower shall submit the Form 1080 to the Department during the reporting period.
- E. A PCA or custom applicator shall retain a copy of each Form 1080 for at least two years from the date of the application.

#### Historical Note

Adopted effective January 17, 1989 (Supp. 89-1).  
Renumbered from R3-10-404 (Supp. 91-4). Section repealed; new Section made by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

#### R3-3-405. Disposal Records; Agricultural Pesticide Concentrate

An applicator shall maintain the following information for two years:

1. EPA registration number, product name, active ingredient, and amount of agricultural pesticide concentrate disposed of;
2. Date of disposal;
3. Method of disposal; and
4. Specific location of the disposal site, or name of licensed disposal contractor.

#### Historical Note

New Section made by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

**ARTICLE 5. NONEXCLUSIVE LISTS OF SERIOUS, NONSERIOUS, AND DE MINIMIS VIOLATIONS****R3-3-501. Serious Violations**

The following is a nonexclusive list of acts that are serious violations if exposure to the pesticide produces a substantial probability that death or serious physical harm could result, unless the violator did not, and could not with the exercise of reasonable diligence, as documented in the investigative record, know of such safety or human health risk, in which case the violation is nonserious:

1. Storing a pesticide or pesticide container improperly,
2. Dumping or disposing a pesticide or pesticide container in violation of this Chapter,
3. Leaving a pesticide or pesticide container unattended,
4. Spraying or applying a pesticide in a manner inconsistent with labeling instructions, or
5. Adulterating a pesticide.

**Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4).  
Renumbered from R3-10-501 (Supp. 91-4). Amended by  
final rulemaking at 10 A.A.R. 276, effective March 6,  
2004 (Supp. 04-1).

**R3-3-502. Nonserious Violations**

**A.** General violations. The following is a nonexclusive list of acts that are nonserious violations if the violation has a direct or immediate relationship to safety, health, or property damage, but does not constitute a de minimis violation or a serious violation, unless the violator did not, and could not with the exercise of reasonable diligence, know of such safety, health, or property damage risk in which case the violation is de minimis. A person shall not:

1. Improperly store, dump, or leave unattended any pesticide, pesticide container or part of a pesticide container, or service container.
2. Make a false statement or misrepresentation in an application for a permit, license, or certification, or a permit, license, or certification renewal.
3. Falsify any records or reports required to be made under Articles 2 through 4 of this Chapter.
4. Operate an aircraft or ground equipment in a faulty, careless, or negligent manner during the application of a pesticide.
5. Apply or instruct another to apply a pesticide so that it comes into contact with:
  - a. An individual;
  - b. An animal; or
  - c. Property, other than the application site being treated.
6. Use, apply, or instruct another to apply a pesticide in a manner or for a use inconsistent with its pesticide label or labeling except as provided by R3-3-301(A).
7. Use, sell, apply, store, or instruct another to use, sell, apply, or store a pesticide:
  - a. That is not registered with the Department and the EPA, or
  - b. Outside the EPA authorized end-use provision if previously registered with the Department and the EPA and cancelled or suspended by the EPA.
8. Fail to provide accurate or approved labeling when registering a pesticide.

**B.** Seller violations. A seller shall not:

1. Sell pesticides without a valid seller's permit issued by the Department,
2. Provide a pesticide to a regulated grower who does not have a valid permit,

3. Fail to maintain records required under Articles 2 through 4 of this Chapter,
4. Fail to maintain complete sales records of restricted use pesticides required under Articles 3 and 4 of this Chapter,
5. Adulterate a pesticide,
6. Make false or misleading claims about a pesticide to any person,
7. Modify a label or labeling without proper authorization, or
8. Provide a pesticide to an unauthorized person.

**C.** PCA violations. A PCA shall not:

1. Act as a PCA without a valid agricultural pest control advisor license issued by the Department,
2. Make a false or fraudulent statement in any written recommendation about the use of a pesticide,
3. Make a recommendation regarding the use of a pesticide in a specific category in which the individual is not licensed, or
4. Make a written recommendation for the use of a pesticide in a manner inconsistent with its pesticide label or the exceptions as provided in R3-3-301(A).

**D.** Agricultural aircraft pilot violations. A pilot shall not apply a pesticide by aircraft without a valid agricultural aircraft pilot license issued by the Department.

**E.** Custom applicator violations. A custom applicator shall not:

1. Allow application equipment to be operated in a careless or reckless manner during the application of a pesticide,
2. Make a custom application without a valid custom applicator's license issued by the Department,
3. Make a custom application of a restricted use pesticide without a valid commercial applicator certification issued by the Department,
4. Allow an aircraft to be operated during the application of a pesticide by an individual who does not have a valid agricultural aircraft pilot license issued by the Department, or
5. Apply a pesticide without a written Form 1080 as prescribed in R3-3-302(A).

**F.** Regulated grower violations. A regulated grower shall not:

1. Purchase, apply, or use a pesticide without a valid regulated grower's permit issued by the Department;
2. Apply a restricted use pesticide without being a commercial applicator, private applicator, or restricted use pesticide certified golf applicator;
3. Apply any pesticide on a golf course without being a golf applicator; or
4. Allow a pesticide application on a golf course without having the proper protective equipment required by the label available to the applicator.

**G.** Certified applicator violations. A certified applicator shall not:

1. Allow the unsupervised application of a restricted use pesticide,
2. Fail to maintain complete records required under Articles 2 through 4 of this Chapter, or
3. Use a restricted use pesticide without a valid commercial applicator, private applicator, or golf applicator restricted use pesticide certification issued by the Department.

**H.** Exemptions. The following incidents are not pesticide use violations under this Section:

1. Exposure of an individual involved in the application who is wearing proper protective clothing and equipment;
2. Exposure of an unknown trespassing individual, animal, or property that the applicator, working in a prudent manner, could not anticipate being at the application site; or

3. Exposure of a person, animal, or property if the application is made according to a government-sponsored emergency program.

#### Historical Note

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-502 (Supp. 91-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Amended by exempt rulemaking at 19 A.A.R. 3130, effective September 16, 2013 (Supp. 13-3).

#### R3-3-503. De minimis Violations

- A. Seller violations. It is a de minimis violation if a seller:
  1. Fails to record seller and regulated grower permit numbers on containers, cartons, and delivery tickets;
  2. Fails to register the seller's representatives; or
  3. Fails to maintain complete records as required under Articles 2 through 4 of this Chapter.
- B. PCA violations. It is a de minimis violation if a PCA:
  1. Fails to put recommendations in writing as prescribed at R3-3-302(A),
  2. Fails to provide complete information required on written recommendations under R3-3-302, or
  3. Fails to maintain complete records as required under Articles 2 through 4 of this Chapter.
- C. Custom applicator violations. It is a de minimis violation if a custom applicator:
  1. Fails to maintain complete records required under Articles 2 through 4 of this Chapter, or
  2. Fails to file reports as required under Articles 3 and 4 of this Chapter.
- D. Regulated grower violations. It is a de minimis violation if a regulated grower:
  1. Fails to maintain complete records as required under Articles 2 through 4 of this Chapter; or
  2. Fails to file reports as required under Article 4 of this Chapter including whether the application includes a pesticide containing an active ingredient that appears on the Arizona Department of Environmental Quality groundwater protection list, and is soil-applied, as defined in A.A.C. R18-6-101.
- E. Certified applicator violations. A certified applicator shall not fail to file reports as required under Articles 3 and 4 of this Chapter.
- F. A third de minimis violation of the same or similar type from among those listed in subsections (A) through (E) in a three-year period is a nonserious violation.
- G. Exemptions. The following incidents are not a violation under this Section:
  1. Exposure of an individual involved in the application who is wearing proper protective clothing and equipment;
  2. Exposure of an unknown trespassing individual, animal, or property that the applicator, working in a prudent manner, could not anticipate being at the application site; or
  3. Exposure of a person, animal, or property if the application is made according to a government-sponsored emergency program.

#### Historical Note

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-503 (Supp. 91-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

#### R3-3-504. Mitigation

- A. A violation listed in R3-3-501 is a nonserious violation if:

1. The violator did not, and could not with the exercise of reasonable diligence, know of the safety or human health risk involved; or
  2. The release is done to avoid an accident that would have resulted in greater harm than that caused by the pesticide release or is caused by mechanical malfunction beyond the control of the operator.
- B. A violation listed in R3-3-502 is a de minimis violation if:
    1. The violator did not, and could not with the exercise of reasonable diligence, know of the safety, health, or property damage risk involved; or
    2. The release is done to avoid an accident that would have resulted in greater harm than that caused by the pesticide release or is caused by mechanical malfunction beyond the control of the operator.

#### Historical Note

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-504 (Supp. 91-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

#### R3-3-505. Unlisted Violations

- A. The Department shall classify a violation of Articles 2 through 4 of this Chapter or of A.R.S. Title 3, Chapter 2, Article 6 that is not listed in R3-3-501, R3-3-502, or R3-3-503 as a serious, nonserious, or de minimis violation depending upon the specific factual circumstances surrounding the violation.
- B. A third de minimis violation of the same or similar type in a three-year period is a nonserious violation.

#### Historical Note

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-505 (Supp. 91-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

#### R3-3-506. Penalty and Fine Point System

- A. The ALJ shall assess points, as applicable, against a violator for the violation of each pesticide rule or statute, or the Associate Director shall assess points, as applicable, for the violation of each pesticide rule or statute upon entering into a negotiated settlement as a result of an informal settlement conference under A.R.S. § 41-1092.06, in accordance with the following point system. From each of subsections (A)(1) through (6), one choice shall be selected, unless otherwise appropriate, based upon supporting evidence in the record of the proceeding before the ALJ or Associate Director. Points shall be totaled for the violation of each pesticide rule or statute.

1. Health effects.
- a. No evidence of human exposure to pesticides and no evidence of the substantial probability of human exposure to pesticides. 0
  - b. Substantial probability of human exposure to pesticides but treatment not required by a physician, nurse, paramedic, or physician's assistant. 5-10
  - c. Evidence of human exposure to pesticides but treatment not required by a physician, nurse, paramedic, or physician's assistant. 11-20
  - d. Human exposure to pesticides that required treatment by a physician, nurse, paramedic, or physician's assistant, but which did not result in pesticide poisoning. 21-30
  - e. Human exposure to pesticides that required either hospitalization for less than 12 hours or treatment as an outpatient for five consecutive days or less by a physician, nurse, paramedic, or physician's assistant for pesticide poisoning. 31-45
  - f. Human exposure to pesticides that required either hospitalization for 12 hours or longer, or treatment as an outpatient for more than five consecutive days by a physician, nurse, paramedic, or physician's assistant for pesticide poisoning. 46-100
  - g. Human exposure to pesticides resulting in death from pesticide poisoning (serious violation unless otherwise documented in the investigative record). 101-180
2. Environmental consequences and property damage. (Select one or more as evidence indicates.)
- a. No evidence of substantial probability of environmental or property damage. 0
  - b. Substantial probability of water contamination. 5-10
  - c. Evidence of water source contamination. 11-20
  - d. Substantial probability of soil contamination causing economic damage. 5-10
  - e. Evidence of soil contamination causing economic damage. 11-20
  - f. Substantial probability of nontarget bird kills. 5-10
  - g. Evidence of nontarget bird kills. 11-20
  - h. Substantial probability of nontarget fish kills. 5-10
  - i. Evidence of nontarget fish kills. 11-20
  - j. Nontarget kills involving game or furbearing animals as defined by A.R.S. § 17-101(B). 10-20
  - k. Any property damage (nonserious violation only under A.R.S. § 3-361(4)). 10-20
  - l. Air contamination causing official evacuation by federal, state, or local authorities. 10-20
  - m. Killing one or more threatened or endangered species. 15-20
  - n. Killing one or more domestic animals. 15-20
3. Culpability.
- a. Knowing. Knew or reasonably should have known by reasonable diligence of the prohibitions or restrictions that are the basis of the misconduct cited. 5-10
  - b. Willfully. Actual knowledge of the prohibitions or restrictions but engages in misconduct. 20-50
4. Prior violations or citations. Violations or citations within three years from the date the violation was committed. (Select one or more as evidence indicates.)
- | Prior violation history  | Current violation<br>Non-serious | Current violation<br>Serious |
|--|----------------------------------|------------------------------|
| None   | 0                                | 0                            |
| One or more De minimis   | 5                                | 0                            |
| One Nonserious   | 10                               | 5                            |
| One Nonserious, same or substantially similar to current violation   | 20                               | 10                           |
| Two Nonserious   | 30                               | 15                           |
| Two Nonserious, same or substantially similar to current violation   | 40                               | 20                           |
| Three Nonserious   | 60                               | 30                           |
| Three Nonserious, same or substantially similar to current violation   | 70                               | 35                           |
| Additional Nonserious: same or substantially similar to current violation, points per each additional violation beyond three | 10                               | 5                            |
| One Serious  | 20                               | 10                           |
| One Serious, same or substantially similar to current violation  | 40                               | 20                           |
| Two Serious  | 60                               | 30                           |
| Two Serious, same or substantially similar to current violation  | 80                               | 40                           |
| Three Serious  | 120                              | 60                           |
| Three Serious, same or substantially similar to current violation  | 140                              | 70                           |
| Additional Serious: same or substantially similar to current violation, points per violation                                 | 20                               | 10                           |
5. The length of time a violation has been allowed to continue by the violator after notification by the Department.
- a. Less than one day. 0
  - b. One day but less than one week. 1-10
  - c. One week but less than one month. 11-20
  - d. One month but less than two months. 21-30
  - e. Two months or more. 31-40

## 6. Wrongfulness of conduct.

- a. Conduct resulting in a violation that does not cause any immediate damage to public health, safety, or property. 4-5
- b. Conduct resulting in a violation that the evidence establishes may have a substantial probability of an immediate effect upon public health, safety, or property. 6-8
- c. Conduct resulting in a violation that the evidence establishes had an immediate effect upon public health, safety, or property, but does not fall within subsection (6)(e). 9-10
- d. Conduct causing the substantial probability of serious physical injury, hospitalization, or sustained medical treatment for an individual, or degrading the pre-existing environmental quality of the air, water, or soil so as to cause a substantial probability of a threat to the public health, safety, or property. 20-35
- e. Conduct resulting in serious physical injury, hospitalization, or sustained medical treatment for an individual, or degrading the pre-existing environmental quality of the air, water, or soil so as to cause a substantial probability of a threat to the public health, safety, or property. 36-50

## B. The ALJ or Associate Director, after determining points pursuant to subsection (A) shall assess a fine or penalty, or fine and penalty, for each violation in accordance with the following schedules:

- 1. Nonserious violation as defined under A.R.S. § 3-361.
  - a. 53 points or less. A fine of \$50 to \$150; a penalty of one to three months' probation, with a condition of violating probation being one to three hours of continuing education.
  - b. 54 to 107 points. A fine of \$151 to \$300; a penalty of four to six months' probation with a condition of violating probation being one to 10 days' suspension.
  - c. 108 points or more. A fine of \$301 to \$500; a penalty of seven to 12 months' probation with a condition of violating probation being 15 to 30 days' suspension or revocation for a period of up to one year.
- 2. Serious violation as defined under A.R.S. § 3-361.
  - a. 46 points or less. A fine of \$1,000 to \$2,000; a penalty of one to three months' probation with a condition of violating probation being five to 10 days' suspension for a nonserious violation or 15 to 30 days' suspension for a serious violation.
  - b. 47 to 93 points. A fine of \$2,001 to \$5,000; a penalty of four to six months' probation with a condition of violating probation being 15 to 30 days' suspension for a nonserious violation and 31 to 90 days' suspension for a serious violation.
  - c. 94 points or more. A fine of \$5,001 to \$10,000; a penalty of probation for seven to 12 months with a condition of violating probation being two to four months' suspension for a nonserious violation and four to 12 months' suspension for a serious violation, or revocation for the remainder of the license year and an additional period of one to three years.
- 3. The first de minimis violation is not considered a violation of probation.

**Historical Note**

Adopted effective September 13, 1989 (Supp. 89-3). Renumbered from R3-10-506 (Supp. 91-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

**ARTICLE 6. REPEALED****R3-3-601. Repealed****Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-601 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

**R3-3-602. Repealed****Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-602 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

**R3-3-603. Repealed****Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-603 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

**R3-3-604. Repealed****Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-604 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

**R3-3-605. Repealed****Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-605 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

**R3-3-606. Repealed****Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-606 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

**R3-3-607. Repealed****Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-607 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

**R3-3-608. Repealed****Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-608 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

**R3-3-609. Repealed****Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-609 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

**R3-3-610. Repealed****Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-610 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

**R3-3-611. Repealed****Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4).  
Renumbered from R3-10-611 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

**R3-3-612. Repealed****Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4).  
Renumbered from R3-10-612 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

**R3-3-613. Repealed****Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4).  
Renumbered from R3-10-613 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

**R3-3-614. Repealed****Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4).  
Renumbered from R3-10-614 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

**R3-3-615. Repealed****Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4).  
Renumbered from R3-10-615 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

**R3-3-616. Repealed****Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4).  
Renumbered from R3-10-616 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

**R3-3-617. Repealed****Historical Note**

Adopted effective November 20, 1987 (Supp. 87-4).  
Renumbered from R3-10-617 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

**ARTICLE 7. PESTICIDE****R3-3-701. Definitions**

In addition to the definitions in A.R.S. § 3-341, the following terms apply to this Article:

1. “Discontinuation” means when the registrant is no longer distributing a pesticide into Arizona.
2. “Pest” means, in addition to the pests declared in A.R.S. § 3-341(20), all birds, mammals, reptiles, amphibians, fish, slugs, snails, crayfish, roots, and plant parts.
3. “Official sample” means any sample of pesticide taken by the Associate Director, or the Associate Director’s agent, and designated as official.

**Historical Note**

Former rule 1; Former Section R3-3-01 repealed, new Section R3-3-01 adopted effective January 18, 1978 (Supp. 78-1). Amended effective December 29, 1978 (Supp. 78-6). Section R3-3-701 renumbered from R3-3-01 (Supp. 91-4). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

**R3-3-702. Pesticide Registration; Fee**

- A. Registration. Any person registering a pesticide shall provide the following documents and information on a form provided

by the Department with a nonrefundable \$100 fee for each pesticide, for each year of the registration:

1. The name, address, telephone number, and signature of the applicant;
2. The name and address of the company appearing on the label;
3. The Social Security number or tax identification number;
4. The date of the application;
5. The brand and name of the pesticide being registered;
6. The EPA registration number of the pesticide if applicable;
7. The analytical methods for any analyses of residues for the active ingredients of the pesticide, if requested by the Department;
8. The toxicological and safety data, if requested by the Department;
9. The name and telephone number of the person providing the toxicological and safety data;
10. Two pesticide labels for any pesticide not previously registered;
11. The material safety data sheet for each pesticide; and
12. The license time-period option.

- B. A pesticide registration is nontransferable, expires on December 31, and shall, at the option of the applicant, be valid for one or two years.
- C. If an applicant elects a two-year pesticide registration, any additional pesticide registered during that two-year registration shall have the same registration end-date as any other pesticide currently registered by that applicant with the Department.
- D. Notwithstanding subsection (A), during fiscal years 2015 and 2016, a person registering a pesticide or renewing a pesticide registration shall pay a \$110 fee for each pesticide for each year of registration.

**Historical Note**

Former rule II; Former Section R3-3-02 renumbered and amended as Section R3-3-01, former Sections R3-3-11 and R3-3-12 renumbered and amended as Section R3-3-02 effective January 18, 1978 (Supp. 78-1). Amended subsection (C) effective January 1, 1979, subsection (D) effective January 1, 1982 (Supp. 78-6). Editorial corrections, subsection (B), paragraphs (6) through (9) (Supp. 79-6). Amended by deleting subsection (D) effective March 5, 1982 (Supp. 82-2). Section R3-3-702 renumbered from R3-3-02 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2). New Section adopted by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4). Amended by exempt rulemaking at 16 A.A.R. 1334, effective June 29, 2010 (Supp. 10-2). Amended by exempt rulemaking at 17 A.A.R. 1759, effective July 20, 2011 (Supp. 11-3). Amended by exempt rulemaking at 20 A.A.R. 2452, effective July 24, 2014 (Supp. 14-3).

**R3-3-703. General Provisions**

- A. Discontinued pesticides. In addition to the requirements for discontinued pesticides established in A.R.S. § 3-351(K), any person holding a pesticide found in the channels of trade following the three-year discontinuation period shall be responsible to register or dispose of the pesticide.
- B. Sampling.
  1. The Associate Director, or the Associate Director’s agent, may sample, inspect, and analyze any pesticide distributed within the state to determine whether the pesticide is in compliance with the provisions of this Article and laws

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pertaining to this Article, or if a complaint has been filed with the Department.

2. The analytical results of pesticide formulations as listed on a label shall comply with the allowed deviations listed in R3-3-704(B).
  3. The results of an official analyses of any pesticide not in compliance with the allowed deviations listed in R3-3-704(B) shall be sent to the Associate Director, to the registrant, or other responsible person. Upon request, and within 30 days, the Associate Director shall provide the registrant or other responsible person a portion of the noncompliant pesticide sample.
- C. Prohibited acts. No person shall purchase a pesticide to repackage the pesticide for distribution and sale without rela-

beling the repackaged container and complying with the provisions of the Act.

**Historical Note**

Section R3-3-703 renumbered from R3-3-03 (Supp. 91-4). New Section adopted by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

**R3-3-704. Labels**

- A. Within two weeks of a pesticide label revision, a registrant shall provide the Department with two pesticide labels that have been revised since the pesticide was originally registered.
- B. The Associate Director may request a copy of a pesticide label if the label on file is older than three years.

**ALLOWED DEVIATIONS OF ANALYTICAL RESULTS FROM LABEL CLAIMS FOR ACTIVE INGREDIENTS IN PESTICIDE FORMULATIONS**

Claim %	HCV <sup>(1)</sup> %	HSD <sup>(2)</sup>	Allowed Deviations for “uniform” <sup>(3)</sup> samples		Allowed Deviations for “non-uniform” <sup>(4)</sup> samples	
			Claim - 3HSD	Claim + 6HSD	Claim - 4HSD	Claim + 8HSD
0.001	11.31	0.00011	0.00066	0.00168	0.00055	0.00191
0.005	8.88	0.00044	0.0037	0.0077	0.0032	0.0086
0.008	8.27	0.00066	0.0060	0.0120	0.0054	0.0133
0.01	8.00	0.00080	0.0076	0.0148	0.0068	0.0164
0.03	6.78	0.0020	0.024	0.042	0.022	0.046
0.06	6.11	0.0037	0.049	0.082	0.045	0.089
0.10	5.66	0.0057	0.083	0.13	0.077	0.145
0.40	4.59	0.018	0.34	0.51	0.33	0.55
0.80	4.14	0.033	0.70	1.00	0.67	1.06
1.0	4.00	0.040	0.88	1.24	0.84	1.32
2.0	3.60	0.072	1.78	2.43	1.71	2.58
4.0	3.25	0.13	3.61	4.78	3.48	5.04
6.0	3.05	0.18	5.45	7.10	5.27	7.47
10.0	2.83	0.28	9.15	11.70	8.87	12.26
15.0	2.66	0.40	13.80	17.39	13.40	18.19
20.0	2.55	0.51	18.47	23.06	17.96	24.08
25.0	2.46	0.62	23.15	28.70	22.54	29.93
30.0	2.40	0.72	27.84	34.32	27.12	35.75
35.0	2.34	0.82	32.54	39.92	31.72	41.56
40.0	2.30	0.92	37.25	45.51	36.33	47.35
45.0	2.26	1.01	41.96	51.09	40.94	53.12
50.0	2.22	1.11	46.67	56.66	45.56	58.88
60.0	2.16	1.30	56.11	67.78	54.82	70.37
70.0	2.11	1.48	65.57	78.86	64.09	81.82
80.0	2.07	1.65	75.04	89.93	73.38	93.24
90.0	2.03	1.83	84.51	100.97	82.68	104.63

(1) HCV(%) = Horwitz Coefficients of Variation =  $2 (1 - 0.5 \log (\text{claim } \%/100))$

(2) HSD = Horwitz Standard Deviation =  $(\text{Claim } \%) \text{ HCV } \%/100$

(3) “Uniform” samples are homogeneous products which can be analyzed by established procedures. In most cases, validated analytical methods are available for these samples.

(4) “Non-uniform” samples are non-homogeneous samples or products which are difficult to sample or subsample. These products may not be uniformly mixed or packaged and include some special formulations like natural products. These types of samples include fertilizer containing pesticides, pesticides in pressurized containers, strips, plastic bands, collars, grain and other carriers. Natural product formulations such as rotenone and pyrethrin are also included in this group. When it is necessary to use methods which are not validated for accuracy, precision, and reproducibility in a specific matrix, the “non-uniform” guidelines may be used for allowed deviations. States may use judgment in placing a sample into the “uniform” or “non-uniform” category.

**Historical Note**

Former rule IV; Former Section R3-3-04 renumbered and amended as Section R3-3-01 effective January 18, 1978 (Supp. 78-1).

Section R3-3-704 renumbered from R3-3-04 (Supp. 91-4). New Section adopted by final rulemaking at 5 A.A.R. 4419, effective

November 3, 1999 (Supp. 99-4).

**R3-3-705. Renumbered****Historical Note**

Former rule V; Repealed effective January 18, 1978 (Supp. 78-1). Section R3-3-705 renumbered from R3-3-05 (Supp. 91-4).

**R3-3-706. Renumbered****Historical Note**

Former rule VI; Repealed effective January 18, 1978 (Supp. 78-1). Section R3-3-706 renumbered from R3-3-06 (Supp. 91-4).

**R3-3-707. Renumbered****Historical Note**

Section R3-3-707 renumbered from R3-3-07 (Supp. 91-4).

**R3-3-708. Renumbered****Historical Note**

Former rule VIII; Repealed effective January 18, 1978 (Supp. 78-1). Section R3-3-708 renumbered from R3-3-08 (Supp. 91-4).

**R3-3-709. Renumbered****Historical Note**

Former Administrative rule 1; Repealed effective January 18, 1978 (Supp. 78-1). Section R3-3-709 renumbered from R3-3-09 (Supp. 91-4).

**R3-3-710. Renumbered****Historical Note**

Section R3-3-710 renumbered from R3-3-10 (Supp. 91-4).

**R3-3-711. Renumbered****Historical Note**

Adopted effective November 30, 1977 (Supp. 77-6). Former Section R3-3-11 renumbered and amended as Section R3-3-02 effective January 18, 1978 (Supp. 78-1). Section R3-3-711 renumbered from R3-3-11 (Supp. 91-4).

**R3-3-712. Renumbered****Historical Note**

Adopted effective November 30, 1977 (Supp. 77-6). Former Section R3-3-12 renumbered and amended as Section R3-3-02 effective January 18, 1978 (Supp. 78-1). Section R3-3-712 renumbered from R3-3-12 (Supp. 91-4).

**ARTICLE 8. FERTILIZER MATERIALS****R3-3-801. Definitions**

In addition to terms and definitions in the Official Publication, which is incorporated by reference, on file with the Secretary of State, and does not include any later amendments, and the definitions in A.R.S. § 3-262, the following term applies to this Article:

“Official Publication” means the Official Publication of the Association of American Plant Food Control Officials, amended 1999. Copies may be purchased from NC Dept. of Agriculture, 4000 Reedy Creek Road, Raleigh, NC 27607-6468.

**Historical Note**

Former rule I; Former Section R3-3-21 repealed, former

Section R3-3-24 renumbered and amended as Section R3-3-21 effective January 12, 1978 (Supp. 78-1).

Amended effective March 23, 1979 (Supp. 79-2). Section R3-3-801 renumbered from R3-3-21 (Supp. 91-4). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

**R3-3-802. Licensure; Specialty Fertilizer Registration; Fees**

- A.** Commercial fertilizer license. Any person applying for a commercial fertilizer license, under A.R.S. § 3-272, to manufacture or distribute commercial fertilizer, shall provide the following information on the license application provided by the Department with a nonrefundable fee of \$125 for each year of the license:
  1. The following information on the license application provided by the Department:
  2. The name, title, and signature of the applicant;
  3. The date of the application;
  4. The distributor or manufacturer name, mailing address, telephone, and facsimile number;
  5. The Social Security number or tax identification number;
  6. The physical location, telephone, and facsimile number of the distributor or manufacturer, if different than subsection (A)(4);
  7. The name, address, telephone, and facsimile number of the distributor or manufacturer where inspection fees are paid, if different than subsection (A)(4); and
  8. The license time-period option.
- B.** A commercial fertilizer license is nontransferable, expires on June 30, and shall, at the option of the applicant, be valid for one or two years.
- C.** Specialty fertilizer registration.
  1. Any manufacturer or distributor whose name appears on a specialty fertilizer label shall provide the following information to the Department with a nonrefundable fee of \$50 per brand and grade of specialty fertilizer for each year of the registration:
    - a. The name, address, telephone number, and signature of the applicant;
    - b. The name and address of the company on the label;
    - c. The date of the application;
    - d. The grade, brand, and name of the specialty fertilizer;
    - e. The current specialty fertilizer label; and
    - f. The registration time-period option.
  2. A specialty fertilizer registration is nontransferable, expires on June 30, and shall, at the option of the applicant, be valid for one or two years.
  3. If an applicant elects a two-year specialty fertilizer registration, any additional fertilizer registered during that two-year registration shall have the same registration end-date as other fertilizer currently registered by that applicant with the Department.
- D.** During fiscal year 2011, notwithstanding subsection (C)(1), the nonrefundable fee per brand and grade of specialty fertilizer is \$40.

**Historical Note**

Former rule II; Former Section R3-3-22 repealed, former Section R3-3-25 renumbered and amended as Section R3-3-22 effective January 12, 1978 (Supp. 78-1). Section R3-3-802 renumbered from R3-3-22 (Supp. 91-4). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4). Amended by exempt rulemaking at 16 A.A.R. 2026, effective September 21, 2010 (Supp. 10-3).



**R3-3-803. Tonnage Reports; Inspection Fee****A. Quarterly tonnage reports and inspection fee.**

1. The inspection fee for all commercial fertilizers, including specialty fertilizers, sold or distributed in Arizona is 25¢ per ton. The tonnage shall be rounded to the nearest whole ton.
2. Any applicant applying for and receiving a new license after March 15, June 15, September 15, or December 15 is not required to file a quarterly tonnage report for the quarter in which the license application is issued. Any commercial fertilizer distributed in the final two weeks of the initial application quarter shall be included on the next full quarterly report. Any person who distributed commercial fertilizer without a license as required under A.R.S. § 3-2009 shall pay all past due inspection fees and late penalties before a license is issued.
3. Any licensee not estimating annual tonnage shall file the following information on a quarterly statement provided by the Department no later than the last day of January, April, July, and October of each year for the preceding calendar quarter and pay the inspection fees and any penalties, if applicable:
  - a. If the inspection fee is being passed on to the purchaser:
    - i. The assigned number and name of the currently licensed company;
    - ii. The commercial fertilizer by code or grade;
    - iii. The amount of commercial fertilizer in whole tons;
    - iv. The name, title, telephone number, and signature of the licensee or the licensee's authorized representative; and
    - v. The date of the report.
  - b. If the licensee pays tonnage fees for the distribution of a commercial fertilizer:
    - i. The grade;
    - ii. The amount of commercial fertilizer distribution by county;
    - iii. If the commercial fertilizer is dry, whether it is a bulk agricultural product, a bagged agricultural product, or a non-agricultural product;
    - iv. If the commercial fertilizer is liquid, whether it is an agricultural or non-agricultural product;
    - v. The name, title, telephone number, and signature of the licensee or the licensee's authorized representative; and
    - vi. The date of the report.

**B. Estimated tonnage report.** A licensee may estimate the annual fertilizer material tonnage if it is 400 tons or less per year and the licensee does not pass the inspection fee responsibility to the purchaser.

1. The licensee shall submit the estimated annual commercial fertilizer tonnage report to the Department with the annual inspection fee no later than July 31 of each year. The tonnage report shall contain:
  - a. The estimated tonnage of commercial fertilizer to be distributed;
  - b. The grade;
  - c. The amount of distribution by county;
  - d. If the commercial fertilizer is dry, whether it is a bulk agricultural product, a bagged agricultural product, or a non-agricultural product;
  - e. If the commercial fertilizer is liquid, whether it is an agricultural or non-agricultural product;

- f. The name, title, telephone number, and signature of the licensee or the licensee's authorized representative; and
- g. The date of the report.

2. The licensee shall pay at least \$8 per year. Adjustments for overestimates or underestimates for a licensee with 400 tons or less of actual tonnage sales shall be made on the next year's estimating form. Adjustments of underestimates of licensees with actual tonnage sales more than 400 tons shall be made no later than July 31 of each year.
3. The licensee shall verify the accuracy of the previous year's tonnage estimates to actual tonnage sales and submit the tonnage verification no later than July 31 of each year.
4. Overestimation of tonnage.
  - a. The Department shall not refund any inspection fee based on an overestimation if the licensee does not re-license in the subsequent year;
  - b. If a licensee applies for a license in the subsequent year, the Department shall apply any overestimation to the subsequent year's tonnage fees.

**C. During fiscal year 2011, notwithstanding subsection (A)(1), the inspection fee for all commercial fertilizers, including specialty fertilizers, sold or distributed in Arizona is \$0.10 per ton. The tonnage must be rounded to the nearest whole ton.****Historical Note**

Former rule III; Former Section R3-3-23 repealed, former Section R3-3-32 renumbered as Section R3-3-23 effective January 12, 1978 (Supp. 78-1). Amended effective March 23, 1979 (Supp. 79-2). Section R3-3-803 renumbered from R3-3-23 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2). New Section adopted by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4). Amended by exempt rulemaking at 16 A.A.R. 2026, effective September 21, 2010 (Supp. 10-3).

**R3-3-804. General Provisions****A. Labeling.**

1. The grade numbers for primary nutrients that accompany the brand name of a commercial fertilizer shall be listed on the label in the following order: total nitrogen, available phosphate, and soluble potash. Other guaranteed nutrient values shall not be included with the grade numbers unless:
  - a. The guaranteed nutrient value follows the grade number;
  - b. The guaranteed nutrient value is immediately preceded with the name of the claimed nutrient to which it refers in the guaranteed analysis; and
  - c. The name printed on the label is as prominent as the numbers.
2. The materials from which claimed nutrients are derived shall be listed on the label.
3. No grade is required for fertilizer materials that claim no primary plant nutrient (i.e., 0-0-0).
4. All guaranteed nutrients, except phosphate and potash, shall be stated in terms of elements.
5. The label shall include the brand name of a fertilizer. Misleading or confusing numerals shall not be used in the brand name on the label.
6. Fertilizer material not defined in the Official Publication may be used as fertilizer material if a definition or other method of analysis and agronomic data for fertilizer material is approved by the Associate Director.

**B. Claims and misleading statements.**

1. Any nutrient claimed as a fertilizer material shall be accompanied by a minimum guarantee for the nutrient. An ingredient shall not be claimed as a nutrient unless a laboratory method of analysis approved by the Associate Director exists for the nutrient.
  2. Scientific data supporting the claim of improved efficacy or increased productivity shall be made available for inspection to the Associate Director upon request.
  3. If the name of a fertilizer material is used as part of a fertilizer brand name, such as blood, bone or fish, the guaranteed nutrients shall be derived from or supplied entirely by the named fertilizer material.
  4. Fertilizer material subject to this Article and applicable laws shall not bear false or misleading statements.
- C. Deficiencies.**
1. The value of a nutrient deficiency in a fertilizer material shall take into account total value of all nutrients at the guaranteed level and the price of the fertilizer material at the time of sale.
  2. A deficiency in an official sample of mixed fertilizer resulting from non-uniformity is not distinguishable from a deficiency due to actual plant nutrient shortage and is subject to official action.
- D.** All investigational allowances shall be conducted as prescribed in the Official Publication, which is incorporated by reference, on file with the Office of the Secretary of State, and does not include any later amendments or editions.
- E.** Leased fertilizer material storage containers shall be clearly labeled with the following:
1. Grade numbers;
  2. Brand name, if applicable; and
  3. The statement, “Leased by (Name and address of lessor) to (Name and address of lessee).”
- C.** During fiscal year 2011, notwithstanding subsection (A)(1), the inspection fee for all commercial fertilizers, including specialty fertilizers, sold or distributed in Arizona is \$0.10 per ton. The tonnage must be rounded to the nearest whole ton.

**Historical Note**

Former rule IV; Former Section R3-3-24 renumbered and amended as Section R3-3-21, new Section R3-3-24 adopted effective January 12, 1978 (Supp. 78-1). Section R3-3-804 renumbered from R3-3-24 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2). New Section adopted by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

**R3-3-805. Repealed****Historical Note**

Former rule V; Former Section R3-3-25 renumbered and amended as Section R3-3-22, new Section R3-3-25 adopted effective January 12, 1978 (Supp. 78-1). Section R3-3-805 renumbered from R3-3-25 (Supp. 91-4). Section repealed by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

**R3-3-806. Repealed****Historical Note**

Former rule VI; Former Section R3-3-26 repealed, new Section R3-3-26 adopted effective January 12, 1978 (Supp. 78-1). Section R3-3-806 renumbered from R3-3-26 (Supp. 91-4). Section repealed by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

**R3-3-807. Repealed****Historical Note**

Former rule VII; Former Section R3-3-27 repealed, new

Section R3-3-27 adopted effective January 12, 1978 (Supp. 78-1). Section R3-3-807 renumbered from R3-3-27 (Supp. 91-4). Section repealed by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

**R3-3-808. Repealed****Historical Note**

Former rule VIII; Former Section R3-3-28 repealed effective January 12, 1978 (Supp. 78-1). New Section R3-3-28 adopted effective March 23, 1979 (Supp. 79-2). Section R3-3-808 renumbered from R3-3-28 (Supp. 91-4). Section repealed by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

**R3-3-809. Repealed****Historical Note**

Former rule IX; Former Section R3-3-29 repealed effective January 12, 1978 (Supp. 1). New Section R3-3-29 adopted effective March 23, 1979 (Supp. 79-2). Section R3-3-809 renumbered from R3-3-29 (Supp. 91-4). Section repealed by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

**R3-3-810. Repealed****Historical Note**

Former rule X; Former Section R3-3-30 repealed effective January 12, 1978 (Supp. 78-1). New Section R3-3-30 adopted effective March 23, 1979 (Supp. 79-2). Section R3-3-810 renumbered from R3-3-30 (Supp. 91-4). Section repealed by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

**R3-3-811. Repealed****Historical Note**

Former Administrative rule 1; Amended effective December 14, 1979 (Supp. 79-6). Section R3-3-811 renumbered from R3-3-31 (Supp. 91-4). Section repealed by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

**R3-3-812. Renumbered****Historical Note**

Adopted effective August 31, 1977 (Supp. 77-4). Former Section R3-3-32 renumbered as Section R3-3-23 effective January 12, 1978 (Supp. 78-1). Section R3-3-812 renumbered from R3-3-32 (Supp. 91-4).

**ARTICLE 9. COMMERCIAL FEED****R3-3-901. Definitions**

In addition to the feed ingredient definitions and feed terms in the Official Publication, which is incorporated by reference, on file with the Secretary of State, and does not contain any later amendments or editions, and the definitions in A.R.S. § 3-2601, the following terms apply to this Article:

1. “Commercial feed” means all materials, except whole seeds unmixed or physically altered entire unmixed seeds, that are distributed for use as feed or for mixing in feed. Commercial feed includes raw agricultural commodities distributed for use as feed or for mixing in feed when the commodities are adulterated within the meaning of section 3-2611. A.R.S. § 3-2601(2)
2. “Lot” means any distinct, describable, and measurable quantity that contains no more than 100 tons.
3. “Official Publication” means the Official Publication of the Association of American Feed Control Officials, effective January 1, 1999. Copies may be purchased from

the Assistant Secretary/Treasurer, P.O. Box 478, Oxford, IN 47971.

#### Historical Note

Former rule I; Former Section R3-3-41 renumbered and amended as Section R3-3-42, new Section R3-3-41 adopted effective January 12, 1978 (Supp. 78-1). Amended effective April 13, 1978 (Supp. 78-2). Amended effective February 3, 1981 (Supp. 81-1). Section R3-3-901 renumbered from R3-3-41 (Supp. 91-4). Amended by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

#### R3-3-902. Licensure; Fee; Ammoniation

- A.** Any person applying for a commercial feed license, under A.R.S. § 3-2609, to manufacture or distribute commercial feed shall provide the following information and a nonrefundable fee of \$10 for each year of the license:
1. A copy of the label of each commercial feed product intended for distribution within the state or not already filed by the applicant with the Department; and
  2. The following information on the license application provided by the Department:
    - a. The name, title, and signature of the applicant;
    - b. The distributor or manufacturer name, mailing address, telephone, and facsimile number;
    - c. The social security number or tax identification number;
    - d. The date of the application;
    - e. The physical location, telephone, and facsimile number of the distributor or manufacturer, if different than subsection (A)(2)(b);
    - f. The name, address, telephone, and facsimile number of the distributor or manufacturer where inspection fees are paid, if different than subsection (A)(2)(b); and
    - g. The license time-period option.
- B.** A commercial feed license is nontransferable, expires on June 30, and shall, at the option of the applicant, be valid for one or two years.
- C.** Ammoniation. Any person who ammoniates feed or feed material for distribution or sale shall obtain a commercial feed license and is responsible for all testing, labeling, or other requirements pertaining to commercial feed, unless the feed is ammoniated on the premises of the person using the ammoniated feed.

#### Historical Note

Former rule II; Former Section R3-3-42 renumbered and amended as Section R3-3-43, former Section R3-3-41 renumbered and amended as Section R3-3-42 effective January 12, 1978 (Supp. 78-1). Section R3-3-902 renumbered from R3-3-42 (Supp. 91-4). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

#### R3-3-903. Tonnage Reports; Inspection Fee

- A.** Quarterly tonnage report and inspection fee.
1. The inspection fee for all commercial feed sold or distributed in Arizona is 20¢ per ton. The tonnage shall be rounded to the nearest whole ton.
  2. Any applicant applying for and receiving a new license after March 15, June 15, September 15, or December 15 is not required to file a quarterly tonnage report for the quarter in which the license application is issued. Any commercial feed distributed in the final two weeks of the initial application quarter shall be included on the next full quarterly report. Any person who distributed com-

mercial feed without a license as required under A.R.S. § 3-2609 shall pay all past due inspection fees and late penalties before a license is issued.

3. Any licensee not estimating annual tonnage shall file the following information on a quarterly statement provided by the Department no later than the last day of January, April, July, and October of each year for the preceding calendar quarter and pay the inspection fees and any penalties, if applicable:
  - a. If the inspection fee is being passed on to the purchaser:
    - i. The assigned number and name of the currently licensed company;
    - ii. The amount of commercial feed in whole tons and by type, indicating whether the commercial feed is bagged or bulk;
    - iii. The name, title, telephone number, and signature of the licensee or the licensee's authorized representative; and
    - iv. The date of the report.
  - b. If the licensee pays a tonnage fee for the distribution of a commercial feed:
    - i. The amount of commercial feed in whole tons and by type, indicating whether the commercial feed is bagged or bulk;
    - ii. The name, title, telephone number, and signature of the licensee or the licensee's authorized representative; and
    - iii. The date of the report.
- B.** Estimated tonnage report. A licensee may estimate the annual commercial feed tonnage if it is 400 tons or less per year and the licensee does not pass the inspection fee responsibility to the purchaser.
  1. The licensee shall submit the estimated annual commercial feed tonnage report to the Department with the annual inspection fee no later than July 31 of each year. The tonnage report shall contain:
    - a. The estimated tonnage of commercial feed to be distributed;
    - b. The amount of commercial feed in whole tons and by type, indicating whether the commercial feed is bagged or bulk;
    - c. The name, title, telephone number, and signature of the licensee or the licensee's authorized representative; and
    - d. The date of the report.
  2. The licensee shall pay at least \$8 per year. Adjustments for overestimates or underestimates for licensees with 400 tons or less of actual tonnage sales shall be made on the next year's estimating form. Adjustments of underestimates of licensees with actual tonnage sales more than 400 tons shall be made no later than July 31 of each year.
  3. The licensee shall verify the accuracy of the previous year's tonnage estimates to actual tonnage sales and submit the tonnage verification no later than July 31 of each year.
  4. Overestimation of tonnage.
    - a. The Department shall not refund any inspection fee based on an overestimation if the licensee does not re-license in the subsequent year;
    - b. If a licensee applies for a license in the subsequent year, the Department shall apply any overestimation to the subsequent year's tonnage fees.

#### Historical Note

Former rule III; Former Section R3-3-43 renumbered and amended as Section R3-3-44, former Section R3-3-42

renumbered and amended as Section R3-3-43 effective January 12, 1978 (Supp. 78-1). Amended effective February 3, 1981 (Supp. 81-1). Section R3-3-903 renumbered from R3-3-43 (Supp. 91-4), Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

**R3-3-904. Milk and Milk Products Decharacterized for Use as Commercial Feed**

- A.** A person shall not sell, offer for sale, store, transport, receive, trade or barter, any milk or milk product for commercial feed unless the milk or milk product:
1. Meets Grade A milk standards as specified in A.A.C. R3-2-802;
  2. Is produced as prescribed in A.A.C. R3-2-805; or
  3. Is decharacterized with food coloring approved by the Federal Food, Drug, and Cosmetic Act and the decharacterization:
    - a. Does not affect nutritive value; and
    - b. Matches the color on the Color Requirement card, incorporated by reference and on file with the Office of the Secretary of State. Any person decharacterizing milk and milk products may obtain a Color Requirement card from the Environmental Services Division Office, Arizona Department of Agriculture, 1688 West Adams, Phoenix, Arizona 85007.
- B.** Labeling. All milk or milk product commercial feed labels shall be approved by the Associate Director before use.
1. The principal display panel of a decharacterized milk or milk product commercial feed container shall prominently state "WARNING - NOT FOR HUMAN CONSUMPTION" in capital letters. The letters shall be at least 1/4 inch on containers of 8 oz. or less and at least 1/2 inch on all other containers.
  2. The container label shall also bear the statement "This product has not been pasteurized and may contain harmful bacteria" in letters at least 1/8 inch in height.
- C.** Milk or milk products intended for commercial feed shall not be displayed, sold, or stored at premises where food is sold or prepared for human consumption, unless it meets Grade A standards or is decharacterized and clearly identified "Not for Human Consumption."

**Historical Note**

Former rule IV; Former Section R3-3-44 repealed, former Section R3-3-43 renumbered and amended as Section R3-3-44 effective January 12, 1978 (Supp. 78-1). Amended effective February 3, 1981 (Supp. 81-1). Amended effective July 20, 1984 (Supp. 84-4). Section R3-3-904 renumbered from R3-3-44 (Supp. 91-4). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

**R3-3-905. Labeling; Precautionary Statements**

- A.** Ingredient statement.
1. Each ingredient or collective term for the grouping of ingredients not defined in the Official Publication shall be a common name.
  2. All labels for commercial feed and customer-formula feed containing cottonseed or a cottonseed product shall separately list the ingredients in the ingredient statement in addition to any collective term listed.
- B.** Labeling and expression of guarantees.
1. All labeling and expression of guarantees shall comply with the commercial feed-labeling guide, medicated commercial feed labeling, and expression of guarantees requirements prescribed in the Official Publication, which is incorporated by reference, on file with the Office

of the Secretary of State, and does not include any later amendments or editions.

2. The label shall include the brand or product name, and shall indicate the intended use of the feed. The label shall not contain any false or misleading statements.
3. Directions for use and precautionary statements.
  - a. All labeling of whole cottonseed, commercial feed, and customer-formula feed containing any additive (including drugs, special purpose additives, or non-nutritive additives) shall clearly state its safe and effective use. The directions shall not require special knowledge of the purpose and use of the feed.
  - b. Directions for use and precautionary statements shall be provided for feed containing non-protein nitrogen as specified in R3-3-906.
  - c. All whole cottonseed or commercial feed, and customer-formula feed delivered to the consumer shall be accompanied by an accurate label, invoice, weight ticket or other documentation approved by the Department. The documentation shall be left with the consumer and shall contain the following:
    - i. "This feed contains 20 or less ppb aflatoxin and may be fed to any animal;" or
    - ii. "WARNING: This feed contains more than 20 ppb but not more than 300 ppb aflatoxin and shall not be fed to lactating animals whose milk is intended for human consumption."
  - d. A distributor of whole cottonseed or cottonseed product intended for further processing, planting seed, or for any other purpose approved by the Director, shall document in writing to the Department that:
    - i. The lot of whole cottonseed or cottonseed product will not be used as commercial feed until the lot is tested and compliant with all state laws; and
    - ii. The documentation prescribed in subsection (B)(3)(c) is not required.
  - e. The distributor shall maintain the documentation for one year.
  - f. The lot of whole cottonseed or cottonseed product shall be labeled as follows: "WARNING: This material has not been tested for aflatoxin and shall not be distributed for feed or fed to any animal until tested and brought into full compliance with all state laws."

**Historical Note**

Former rule V; Former Section R3-3-45 repealed, new Section R3-3-45 adopted effective January 12, 1978 (Supp. 78-1). Amended effective February 3, 1981 (Supp. 81-1). Amended effective July 20, 1984 (Supp. 84-4). Section R3-3-905 renumbered from R3-3-45 (Supp. 91-4). Amended by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

**R3-3-906. Non-protein Nitrogen**

- A.** Urea and other non-protein nitrogen products are acceptable ingredients in commercial feed for ruminant animals as a source of equivalent crude protein.
1. If commercial feed contains more than 8.75% of equivalent crude protein from all forms of non-protein nitrogen or if the equivalent crude protein from all forms of non-protein nitrogen exceeds 1/3 of the total crude protein, the label shall include directions for the safe use of the feed

and the following precautionary statement: “Caution: Use as Directed.”

2. The directions for use and the precautionary statement shall be printed and placed on the label so that an ordinary person under customary conditions of purchase and use can read and understand the directions.
- B.** Non-protein nitrogen products are acceptable ingredients in commercial feeds distributed to non-ruminant animals as a source of nutrients other than equivalent crude protein. The maximum equivalent crude protein from non-protein nitrogen sources in non-ruminant rations shall not exceed 1.25% of the total daily ration.
- C.** A medicated feed label shall contain feeding directions or precautionary statements, or both, with sufficient information to ensure that the feed is properly used.

#### Historical Note

Former rule VI; Former Section R3-3-46 repealed, new Section R3-3-46 adopted effective January 12, 1978 (Supp. 78-1). Amended effective January 29, 1979 (Supp. 79-1). Amended effective February 3, 1981 (Supp. 81-1). Amended effective July 20, 1984 (Supp. 84-4). Section R3-3-906 renumbered from R3-3-46 (Supp. 91-4). Amended by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

#### R3-3-907. Repealed

#### Historical Note

Former rule VII; Former Section R3-3-47 repealed, former Section R3-3-54 renumbered as Section R3-3-47 effective January 12, 1978 (Supp. 78-1). Amended by adding subsection (F) effective July 20, 1984 (Supp. 84-4). Section R3-3-907 renumbered from R3-3-47 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

#### R3-3-908. Repealed

#### Historical Note

Former rule VIII; Former Section R3-3-48 repealed, new Section R3-3-48 adopted effective January 12, 1978 (Supp. 78-1). Amended for spelling correction, subsection (E), effective January 29, 1979 (Supp. 79-1). Amended by adding subsection (J) effective July 20, 1984 (Supp. 84-4). Section R3-3-908 renumbered from R3-3-48 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

#### R3-3-909. Repealed

#### Historical Note

Former rule IX; Former Section R3-3-49 repealed, new Section R3-3-49 adopted effective Jan. 12, 1978 (Supp. 78-1). Amended by adding subsection (D) effective February 3, 1981 (Supp. 81-1). Amended effective July 20, 1984 (Supp. 84-4). Section R3-3-909 renumbered from R3-3-49 (Supp. 91-4). Section repealed by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

#### R3-3-910. Drug and Feed Additives

- A.** Drug and feed additive approval.
1. Before a label is approved by the Associate Director for commercial feed containing additives (including drugs, other special purpose additives, or non-nutritive additives), the distributor may be required to submit evidence demonstrating the safety and efficacy of the commercial feed when used according to the label directions if the material is not recognized as a commercial feed.

2. If a complaint has been filed with the Department, the distributor may be required to submit evidence demonstrating the safety and efficacy of the commercial feed when used according to the label directions.

- B.** Evidence of safety and efficacy of a commercial feed may be:
1. If the commercial feed containing additives conforms to the requirements of “Food Additives Permitted in Feed and Drinking” in the Official Publication, which is incorporated by reference, on file with the Office of the Secretary of State, and does not include any later amendments or editions; or
  2. If the commercial feed is a substance generally recognized as safe and is defined in the Official Publication or listed as a “Substances Generally Recognized as Safe in Animal Feeds” in the Official Publication, which is incorporated by reference, on file with the Office of the Secretary of State, and does not include any later amendments or editions.

#### Historical Note

Former rule X; Former Section R3-3-50 repealed, new Section 3-3-50 adopted effective January 12, 1978 (Supp. 78-1). Amended effective July 20, 1984 (Supp. 84-4). Section R3-3-910 renumbered from R3-3-50 (Supp. 91-4). Amended by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

#### R3-3-911. Repealed

#### Historical Note

Former rule XI; Former Section R3-3-51 repealed, new Section R3-3-51 adopted effective January 12, 1978 (Supp. 78-1). Amended effective July 20, 1984 (Supp. 84-4). Section R3-3-911 renumbered from R3-3-51 (Supp. 91-4). Section repealed by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

#### R3-3-912. Repealed

#### Historical Note

Former rule XII; Former Section R3-3-52 repealed. New Section R3-3-52 adopted effective January 12, 1978 (Supp. 78-1). Section R3-3-912 renumbered from R3-3-52 (Supp. 91-4). Section repealed by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

#### R3-3-913. Sampling Methods

- A.** Sampling commercial feed. The methods of sampling commercial feed shall comply with the procedures established in 4.1.01, Official Method 965.16 Sampling of Animal Feed, in the “Official Methods of Analysis of AOAC International,” 16th Edition, 1997, which is incorporated by reference, on file with the Office of the Secretary of State, and does not include any later amendments or editions of the incorporated matter. Copies may be purchased from AOAC International, 481 North Frederick Avenue, Suite 500, Gaithersburg, Maryland 20877-2417.
- B.** Sampling whole cottonseed.
1. Sample size - A gross sample not less than 30 pounds shall be taken from a lot. The gross sample shall consist of not less than 10 probes evenly spaced or 10 stream sample passes taken following the procedure prescribed in subsection (B)(4)(b).
  2. Sample container - The sample container shall consist of a clean cloth, burlap, or paper or plastic mesh bags. The sample shall be delivered to the laboratory within 48 hours (excluding weekends and holidays), stored in a dry, well-aerated location, and the results of the analysis

reported by a certified laboratory within five working days from receipt of sample.

3. Sampling equipment. Sampling equipment includes:

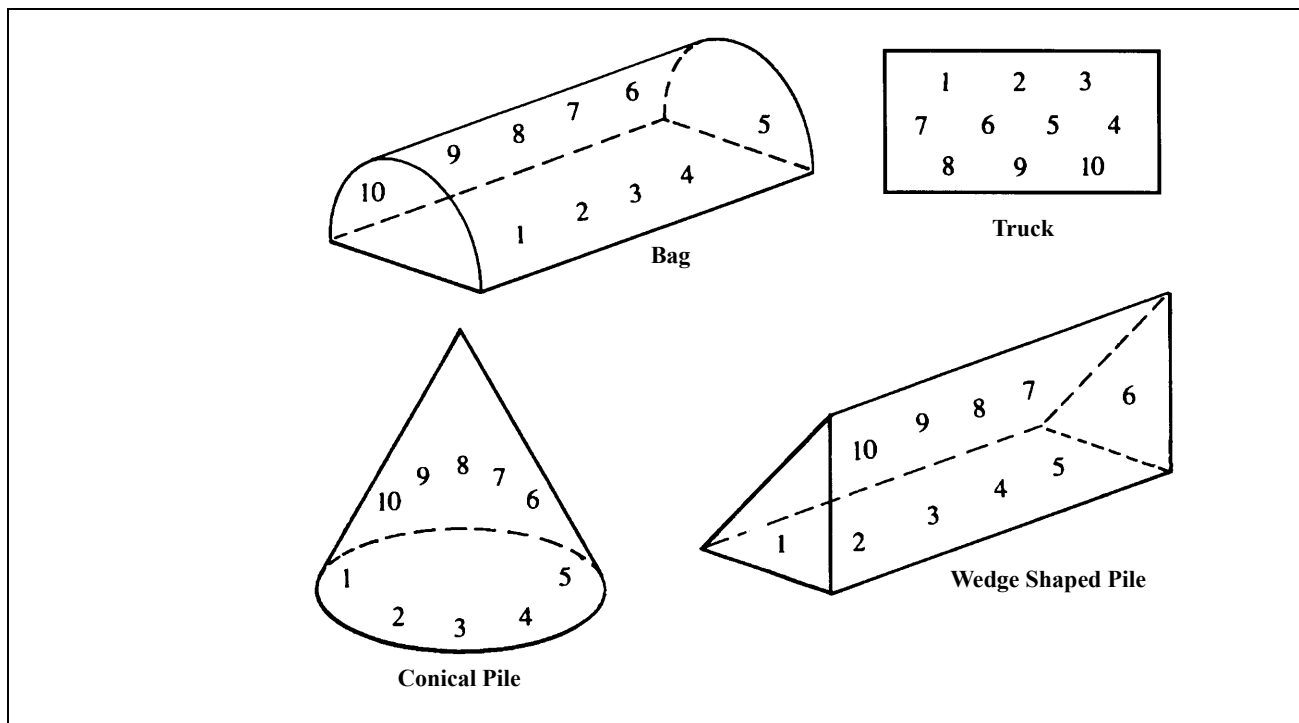
- a. Scale, graduated in one-half pound increments, and any of the following:
- b. Corkscrew trier, approximately 50 inches in length and capable of taking at least a three-pound sample,
- c. Pneumatic probe sampler such as the "Probe-a-Vac" pneumatic sampler,
- d. Stream sampler: A container at least 8 inches x 5 inches x 5 1/2 inches attached to a pole that enables the sampler to pass the container through falling streams of cottonseed,

- e. Automatic stream samplers or other sampling equipment if scientific data documenting its ability to obtain a representative sample is approved by the Associate Director,

- f. Shop-vac 1.5 hp vacuum system capable of holding 12 gallons, modified to hold a 15 ft. length of vacuum hose attached to a 13 ft. length of 3/4 inch PVC pipe.

4. Sampling procedure.

- a. If a corkscrew trier or Probe-a-Vac sampler is used, at least 10 evenly spaced probes shall be taken per lot. The probed samples shall be taken according to the following patterns:



The probes shall penetrate at least 50 inches, and at least two of the 10 probes per sample shall reach the bottom of the lot being sampled. The probe shall be inserted at an angle perpendicular to the face of the lot.

- b. If a shop-vac system is used, at least 15 evenly spaced probes shall be taken per lot. The sampling patterns specified in subsection (B)(4)(a) shall be modified to allow for the additional samples.
- c. Stream samples shall be taken while the cottonseed is being discharged, if there is a uniform discharge flow over a set period of time. The sample shall consist of at least 10 evenly timed and spaced passes through the discharge flow, resulting in the sample size specified in subsection (B)(1).
- d. The gross sample shall be weighed to the nearest 1/2 pound but shall not be reduced in size. If any gross sample does not meet the minimum 30 pound weight, that gross sample shall be discarded and the sampling procedure repeated from the beginning. If the shop-vac gross sample is not at least 10 pounds,

the sample shall be discarded and the sampling procedure repeated from the beginning.

- e. The Associate Director shall approve any modified sampling procedure if scientific data is provided that documents that representative samples will be obtained through the modified sampling procedure.

**Historical Note**

Former Administrative Rule 1. Former Section R3-3-53 repealed effective January 12, 1978 (Supp. 78-1). New Section R3-3-53 adopted as an emergency effective October 10, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). Amended as an emergency effective October 11, 1978, pursuant to A. R. S. § 41-1003, valid for only 90 days (Supp. 78-5). New Section R3-3-53 adopted effective February 3, 1981 (Supp. 81-1). Amended effective July 20, 1984 (Supp. 84-4). Section R3-3-913 renumbered from R3-3-53 (Supp. 91-4). Patterns omitted in Supp. 98-4 under subsection (C)(4)(a) have been corrected to reflect filed rules (Supp. 99-1). Amended by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

**R3-3-914. Repealed****Historical Note**

Adopted effective August 31, 1977 (Supp. 77-4). Former Section R3-3-54 renumbered as Section R3-3-47 effective January 12, 1978 (Supp. 78-1). New Section R3-3-54 adopted as an emergency effective October 10, 1978, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 78-5). New Section R3-3-54 adopted effective February 3, 1981 (Supp. 81-1). Amended effective July 20, 1984 (Supp. 84-4). Section R3-3-914 renumbered from R3-3-54 (Supp. 91-4). Section repealed by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

**R3-3-915. Repealed****Historical Note**

Adopted effective December 14, 1979 (Supp. 79-6). Section R3-3-915 renumbered from R3-3-55 (Supp. 91-4). Section repealed by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

**R3-3-916. Repealed****Historical Note**

Adopted effective July 20, 1994 (Supp. 84-4). Section R3-3-916 renumbered from R3-3-56 (Supp. 91-4). Section repealed by final rulemaking at 5 A.A.R. 4419, effective November 3, 1999 (Supp. 99-4).

**ARTICLE 10. AGRICULTURAL SAFETY****R3-3-1001. Definitions**

In addition to the definitions set forth in A.R.S. § 3-3101 the following terms apply to this Article:

1. “Agricultural emergency” means a sudden occurrence or set of circumstances that:
  - a. An agricultural employer could not have anticipated and over which the agricultural employer has no control,
  - b. Requires entry into a treated area during a restricted-entry interval, and
  - c. No alternative practices would prevent or mitigate a substantial economic loss.
2. “Agricultural employer” means any person, including a farm labor contractor, who hires or contracts for the services of workers for any type of compensation, to perform activities related to the production of agricultural plants, or any person who is an owner of, or is responsible for, the management or condition of an agricultural establishment that uses agricultural workers.
3. “Agricultural establishment” means any farm, forest, nursery, or greenhouse using pesticide products that are required by label to be used in accordance with the federal worker protection standards. An establishment is exempt from the requirements of this Article if the establishment uses only products that do not have a federal worker protection statement on the label.
4. “Agricultural plant” means any plant grown or maintained for commercial or research purposes and includes:
  - a. Food, feed, and fiber plants;
  - b. Trees;
  - c. Turfgrass;
  - d. Flowers, shrubs;
  - e. Ornamentals; and
  - f. Seedlings.
5. “Chemigation” means the application of pesticides through irrigation systems.
6. “Consultation” means an on-site visit by, or a response to an inquiry from, the Agricultural Consulting and Training program personnel, pursuant to A.R.S. § 3-109.01, to review agricultural practices and obtain documented non-regulatory advice to help ensure compliance with the issues addressed.
7. “*De minimis violation*” means a condition or practice which, although undesirable, has no direct or immediate relationship to safety or health (A.R.S. § 3-3101(2)).
8. “Early entry” means any worker or handler entering a treated area after a pesticide is applied to a location on the agricultural establishment and before the expiration of the restricted-entry interval.
9. “Farm labor contractor” means any person who hires or contracts for the services of workers for any type of compensation, to perform activities related to the production of agricultural plants, but does not own or is not responsible for, the management or condition of an agricultural establishment.
10. “Flagger” means a person who indicates an aircraft spray swath width from the ground.
11. “Gravity based penalty” means an unadjusted penalty calculated for each violation, or combined or grouped violations, by adding the gravity factor to the other penalty factors.
12. “Handler” means any person, including a self-employed person:
  - a. Who is employed for any type of compensation by an agricultural establishment or commercial pesticide handling establishment to which this Article applies and who does any of the following:
    - i. Mixing, loading, transferring, or applying pesticides;
    - ii. Disposing of pesticides, or non-triple rinsed or equivalent pesticide containers;
    - iii. Handling open containers of pesticides;
    - iv. Acting as a flagger;
    - v. Cleaning, adjusting, handling, or repairing any part of mixing, loading, or application equipment that may contain pesticide residue;
    - vi. Assisting with the application of pesticides;
    - vii. Entering a greenhouse or other enclosed area after the pesticide application and before either the inhalation exposure level listed in the labeling is reached or any of the ventilation criteria in R3-3-1002 or in the labeling has been met to operate ventilation equipment, adjust or remove coverings used in fumigation, or monitor air levels.
    - viii. Entering a treated area outdoors after pesticide application of any soil fumigant to adjust or remove soil coverings.
    - ix. Performing tasks as a pest control advisor during any pesticide application.
  - b. The term handler does not include:
    - i. Any person who handles only pesticide containers that are emptied or cleaned according to pesticide product labeling instructions or, in the absence of labeling instructions, are triple-rinsed or its equivalent;
    - ii. Any person who handles only pesticide containers that are unopened; or
    - iii. Any person who repairs, cleans, or adjusts the pesticide application equipment at an equipment maintenance facility, after the equipment is decontaminated, and is not an employee of the handler employer.

13. "Handler employer" means any person who is self-employed as a handler or who employs a handler, for any type of compensation.
14. "Nonserious violation" means a condition or practice in a place of employment which does not constitute a serious violation but which violates a standard or rule and has a direct or immediate relationship to safety or health, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the condition or practice (A.R.S. § 3-3101(6)).
15. "Personal protective equipment" means devices and apparel that are worn to protect the body from contact with pesticides or pesticide residues, including coveralls, chemical-resistant suits, chemical-resistant gloves, chemical-resistant footwear, respiratory protection devices, chemical-resistant aprons, chemical-resistant headgear, and protective eyewear.
16. "Pest control advisor" means a crop advisor, as defined in 40 CFR 170, who assesses pest numbers or damage, pesticide distributions, or the status or requirements to sustain the agricultural plants. The term does not include a person who performs hand-labor tasks or handling activities.
17. "Pesticide" means:
  - (a) any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest.
  - (b) any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant (A.R.S. § 3-341(21)).
18. "Restricted-entry interval" means the time after the completion of a pesticide application during which entry into a treated area is restricted as indicated by the pesticide product label.
19. "Restricted use pesticide" means a pesticide classified as such by the United States Environmental Protection Agency (A.R.S. § 3-361(8)).
20. "Serious violation" means a condition or practice in a place of agricultural employment which violates a standard or rule or section 3-3104, subsection (A) and produces a substantial probability that death or serious physical harm could result, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of such condition or practice (A.R.S. § 3-3101(10)).
21. "Substantial economic loss" means a loss in yield greater than expected based on the experience and fluctuations of crop yields in previous years. Only losses caused by an agricultural emergency specific to the affected site and geographic area are considered. The contribution of mismanagement is not considered in determining the loss.
22. "Treated area" means any area to which a pesticide is being directed or has been directed.
23. "Worker" means any person, including a self-employed person, who is employed for any type of compensation and who performs activities relating to the production of agricultural plants on an agricultural establishment. The requirements of this Article do not apply to any person employed by a commercial pesticide-handling establishment who performs tasks as a pest control advisor.

#### Historical Note

Adopted effective July 13, 1989 (Supp. 89-3). Section R3-3-1001 renumbered from R3-8-201 (Supp. 91-4).  
 Amended effective March 3, 1995 (Supp. 95-1).  
 Amended effective October 8, 1998 (Supp. 98-4).

#### R3-3-1002. Worker Protection Standards

Worker protection regulations shall be as prescribed in 40 CFR 170, excluding 40 CFR 170.130 and 170.230, as amended July 1, 2002. This material is incorporated by reference, on file with the Department, and does not include any later amendments or editions.

#### Historical Note

Adopted effective July 13, 1989 (Supp. 89-3). Section R3-3-1002 renumbered from R3-8-202 (Supp. 91-4).  
 Section repealed, new Section adopted effective March 3, 1995 (Supp. 95-1). R3-3-1002 renumbered to R3-3-1003; new Section R3-3-1002 adopted effective October 8, 1998 (Supp. 98-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

#### R3-3-1003. Pesticide Safety Training

##### A. Training exemptions.

1. Handler. A handler who currently meets one of the following conditions is exempt from the requirements under subsection (D)(1) and (D)(3):
  - a. Certified as an applicator of restricted use pesticides under R3-3-208,
  - b. Certified as a trainer under this Section, or
  - c. Certified or licensed as a crop advisor by a program approved in writing by the EPA or the Department.
2. Worker. A worker who meets one of the following conditions is exempt from the requirements under subsections (C), (D)(1), and (D)(2):
  - a. Certified as an applicator of restricted use pesticides under R3-3-208,
  - b. Holds a current handler card under subsection (D)(4),
  - c. Certified as a trainer under this Section, or
  - d. Certified or licensed as a crop advisor by a program approved in writing by the EPA or the Department.

##### B. Training verification.

1. Handler. The handler employer shall verify, before the handler performs a handling task, that the handler:
  - a. Meets a condition listed in subsection (A)(1); or
  - b. Received pesticide safety training during the last three years, excluding the month in which the training was completed.
2. Worker. The agricultural employer shall verify that a worker:
  - a. Meets a condition listed in subsection (A)(2); or
  - b. Received pesticide safety training during the last five years before allowing a worker entry into an area:
    - i. To which a pesticide was applied during the last 30 days, or
    - ii. For which a restricted-entry interval for a pesticide was in effect during the last 30 days.
3. The agricultural employer and the handler employer, or designee, shall verify that a training exemption claimed in subsection (A)(1) or (A)(2) is valid by reviewing the appropriate certificate issued by the Department, the EPA, or an EPA-approved program.
4. The agricultural employer and the handler employer, or designee, shall visually inspect the handler's or worker's EPA-approved Worker Protection Standard training verification card to verify that the training requirements prescribed in subsections (B)(1) or (B)(2) are met. If the employer believes that a worker or handler training verification card is valid, the verification requirement of subsection (B)(1) or (B)(2) is satisfied.
5. An EPA-approved Worker Protection Standard training verification card is valid if issued:



- a. As prescribed in this Section, or
  - b. By a program approved by the Department, and
  - c. Within the time-frames prescribed in subsection (B)(1) or (B)(2).
6. The agricultural employer shall provide a worker who does not possess the training required in subsection (B)(2) with the pesticide safety information prescribed in subsection (C) and the pesticide safety training prescribed in subsection (D)(1) and (D)(2). The agricultural employer shall provide pesticide safety training to a worker before:
  - a. The worker enters a treated area on an agricultural establishment during a restricted-entry interval to perform early-entry activities; or
  - b. The sixth day that the worker enters an area on the agricultural establishment if a pesticide has been applied within the past 30 days, or a restricted-entry interval for the pesticide has been in effect within the past 30 days.
- C. Pesticide safety information.
  1. The agricultural employer shall provide pesticide safety information to a worker who does not meet the training requirements of subsection (B) before the worker enters an area on an agricultural establishment if, within the last 30 days a pesticide has been applied or a restricted-entry interval for the pesticide has been in effect. The agricultural employer shall provide safety information in a manner that the worker can understand. The safety information shall include the following:
    - a. Pesticides may be on or in plants, soil, irrigation water, or drifting from nearby applications;
    - b. Workers may prevent pesticides from entering their bodies by:
      - i. Following directions or signs, or both, about keeping out of a treated or restricted area;
      - ii. Washing before eating, drinking, chewing gum or using tobacco products, or using the toilet;
      - iii. Wearing work clothing that protects the body from pesticide residue;
      - iv. Washing or showering with soap and water, shampooing hair, and putting on clean clothing after work;
      - v. Washing work clothes separately from other clothes before wearing; and
      - vi. Washing immediately in the nearest clean water if pesticides are spilled or sprayed on the body, and as soon as possible, showering, shampooing, and changing into clean clothes.
  2. The agricultural employer shall document compliance by obtaining the employee's signature or other verifiable means to acknowledge the employee's receipt of the information required in subsection (C)(1).
- D. Pesticide safety training. The agricultural employer or handler employer shall ensure that pesticide safety training is provided before the sixth day of entry into a pesticide-treated area. The pesticide safety training program shall be in a language easily understood by a worker or handler, using a translator if necessary. The program shall relate solely to pesticide safety training. Information shall be presented either orally from written material or in an audiovisual manner and shall contain non-technical terms. The trainer shall respond to questions from attendees.
  1. General pesticide safety training. The following pesticide safety training shall be presented to either a handler or a worker:
    - a. Hazards of pesticides resulting from toxicity and exposure, including acute and chronic effects, delayed effects, and increased sensitivity;
    - b. Routes by which pesticides can enter the body;
    - c. Signs and symptoms of common types of pesticide poisoning;
    - d. Emergency first aid for pesticide injuries or poisonings;
    - e. How to obtain emergency medical care;
    - f. Routine and emergency body decontamination procedures, including emergency eyeflushing techniques;
    - g. Warnings about taking pesticides or pesticide containers home; and
    - h. How to report violations to the Department, including providing the Department's toll-free pesticide hotline telephone number.
  2. Worker training. In addition to the information in subsection (D)(1), a pesticide safety training program for a worker shall include the following:
    - a. Where and in what form pesticides may be encountered during work activities;
    - b. Hazards from chemigation and drift;
    - c. Hazards from pesticide residue on clothing; and
    - d. Requirements of this Article designed to reduce the risks of illness or injury resulting from workers' occupational exposure to pesticides, including:
      - i. Application and entry restrictions,
      - ii. Posting of warning signs,
      - iii. Oral warning,
      - iv. The availability of specific information about applications,
      - v. Protection against retaliatory acts, and
      - vi. The design of the following warning sign:



3. Handler training. In addition to the information in subsection (D)(1), a pesticide safety training program for a handler shall include the following:
  - a. Format and meaning of information contained on pesticide labels and in labeling, including safety information such as precautionary statements about human health hazards;
  - b. Need for and appropriate use of personal protective equipment;
  - c. Prevention, recognition, and first aid treatment of heat-related illness;
  - d. Safety requirements of handling, transporting, storing, and disposing of pesticides, including general procedures for spill cleanup;
  - e. Environmental concerns such as drift, runoff, and potential impact on wildlife; and

- f. Requirements of this Article applicable to handler employers for the protection of handlers and other individuals, including:
    - i. The prohibition against applying pesticides in a manner that will cause contact with workers or other individuals,
    - ii. The requirement to use personal protective equipment,
    - iii. The provisions for training and decontamination, and
    - iv. Protection against retaliatory acts.
  - 4. The trainer shall issue an EPA-approved Worker Protection Standard training verification card to each handler or worker who successfully completes training, and shall maintain a record in indelible ink containing the following information:
    - a. Name and signature of the trained worker or handler;
    - b. Training verification card number;
    - c. Issue and expiration date of the training verification card;
    - d. Social security number or a unique trainer-assigned identification number of the worker or handler;
    - e. Name and signature of the trainer; and
    - f. Address or location of where the training occurred, including city, county, and state.
- E. Trainer requirements.**
- 1. A person applying for pesticide safety trainer certification shall:
    - a. Complete the Department pesticide safety training program established in subsection (D)(1) through (D)(3); or
    - b. Hold a current PCA license or restricted use certification, issued by the Department for a PCA or certified applicator, as prescribed under R3-3-207 or R3-3-208.
  - 2. An applicant shall submit a signed and dated affidavit to the Department verifying that each worker or handler will be trained according to the requirements of subsection (D). The affidavit shall include the applicant's:
    - a. Name, address, e-mail address, and telephone and fax numbers, as applicable; and
    - b. Social security number.
  - 3. Trainer certification is:
    - a. Nontransferable; and
    - b. Is valid for three years from the date issued under subsection (E)(1)(a), excluding the month in which the trainer was certified, and is renewable upon completion of the Department pesticide safety training program established in subsection (D)(1) through (D)(3); or
    - c. Is valid initially for one year from the date issued under subsection (E)(1)(b) if the PCA license or restricted use certification remain current, and is renewable for three years upon completion of the pesticide safety training program established in subsection (D)(1) through (D)(3).
  - 4. A trainer shall maintain the records required in subsection (D)(4) for five years for workers, and three years for handlers, excluding the month in which the verification card was issued.
  - 5. Upon request by the Department, the trainer shall make available worker and handler records prescribed in subsection (D)(4) for inspection and copying by the Department.
- F. A trainer shall permit the Assistant Director or designee to enter a place where worker safety training is being presented to observe and question trainers and attendees to determine compliance with the requirements of this Section.**
- G. The Department may suspend, revoke, or deny trainer certification if any of the following occur:**
- 1. Failing to follow the worker and handler training requirements prescribed in subsections (D)(1) through (D)(3);
  - 2. Failing to issue training verification cards to workers and handlers as prescribed in subsection (D)(4);
  - 3. Failing to maintain the training information prescribed in subsection (E)(4);
  - 4. Failing to fulfill the requirements of the affidavit as prescribed in subsection (E)(2); or
  - 5. Having had a similar certification revoked, suspended, or denied in any jurisdiction within the last three years.
- Historical Note**
- Adopted effective July 13, 1989 (Supp. 89-3). Section R3-3-1003 renumbered from R3-8-203 (Supp. 91-4). R3-3-1003 repealed; new Section R3-3-1003 renumbered from R3-3-1002 and amended effective October 8, 1998 (Supp. 98-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).
- R3-3-1004. Notification Requirements for Farm Labor Contractors**
- A.** The owner or operator of an agricultural establishment shall provide the farm labor contractor who performs work on that agricultural establishment with:
- 1. The location of the agricultural establishment's central posting site; and
  - 2. The restrictions on entering the treated area as specified in 40 CFR 170.120(d), if a treated area is within 1/4 mile of where workers will be working and the treated area is not posted as allowed or required in 40 CFR 170.120(a), (b) and (c).
- B.** The farm labor contractor shall:
- 1. Post or provide the worker in writing, with the information in 40 CFR 170.122, or shall post or provide the worker in writing, the specific location of the central posting site for each agricultural establishment on which the worker will be working;
  - 2. Provide the worker with restrictions on entering a treated area as specified in 40 CFR 170.120(d) if the treated area on the agricultural establishment where a worker will be working is within 1/4 mile of where the worker is working, and the treated area is not posted as allowed or required in 40 CFR 170.120(a), (b) and (c).
- Historical Note**
- Adopted effective July 13, 1989 (Supp. 89-3). Section R3-3-1004 renumbered from R3-8-204 (Supp. 91-4). Amended effective October 8, 1998 (Supp. 98-4).
- R3-3-1005. Container Used For Mixing or Applying Pesticides**
- A.** All openings on containers used for applying pesticides shall be equipped with covers that prevent splashes and spills.
- B.** All containers shall:
- 1. Be translucent, or
  - 2. Have a means to indicate externally the internal liquid level in the container, or
  - 3. Have a filler hose nozzle that automatically stops the filling operation before the liquid pesticide mixture spills over the top of the container.
- C.** Any employer who mixes or applies any liquid pesticide mixture in a container with a capacity of more than 49 gallons

shall have a handler present whenever pesticides are mixed or containers are filled to ensure that the liquid pesticide mixture does not spill over the top of the container.

- D. Each handler, while mixing pesticides, shall protect the water supply from back-siphoning pesticide mixtures.

#### Historical Note

Adopted effective July 13, 1989 (Supp. 89-3). Section R3-3-1005 renumbered from R3-8-205 (Supp. 91-4). Section repealed; new Section adopted effective October 8, 1998 (Supp. 98-4).

#### R3-3-1006. Agricultural Emergency

- A. Any grower, a group of growers, or designee may request the Assistant Director for an agricultural emergency.
- B. Possibility of agricultural emergency.
- If during business hours information is obtained showing that a declaration of an agricultural emergency is necessary, the requesting party shall notify the Department immediately and provide the following information:
    - The cause of the emergency,
    - The area where the emergency may occur,
    - An explanation of why early entry is necessary,
    - Why other methods cannot be used to avoid the early entry, and
    - The justification that substantial economic loss will occur.
  - The Assistant Director shall render a decision to the requesting party on whether an agricultural emergency exists within four hours of receiving the information.
  - If a grower or requesting party does not submit the written documentation in subsection (B)(1) or if the Assistant Director questions the validity or adequacy of the written evidence of the emergency, the Assistant Director shall investigate a grower's entry into the restricted-entry interval area and advise the requesting party of the reasons for the denial of the agricultural emergency.
  - If the information in subsection (B)(1) is given orally, the requesting party shall notify the Department immediately and provide the Assistant Director with written evidence of the emergency within five days. The Assistant Director shall, within 10 business days of receipt of the written evidence of the emergency or completion of the investigation, issue a letter to the requesting party confirming or denying the request for an agricultural emergency.
- C. Occurrence of agricultural emergency.
- If information is obtained after business hours, or during a weekend or holiday, showing that a declaration of agricultural emergency is necessary, the requesting party shall inform the Department, orally, the next business day following the emergency and provide the following information, in writing, within 72 hours of the emergency or notification:
    - The cause of the emergency,
    - The area where the emergency occurred,
    - A brief explanation of why early entry was necessary,
    - Why other methods could not be used to avoid the early entry, and
    - The justification that substantial economic loss would have occurred.
  - If a grower or requesting party does not submit the written evidence of the emergency in subsection (B)(1) or if the Assistant Director questions whether the written evidence of emergency could have occurred before the emergency, or the validity or adequacy of the written evidence of the emergency, the Assistant Director shall

investigate a grower's entry into the restricted-entry interval area and advise the requesting party of the reasons for the denial.

- The Assistant Director shall within 10 business days of receipt of the evidence of emergency or completion of the investigation issue a letter to the requesting party confirming or denying the request for the agricultural emergency.

#### Historical Note

Adopted effective July 13, 1989 (Supp. 89-3). Section R3-3-1006 renumbered from R3-8-206 (Supp. 91-4). Section repealed; new Section adopted effective October 8, 1998 (Supp. 98-4).

#### R3-3-1007. Violations and Civil Penalties

- A. Serious violations. The base penalty for any serious violation is \$500 and no adjustment shall be made for mitigating circumstances. The penalty for a violation in which a person is killed or permanently disabled shall be the maximum allowed in A.R.S. §§ 3-3113 and 3-3114.
- B. Nonserious violations. The Assistant Director shall calculate the base penalty for a nonserious violation and determine the civil penalty amount based on the factors prescribed in A.R.S. § 3-3113(I). If there are contributing or mitigating circumstances, the points may be adjusted, provided the adjustment is documented.

#### VIOLATION GRAVITY FACTOR

(1 - lowest; 4 - highest)

VIOLATION	GRAVITY
Central Posting	1 - 2
Training	1 - 4
Decontamination	1 - 4
Personal Protective Equipment	1 - 4
Pesticide Applications and Notice	1 - 4
Pesticide Application Restrictions	2 - 4
Other Requirements	1 - 4

- C. Size-of-business. The Assistant Director shall use:
- The maximum number of employees at any one time during the previous 12 months from the date of notice, including only the Arizona branch offices to determine the size business category; or
  - A site-specific employee count, if the violation does not endanger employees at other locations of the business; or
  - The number of persons trained by a trainer during the previous 12 months that violate the training provisions of this Section.

#### SIZE-OF-BUSINESS

Size Category	Number of Employees or Number of People Trained
I	1-10
II	11-75
III	76-150
IV	More than 150

- D. Base penalty. The Assistant Director shall calculate the base penalty for the alleged violation by using the violation gravity factor established in subsection (B) and applying the size-of-business category established in subsection (C).

#### BASE PENALTY

Gravity Factor	Size Category			
	I	II	III	IV
1	\$250	\$300	\$350	\$400
2	300	350	400	450
3	350	400	450	500
4	500	500	500	500

- E. Combined or group violations. The Assistant Director may combine or group violations.

1. Violations may be combined and assessed one penalty if the violation does not cause any immediate danger to public health or safety or damage to property. Example: Eight workers on a harvest crew have received no training and there is no evidence of exposure. This situation may result in only one training penalty being assessed against the employer.
  2. Violations may be grouped if they have a common element and it is apparent which violation has the highest gravity. The penalty for a grouped violation is assessed on the violation with the highest gravity. The penalty for a grouped violation is assessed pursuant to the appropriate law or rule with the highest gravity. Example: Two crews from the same company are engaged in an improper handling activity and one crew is using a pesticide with a “danger” signal word, (skull and cross bones) while the other crew is using a pesticide with a “warning” signal word. This situation may result in the employer being assessed one penalty based on the penalty for the “danger” (skull and cross bones) violation.
- F. If a decision is not reached in a negotiated settlement, the Director may assess a penalty pursuant to A.R.S. § 3-3114.

#### Historical Note

Adopted effective July 13, 1989 (Supp. 89-3). Section R3-3-1007 renumbered from R3-8-207 (Supp. 91-4).  
Section repealed; new Section adopted effective October 8, 1998 (Supp. 98-4).

#### R3-3-1008. Penalty Adjustments

- A. The Assistant Director shall assign an appropriate number of points for each of the following five factors to increase the base penalty for a serious violation, or increase or decrease the base penalty for a nonserious violation.
1. If the total adjustment points on a nonserious violation is less than 9, the base penalty is reduced; if it is more than 9, the base penalty is increased.
  2. If the total adjustment points on a serious violation is 3 or less, the base penalty shall be imposed; if it is more than 3, the base penalty is increased.
  3. If a violation is a repeated violation, as prescribed in R3-3-1011 for compliance history, a base penalty adjustment factor shall not be used in assessing a penalty.

#### BASE ADJUSTMENT FACTORS

##### Pesticide

Signal word danger with skull and crossbones	5
Signal word danger	4
Warning	3
Caution	2
Indirect relation to the violation	1

##### Harm to Human Health

Actual Injuries or temporary reversible illness resulting in hospitalization or a variable but limited period of disability. (hospital care greater than 8 hours)	9
Actual (doctor care required, less than 8 hours)	6
Minor supportive care only	2 - 4
Consequence potential	1 - 2
No relationship found	0

##### Compliance History

One or more violations in the previous 12 months	4
One or more violations in the previous 24 months	3
One or more violations in the	

previous 36 months	1
No violation history	0
<b>Culpability</b>	
Knowing or should have known	4
Negligence	2
Neither	0
<b>Good Faith</b>	0 - -2

- B. The Assistant Director may reduce the base penalty for a non-serious violation, as determined in R3-3-1007(C), by as much as 80% depending upon the number of employees or trained persons, good faith, and history of previous violations.

#### FINAL PENALTY CALCULATION

	Nonserious Violation	Serious Violation
Number of Points	Penalty Adjustment	Penalty Adjustment
3 or below	Base -80%	Base Penalty
4	Base -65%	Base + 10%
5	Base -50%	Base + 20%
6	Base -35%	Base + 30%
7	Base -20%	Base + 40%
8	Base -5%	Base + 50%
9	Base Penalty	Base + 60%
10	Base + 20%	Base + 70%
11	Base + 35%	Base + 80%
12	Base + 50%	Base + 90%
13	Base + 65%	Base + 100%
14	Base + 80%	Base + 100%
15 or more	Base + 100%	Base + 100%

Example: A business employs 26 people in Town A and 14 people in Town B. In addition, 35 seasonal people are employed during the harvest. The total annual employee positions equal 75. The following violations are found during an inspection: (1) No training for 35 seasonal workers on the harvest crew; (2) No available decontamination supplies; (3) No safety poster at the central posting location; (4) No emergency telephone number posted, and no medical facility location posted at the central posting location; (5) No posted pesticide application information at the central posting location.  
Step 1. Use the *Violation Gravity Factor* table to determine the gravity of the violation.

- |  |  |
|--|--|
| (1) Training, 1-4  | 2 points, all 35 workers are combined;   |
| (2) Decontamination, 1-43 points, no supplies were available within the prescribed distance and it has been 25 days since the most recent application; |  |
| (3) - (5) Central Posting, 1-2   | 1 point, since the violations concerns the same factor, they are combined. (There is evidence that the old poster blew away and the pesticide application information is kept available in the secretary's desk, but |

it is not 'readily' available.)

Step 2. Use the *Size of Business* table to determine the size category.

75 employees falls into the size category II;

Step 3. Use the *Base Penalty* table to determine the base penalty. Use column II based on the *Size of Business* determination from step 2.

Violation 1, with a gravity factor of 2, equals a base penalty of \$350;

Violation 2, with a gravity factor of 3, equals a base penalty of \$400;

Violations 3, 4, and 5, with a gravity factor of 1, equals 1 base penalty of \$300.

Step 4. Using the *Base Adjustment Factors* table to calculate the adjustments, if any. In this case, the base adjustments are uniform in all categories except #4, culpability.

Pesticide. It was a indirect relationship because of the timing of the application and when the workers were in the treated area. 1 point.

Harm to Human Health. There was no harm to health and the pesticide had not been applied recently. 1 point.

Compliance History. This farm has no previous violation history. 0 points.

Culpability. The supervisor attended a "train-the-trainer" course two years ago and should have been aware of the requirements of the worker protection standard. Therefore, for the first two violations the supervisor should have known about the requirements. For the last three violations, the central posting sight was not checked frequently enough to ensure compliance. For violations 1 and 2, 4 points for knowing or should have known; For violations 3, 4, and 5, 2 points for negligence.

Good Faith. The inspector came back five days later and the workers were trained the day of the first inspection, the poster was posted and everything was in compliance. Since the employer corrected the violations quickly. -1 point.

Step 5. Add the points for each violation from Step 4.

Violation 1  $1 + 1 + 0 + 4 + -1 = 5$

Violation 2  $1 + 1 + 0 + 4 + -1 = 5$

Violations 3, 4, 5  $1 + 1 + 0 + 2 + -1 = 3$

Step 6. Using the *Final Penalty Calculation* table to determine the appropriate violation penalty adjustment that corresponds with the base adjustment factor point total. Use the definitions for nonserious or serious violations to determine the appropriate violation penalty adjustment column. In this case, use the nonserious penalty adjustment column.

Violation 1 5 points Base - 50% = 350-175 = \$175

Violation 2 5 points Base - 50% = 400-200 = \$200

Violations

3, 4, 5 3 points Base - 80% = 300-240 = \$60

Adjusted Penalty Total \$435

#### Historical Note

Adopted effective July 13, 1989 (Supp. 89-3). Section R3-3-1008 renumbered from R3-8-208 (Supp. 91-4). Section repealed; new Section adopted effective October 8, 1998 (Supp. 98-4).

#### R3-3-1009. Failure to Abate

- A. The Director shall issue a notification of failure-to-abate an alleged violation if a violation has not been corrected as specified on the citation. Failure-to-abate penalties, pursuant to A.R.S. § 3-3113(E), shall be applied if an employer or handler has not corrected a previous cited violation that is a final order of the Director. When determining the appropriate penalty amount, the Director shall take into consideration a good faith effort to abate the violation.
- B. If a person does not file a timely notice of contest within the 30-day contest period, the citation and proposed penalties shall be a final order of the Director.
- C. If a person files a notice of contest pursuant to A.R.S. § 3-3116(A), the period for the abatement shall not begin, as to those violations contested, until the day following the entry of the final order by the Director affirming the citation. If the person contests only the amount of the proposed penalty, the person shall correct the alleged violation within the prescribed abatement period.

#### Historical Note

Adopted effective October 8, 1998 (Supp. 98-4). Section heading corrected at request of the Department, Office File No. M11-60, filed February 23, 2011 (Supp. 09-4).

#### R3-3-1010. Calculation of Additional Penalties For Unabated Violations

- A. The Assistant Director shall calculate a daily penalty for unabated violations if failure to abate a serious or nonserious violation exists at the time of reinspection. That penalty shall not be less than the penalty for the violation when cited, except as provided in subsection (C).
  1. If no penalty was initially proposed, the Assistant Director shall determine a penalty. In no case shall the penalty be more than \$1,000 per day, the maximum allowed by A.R.S. § 3-3113(E).
  2. The daily proposed penalty shall be multiplied by the number of calendar days that the violation has continued unabated, except for the following: The number of days unabated shall be counted from the day following the abatement date specified in the final order. It shall include all calendar days between that date and the date of reinspection, excluding the date of reinspection.
- B. When calculating the additional daily penalty, the Assistant Director shall consider the extent that the violation has been abated, whether the employer has made a good faith effort to correct the violation, and it is beyond the employer's control to abate. Based on these factors, the Assistant Director may reduce or eliminate the daily penalty. Example: If three of five instances have been corrected, the daily proposed penalty (calculated as outlined in subsection (A) without regard to any partial abatement), may be reduced by the percentage of the total violations which have been corrected, in this instance, three of five, or 60%.

#### Historical Note

Adopted effective October 8, 1998 (Supp. 98-4).

#### R3-3-1011. Repeated or Willful Violations

- A. The Assistant Director shall calculate a penalty for each violation classified as serious or nonserious if similar violations are repeated within the last three years from the date of notice.
  1. The penalty for a repeated nonserious violation shall be doubled for the first repeated violation and tripled if the violation has been cited twice before, up to the maximum allowed by A.R.S. § 3-3113(A).
  2. The penalty for a repeated serious violation shall be multiplied five times for the first repeated violation and seven

times if the violation has been cited twice before, up to the maximum allowed by A.R.S. § 3-3113(A).

3. The penalty for a repeated serious violation in which someone is disabled or killed shall be multiplied 10 times for each repeated violation, up to the maximum allowed by A.R.S. § 3-3113(A).
  4. A repeated violation having no initial penalty shall be assessed for the first repeated violation as determined by this Article.
  5. If the Assistant Director determines, through documentation, that it is appropriate, the penalty may be multiplied by 10, up to the maximum allowed by A.R.S. § 3-3113(A).
- B.** The Assistant Director may adjust the gravity based penalty by a multiplier up to 10 for any willful violation, up to the maximum allowed by A.R.S. § 3-3113(A).
- C.** The Assistant Director shall not allow a reduction for any serious or nonserious willfully repeated violation.

#### Historical Note

Adopted effective October 8, 1998 (Supp. 98-4).

#### R3-3-1012. Citation; Posting

An employer shall post a citation prescribed at A.R.S. § 3-3110(C) for three days or until the violation is abated, whichever time period is longer.

#### Historical Note

New Section made by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

### ARTICLE 11. ARIZONA NATIVE PLANTS

#### R3-3-1101. Definitions

In addition to the definitions in A.R.S. § 3-901, the following terms apply to this Article:

“Agent” means a person authorized to manage, represent, and act for a landowner.

“Certificate of inspection for interstate shipments” means a certificate to transport protected native plants out of the state.

“Conservation” means prevention of exploitation, destruction, or neglect of native plants while helping to ensure continued public use.

“Cord” means a specific type string or small rope issued by the Department for attaching tags and seals to protected native plants.

“Cord of wood” means a measurement of firewood equal to 128 cubic feet.

“Department” means the Arizona Department of Agriculture.

“Destroy” means to cause the death of any protected native plant.

“Harvest restricted native plant permit” means a permit required to remove the by-products, fibers, or wood from a native plant listed in Appendix A, subsection (D).

“Landowner” means a person who holds title to a parcel of land.

“Noncommercial salvage permit” means a permit required for the noncommercial salvage of a highly safeguarded native plant.

“Original growing site” means a place where a plant is growing wild and is rooted to the ground or any property owned by the same landowner where a protected native plant is relocated or transplanted without an original transportation permit.

“Permittee” means any person who is issued a permit by the Department for removing and transporting protected native plants.

“Protected native plant” means any living plant or plant part listed in Appendix A and growing wild in Arizona.

“Protected native plant tag” means a tag issued by the Department to identify the lawful removal of a protected native plant, other than a saguaro cactus, from its original growing site.

“Saguaro tag” means a tag issued by the Department to identify a saguaro cactus being lawfully moved.

“Salvage assessed native plant permit” means a permit required to remove a native plant listed in Appendix A, subsection (C).

“Salvage restricted native plant permit” means a permit required to remove a native plant listed in Appendix A, subsection (B).

“Scientific permit” means a permit required to remove a native plant for a controlled experimental project by a qualified person.

“Securely tie” means to fasten in a tight and secure manner to prevent the removal of tags, seals, or cord for reuse.

“Small Native Plant” means any protected plant eight inches in height or less.

“Survey” means the process by which a parcel of land is examined for the presence of protected native plants. A simple survey determines only whether protected native plants are present. A complete survey establishes the kind and number of each species present.

“Wood receipt” means a receipt issued by the Department to identify the lawful removal of a protected native plant harvested for fuel, being removed from its original growing site.

#### Historical Note

New Section recodified from R3-4-601 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Amended by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).

#### R3-3-1102. Protected Native Plant Destruction by a Private Landowner

##### A. Notice of intent.

1. Before a protected native plant is destroyed, the private landowner shall provide the following information to the Department on a form obtained from the Department:
  - a. Name, address, and telephone number of the landowner;
  - b. Name, address, and telephone number of the landowner’s agent, if applicable;
  - c. Valid documentation indicating land ownership, including but not limited to a parcel identification number, tax assessment, or deed;
  - d. Legal description, map, address, or other description of the area, including the number of acres to be cleared, in which the protected native plants subject to the destruction are located;
  - e. Earliest date of plant destruction; and
  - f. Landowner’s intent for the disposal or salvage of protected native plants on the land.
2. A landowner intending to destroy protected native plants on an area of less than one acre may submit the information required in subsection (A)(1) to the Department verbally.

##### B. A landowner shall not destroy a protected native plant until:

1. The landowner receives a written confirmation notice from the Department, and
2. Notice is given to the Department within the following minimum time periods:

- a. Twenty days before the plants are destroyed over an area of less than one acre.
  - b. Thirty days before the plants are destroyed over an area of one acre or more but less than 40 acres.
  - c. Sixty days before the plants are destroyed over an area of 40 acres or more.
- C. The Department shall provide a salvage operator or other interested person with a copy of a notice of intent submitted under this Section upon receipt of the private landowner's name, address, telephone number, and payment of an annual \$25 nonrefundable fee.

**Historical Note**

New Section recodified from R3-4-602 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Amended by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).

**R3-3-1103. Disposal and Salvage of Protected Native Plants by a State Agency**

- A. A state agency intending to remove or destroy protected native plants shall notify the Department, under A.R.S. § 3-905, and shall propose a method of disposal from the following list:
- 1. The plants may be sold at a public auction;
  - 2. The plants may be relocated or transported to a different location on the same property or to another property owned by the state, without obtaining a permit;
  - 3. The plants may be donated to nonprofit organizations as provided in A.R.S. § 3-916;
  - 4. The plants may be donated to another state agency or political subdivision, without obtaining a permit; or
  - 5. The plants may be salvaged or harvested by a member of the general public or a commercial dealer, if the person holds a permit as provided under A.R.S. § 3-906 or 3-907.
- B. If the plants are highly safeguarded native plants, they shall first be made available to the holder of a scientific permit or a noncommercial salvage permit.

**Historical Note**

New Section recodified from R3-4-603 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Amended by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).

**R3-3-1104. Protected Native Plant Permits; Tags; Seals; Fees**

- A. A person shall not collect, transport, possess, sell, offer for sale, dispose, or salvage protected native plants unless that person is 18 years of age or older and possesses an appropriate permit.
- B. An applicant shall submit the following information to the Department on a form obtained from the Department, as applicable:
- 1. Name, business name, address, telephone number, Social Security number or tax identification number, and signature of the applicant;
  - 2. Name and number of plants to be removed;
  - 3. Purpose of the plant removal;
  - 4. Whether the applicant has a conviction for a violation of a state or federal statute regarding the protection of native plants within the previous five years;
  - 5. Except for salvage assessed native plants:
    - a. Name, address, telephone number, and signature of the landowner;
    - b. Location of the permitted site and size of acreage;
    - c. Destination address where the plants will be transplanted;

- d. Legal and physical description of the location of the original growing site; and
- e. Parcel identification number for the permitted site or other documents proving land ownership.

**C. Permit fees.**

- 1. A person removing and transporting protected native plants shall submit the following applicable fee to the Department with the permit application:
  - a. Salvage assessed native plant permit, annual use, \$35;
  - b. Harvest restricted native plant permit, annual use, \$35;
  - c. All other native plant permits, one-time use, \$7;
  - d. Certificate of inspection for interstate shipments, \$15.
- 2. Exemptions. Protected native plants are exempt from fees if:
  - a. The protected native plants intended for personal use by a landowner are taken from one piece of land owned by the landowner to another piece of land also owned by the landowner, remain on the property of the landowner, and are not sold or offered for sale;
  - b. The protected native plants are collected for scientific purposes; or
  - c. A landowner donates the protected native plant to a scientific, educational, or charitable institution.

**D. Tag and harvesting fees.**

- 1. Any person obtaining a saguaro tag or other protected native plant tag or receipt shall submit the following applicable fee to the Department at the time a tag is obtained:
  - a. Saguaro, \$8 per plant;
  - b. Trees cut for firewood and listed in the harvest restricted category, \$6 per cord of wood;
  - c. Small native plant, \$.50 per plant;
  - d. Any other protected native plant referenced in A.R.S. § 3-903(B) and (C) and listed in Appendix A, \$6 per plant.
- 2. The fee for harvesting *nolina* or *yucca* parts is \$6 per ton. Payment shall be made to the Department in the following manner:
  - a. Unprocessed *nolina* or *yucca* fiber shall be weighed on a state-certified bonded scale; and
  - b. The harvester shall submit payment and weight certificates to the Department no later than the tenth day of the month following each harvest.

**E. Seal fees.** A person obtaining a seal shall submit a \$.15 per plant fee to the Department at the time a seal is obtained.**F. Salvage assessed native plant permits and plant tags are valid for the calendar year in which they are issued. The tags expire at the end of the calendar year unless the permit is renewed.****Historical Note**

New Section recodified from R3-4-604 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Amended by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).

**R3-3-1105. Scientific Permits; Noncommercial Salvage Permits****A. Scientific Permit**

- 1. A person shall not collect any highly safeguarded or other protected native plants for a research project unless that person holds a scientific permit.
- 2. An applicant shall submit the following information to the Department on a form obtained from the Department:

- a. Name, address, and telephone number of the company or research facility applying for the permit;
  - b. Name, title and experience of the person conducting the research project;
  - c. Purpose and intent of the research project;
  - d. Controls to be used;
  - e. Variables to be considered;
  - f. Time-frame for the project;
  - g. Anticipated results and plans for publication;
  - h. Reports and recordkeeping that will be used to monitor the project;
  - i. Project funding source;
  - j. Funding of the company or research facility;
  - k. Written authorization from the landowner for collection of the plants;
  - l. Date of the application;
  - m. Signed affirmation by the applicant that the plants collected will not be sold or used for personal interests; and
  - n. Tax identification number, or if applicant is an individual, a Social Security number.
3. A scientific permit shall be issued if the applicant provides documentation that demonstrates the following:
    - a. A plan, pre-approved by the landowner, to restore the removal site to a natural appearance;
    - b. The removal and movement of the native plants shall be accomplished by a person experienced in native plant removal and transplantation;
    - c. The native plants used in the project shall remain accessible to the Department;
    - d. The ecology of the project site is beneficial to the growth of the specific plants in the project if practical;
    - e. Arrangements exist for a suitable permanent planting site for the surviving plants after the project's completion; and
    - f. Description of plant disposition and research hypothesis.
  4. A scientific permit is valid for the calendar year in which it is issued.
- B. Noncommercial salvage permit:**
1. Highly safeguarded native plants may only be collected for conservation by a person holding a noncommercial salvage permit.
  2. An applicant shall submit the following information to the Department, on a form obtained from the Department:
    - a. Name, address, and telephone number of the applicant applying for the permit;
    - b. Proposed relocation site for the plants;
    - c. Written authorization from the landowner for collection of the plants;
    - d. Date of the application; and
    - e. Signed affirmation by the applicant that the plants collected will not be sold or used for personal interests.
  3. A noncommercial salvage permit shall be issued if all of the following conditions are met through documentation provided to the Department:
    - a. The native plants used in the project shall be accessible to the Department after transplant, and
    - b. The relocation site is beneficial to the growth of the specific plants in the project.
  4. A noncommercial salvage permit is valid only for the transportation and the transplantation of the particular native plant.

**Historical Note**

New Section recodified from R3-4-605 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Amended by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).

**R3-3-1106. Protected Native Plant Survey; Fee**

- A.** Upon request, the Department may conduct a native plant survey. Upon completion, the Department shall notify the individual who made the request of:
1. The date the survey was performed;
  2. The amount of the survey fee payable to the Department;
  3. The name of Department personnel performing the survey;
  4. Upon payment, the survey results including the names and numbers of protected native plants.
- B.** A person who requests a native plant survey shall pay the survey fee to the Department within 30 days from the date of the notification. The survey fee shall be based on time and travel expenses, except that no fee shall be charged for a determination of whether protected species exist on the land.

**Historical Note**

New Section recodified from R3-4-606 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Amended by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).

**R3-3-1107. Movement Permits; Tags, Seals, and Cord Use**

- A.** Any person moving a protected native plant, except a saguaro cactus, previously transplanted from its original growing site in Arizona and transplanting it to another location shall apply to the Department for a Movement Permit. The landowner from where the plant is being moved shall provide the following information on the permit application:
1. The name, telephone number, and signature of the landowner;
  2. The location of the plant;
  3. The name, address, and telephone number of the receiver;
  4. The name, address, and telephone number of the carrier;
  5. The number, species, and description of the plant being removed;
  6. The tax parcel identification number; and
  7. The date of the application.
- B.** Any person moving a saguaro cactus over four feet tall previously transplanted from its original growing site in Arizona and transplanting it to another location shall apply to the Department for a Movement Permit. The landowner from where the saguaro cactus is being moved shall provide the following information on the permit application, unless the applicant maintains a record of the original permit or verifies the Department has a record of a previous legal movement of the cactus by the applicant.
1. The name, telephone number, and signature of the landowner;
  2. The address where the saguaro cactus is located;
  3. The name, address, and telephone number of the receiver;
  4. The name, address, and telephone number of the carrier;
  5. The number, species, and description of the plant being removed;
  6. The tax parcel identification number of the property where the saguaro cactus is being moved; and
  7. The date of the application.
- C.** Movement of protected native plants obtained outside Arizona.
1. Any person moving a protected native plant obtained outside Arizona and transporting and planting it within the state shall declare the protected native plant at the agri-



cultural inspection station nearest the port of entry. The Department shall place the protected native plant under “Warning Hold” to the nearest permitting office.

2. If an agricultural station is not in operation at the port of entry, the person shall declare the protected native plant at the nearest permitting office during normal office hours.
  3. After the plants have been declared, the permitting office shall issue a Movement Permit and seal.
- D.** Any person moving protected native plants shall obtain the following seals from the Department and securely attach the appropriate seal to each protected native plant:
1. Protected native plant seals identify protected native plants, except saguaro cacti, that will be moved from locations that are not the original growing sites.
  2. Imported seals identify all imported protected native plants.
- E.** Tag, seal, and cord attachment.
1. A permittee shall attach a tag to each protected native plant taken from its original growing site, using cord provided by the Department, before transport. No other type of rope, string, twine, or wire is allowed.
  2. The cord shall be securely tied around the plant, and the tag attached so that it cannot be removed without breaking the seal or cutting the cord.
  3. The tag shall be placed directly over the knot in the cord and the ends pressed firmly together sealing the knot so that it cannot be removed for reuse.
  4. The protected native plant seal shall be placed directly over the knot and snapped firmly closed, sealing the knot.
  5. The imported seal shall be attached directly to the plant.
  6. Upon loading the plant, every effort shall be made to allow visibility of the tag during transport.

#### Historical Note

New Section recodified from R3-4-607 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Amended by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).

### R3-3-1108. Recordkeeping; Salvage Assessed and Harvest Restricted Native Plants

- A.** Salvage Assessed Native Plants.
1. A permittee shall maintain a record of each protected native plant removed under an annual permit for two years from the date of each transaction and allow Department inspection of the records during normal business hours. The transaction record shall include the date salvage restricted protected native plants were removed and the permit and tag numbers.
  2. Annually, by January 31, a permittee shall submit to the Department a copy of each transaction record for the prior calendar year.
- B.** Harvest Restricted Native Plants. A permittee shall submit to the Department by the tenth day of each month the transaction records for the previous month, or a written statement that no transactions were conducted for that month.

#### Historical Note

New Section recodified from R3-4-608 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Amended by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).

### R3-3-1109. Arizona Native Plant Law Education

- A.** The Department may schedule seminars and training courses on an as-needed basis.

- B.** In addition to the following fees, charges for printed materials or pamphlets shall be assessed based upon printing and mailing costs:

1. A person attending a seminar or training course on Arizona native plant law shall pay a nonrefundable fee of \$10 to the Department before attending the class.
2. A person convicted of violating Arizona native plant laws and ordered by a court to attend a native plant educational class shall pay a nonrefundable fee of \$25 to the Department before attending the class. The Department shall provide written confirmation of satisfactory completion to a person ordered by a court to attend a class.

#### Historical Note

New Section recodified from R3-4-609 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Amended by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).

### R3-3-1110. Permit Denial

Upon notice of denial of a permit, an applicant may request, in writing, that the Department provide an administrative hearing under A.R.S. Title 41, Chapter 6, Article 10, to appeal the denial.

#### Historical Note

New Section recodified from R3-4-610 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Amended by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).

### R3-3-1111. Repealed

#### Historical Note

New Section recodified from R3-4-611 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Repealed by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).

### Appendix A. Protected Native Plants by Category

- A.** Highly safeguarded native plants as prescribed in A.R.S. § 3-903(B)(1), for which removal is not allowed except as provided in R3-3-1105:

#### AGAVACEAE Agave Family

*Agave arizonica* Gentry & Weber–Arizona agave  
*Agave delamateri* Hodgson & Slauson  
*Agave murpheyi* Gibson–Hohokam agave  
*Agave parviflora* Torr.–Santa Cruz striped agave, Small-flowered agave  
*Agave phillipsiana* Hodgson  
*Agave schottii* Engelm. var. *treleasei* (Toumey) Kearney & Peebles

#### APIACEAE Parsley Family. [= Umbelliferae]

*Lilaeopsis schaffneriana* (Schlecht.) Coult. & Rose ssp. *recurva* (A. W. Hill) Affolter–Cienega false rush, Huachuca water umbel.  
 Syn.: *Lilaeopsis recurva* A. W. Hill

#### APOCYNACEAE Dogbane Family

*Amsonia kearneyana* Woods.–Kearney’s bluestar  
*Cycladenia humilis* Benth. var. *jonesii* (Eastw.) Welsh & Atwood–Jones’ cycladenia

#### ASCLEPIADACEAE Milkweed Family

*Asclepias welshii* N. & P. Holmgren–Welsh’s milkweed

#### ASTERACEAE Sunflower Family [= Compositae]

- Erigeron lemmonii* Gray–Lemmon fleabane  
*Erigeron rhizomatus* Cronquist–Zuni fleabane  
*Senecio franciscanus* Greene–San Francisco Peaks groundsel  
*Senecio huachucae* Gray–Huachuca groundsel
- BURSERACEAE** Torch Wood Family  
*Bursera fagaroides* (H.B.K.) Engler–Fragrant bursera
- CACTACEAE** Cactus Family  
*Carnegiea gigantea* (Engelm.) Britt. & Rose–Saguaro: ‘Crested’ or ‘Fan-top’ form  
 Syn.: *Cereus giganteus* Engelm.  
*Coryphantha recurvata* (Engelm.) Britt. & Rose–Golden-chested beehive cactus  
 Syn.: *Mammillaria recurvata* Engelm.  
*Coryphantha robbinsorum* (W. H. Earle) A. Zimmerman–Cochise pincushion cactus, Robbin’s cory cactus.  
 Syn.: *Cochiseia robbinsorum* W.H. Earle  
*Coryphantha scheeri* (Kuntze) L. Benson var. *robustispina* (Schott) L. Benson–Scheer’s strong-spined cory cactus.  
 Syn.: *Mammillaria robustispina* Schott  
*Echinocactus horzonthalonius* Lemaire var. *nicholii* L. Benson–Nichol’s Turk’s head cactus  
*Echinocereus triglochidiatus* Engelm. var. *arizonicus* (Rose ex Orcutt) L. Benson–Arizona hedgehog cactus  
*Echinomastus erectocentrus* (Coult.) Britt. & Rose var. *acunensis* (W.T. Marshall) L. Benson–Acuna cactus  
 Syn.: *Neolloydia erectocentra* (Coult.) L. Benson var. *acunensis* (W. T. Marshall) L. Benson  
*Pediocactus bradyi* L. Benson–Brady’s pincushion cactus  
*Pediocactus paradinei* B. W. Benson–Paradine plains cactus  
*Pediocactus peeblesianus* (Croizat) L. Benson var. *fickeiseniae* L. Benson  
*Pediocactus peeblesianus* (Croizat) L. Benson var. *peeblesianus* Peebles’ Navajo cactus, Navajo plains cactus  
 Syn.: *Navajoa peeblesiana* Croizat  
*Pediocactus sileri* (Engelm.) L. Benson–Siler pincushion cactus  
 Syn.: *Utahia sileri* (Engelm.) Britt. & Rose
- COCHLOSPERMACEAE** Cochlospermum Family  
*Amoreuxia gonzalezii* Sprague & Riley
- CYPERACEAE** Sedge Family  
*Carex specuicola* J. T. Howell–Navajo sedge
- FABACEAE** Pea Family [=Leguminosae]  
*Astragalus cremnophyllax* Barneby var. *cremnophyllax* Sentry milk vetch  
*Astragalus holmgreniorum* Barneby–Holmgren milk-vetch  
*Dalea tentaculoides* Gentry–Gentry indigo bush
- LENNOACEAE** Lennoa Family
- Pholisma arenarium* Nutt.–Scaly-stemmed sand plant  
*Pholisma sonora* (Torr. ex Gray) Yatskievych–Sandfood, sandroot  
 Syn.: *Ammobroma sonora* Torr. ex Gray
- LILIACEAE** Lily Family  
*Allium gooddingii* Ownbey–Goodding’s onion
- ORCHIDACEAE** Orchid Family  
*Cypripedium calceolus* L. var. *pubescens* (Willd.) Correll–Yellow lady’s slipper  
*Hexaletris warnockii* Ames & Correll–Texas purple spike  
*Spiranthes delitescens* C. Sheviak
- POACEAE** Grass Family [=Gramineae]  
*Puccinellia parishii* A.S. Hitchc.–Parish alkali grass
- POLYGONACEAE** Buckwheat Family  
*Rumex orthoneurus* Rech. f.
- PSILOTACEAE** Psilotum Family  
*Psilotum nudum* (L.) Beauv. Bush Moss, Whisk Fern
- RANUNCULACEAE** Buttercup Family  
*Cimicifuga arizonica* Wats.–Arizona bugbane  
*Clematis hirsutissima* Pursh var. *arizonica* (Heller) Erickson–Arizona leatherflower
- ROSACEAE** Rose Family  
*Purshia subintegra* (Kearney) J. Hendrickson–Arizona cliffrose, Burro Creek cliffrose  
 Syn.: *Cowania subintegra* Kearney
- SALICACEAE** Willow Family  
*Salix arizonica* Dorn–Arizona willow
- SCROPHULARIACEAE** Figwort Family  
*Penstemon discolor* Keck–Variegated beardtongue
- B.** Salvage restricted native plants as prescribed in A.R.S. § 3-903(B)(2) that require a permit for removal. In addition to the plants listed under Agavaceae, Cactaceae, Liliaceae, and Orchidaceae, all other species in these families are salvage restricted protected native plants:
- AGAVACEAE** Agave Family  
*Agave chrysantha* Peebles  
*Agave deserti* Engelm. ssp. *simplex* Gentry–Desert agave  
*Agave mckelveyana* Gentry  
*Agave palmeri* Engelm.  
*Agave parryi* Engelm. var. *couseii* (Engelm. ex Trel.) Kearney & Peebles  
*Agave parryi* Engelm. var. *huachucensis* (Baker) Little ex L. Benson  
 Syn.: *Agave huachucensis* Baker  
*Agave parryi* Engelm. var. *parryi*  
*Agave schottii* Engelm. var. *schottii* – Shindigger  
*Agave toumeyana* Trel. ssp. *bella* (Breitung) Gentry  
*Agave toumeyana* Trel. ssp. *toumeyana*  
*Agave utahensis* Engelm. ssp. *kaibabensis* (McKelvey) Gentry  
 Syn.: *Agave kaibabensis* McKelvey

- Agave utahensis* Engelm. var. *utahensis*  
*Yucca angustissima* Engelm. var. *angustissima*  
*Yucca angustissima* Engelm. var. *kanabensis* (McKelvey) Reveal  
 Syn.: *Yucca kanabensis* McKelvey  
*Yucca arizonica* McKelvey  
*Yucca baccata* Torr. var. *baccata*–Banana yucca  
*Yucca baccata* Torr. var. *vespertina* McKelvey  
*Yucca baileyi* Woot. & Standl. var. *intermedia* (McKelvey) Reveal  
 Syn.: *Yucca navajoa* Webber  
*Yucca brevifolia* Engelm. var. *brevifolia*–Joshua tree  
*Yucca brevifolia* Engelm. var. *jaegeriana* McKelvey  
*Yucca elata* Engelm. var. *elata*–Soaptree yucca, pal-milla  
*Yucca elata* Engelm. var. *utahensis* (McKelvey) Reveal  
 Syn.: *Yucca utahensis* McKelvey  
*Yucca elata* Engelm. var. *verdiensis* (McKelvey) Reveal  
 Syn.: *Yucca verdiensis* McKelvey  
*Yucca harrimaniae* Trel.  
*Yucca schidigera* Roez. l.–Mohave yucca, Spanish dagger  
*Yucca schottii* Engelm.–Hairy yucca  
*Yucca thornberi* McKelvey  
*Yucca whipplei* Torr. var. *whipplei*–Our Lord’s candle  
 Syn.: *Yucca newberryi* McKelvey
- AMARYLLIDACEAE Amaryllis Family  
*Zephyranthes longifolia* Hemsl.–Plains Rain Lily
- ANACARDIACEAE Sumac Family  
*Rhus kearneyi* Barkley–Kearney Sumac
- ARECACEAE Palm Family [=Palmae]  
*Washingtonia filifera* (Linden ex Andre) H. Wendl–California fan palm
- ASTERACEAE Sunflower Family [=Compositae]  
*Cirsium parryi* (Gray) Petrak ssp. *mogollonicum* Schaak  
*Cirsium virginensis* Welsh–Virgin thistle  
*Erigeron kuschei* Eastw.–Chiricahua fleabane  
*Erigeron piscaticus* Nesom–Fish Creek fleabane  
*Flaveria macdougalii* Theroux, Pinkava & Keil  
*Perityle ajoensis* Todson–Ajo rock daisy  
*Perityle cochisensis* (Niles) Powell–Chiricahua rock daisy  
*Senecio quaerens* Greene–Gila groundsel
- BURSERACEAE Torch-Wood Family  
*Bursera microphylla* Gray–Elephant tree, torote
- CACTACEAE Cactus Family  
*Carnegiea gigantea* (Engelm.) Britt. & Rose–Saguaro  
 Syn.: *Cereus giganteus* Engelm.  
*Coryphantha missouriensis* (Sweet) Britt. & Rose  
*Coryphantha missouriensis* (Sweet) Britt. & Rose  
 var. *marstonii* (Clover) L. Benson  
*Coryphantha scheeri* (Kuntze) L. Benson var. *valida* (Engelm.) L. Benson  
*Coryphantha strobiliformis* (Poselger) var. *orcuttii* (Rose) L. Benson  
*Coryphantha strobiliformis* (Poselger) var. *strobiliformis*  
*Coryphantha vivipara* (Nutt.) Britt. & Rose var. *alversonii* (Coult.) L. Benson  
*Coryphantha vivipara* (Nutt.) Britt. & Rose var. *arizonica* (Engelm.) W. T. Marshall  
 Syn.: *Mammillaria arizonica* Engelm.  
*Coryphantha vivipara* (Nutt.) Britt. & Rose var. *bisbeeana* (Orcutt) L. Benson  
*Coryphantha vivipara* (Nutt.) Britt. & Rose var. *deserti* (Engelm.) W. T. Marshall  
 Syn.: *Mammillaria chlorantha* Engelm.  
*Coryphantha vivipara* (Nutt.) Britt. & Rose var. *rosea* (Clokey) L. Benson  
*Echinocactus polycephalus* Engelm. & Bigel. var. *polycephalus*  
*Echinocactus polycephalus* Engelm. & Bigel. var. *xeranthemoides* Engelm. ex Coult.  
 Syn.: *Echinocactus xeranthemoides* Engelm. ex Coult.  
*Echinocereus engelmannii* (Parry ex Engelm.) Lemaire var. *acicularis* L. Benson  
*Echinocereus engelmannii* (Parry ex Engelm.) Lemaire var. *armatus* L. Benson  
*Echinocereus engelmannii* (Parry ex Engelm.) Lemaire var. *chrysocentrus* L. Benson  
*Echinocereus engelmannii* (Parry ex Engelm.) Lemaire var. *engelmannii*  
*Echinocereus engelmannii* (Parry) Lemaire var. *variegatus* (Engelm.) Engelm. ex Rümpler  
*Echinocereus fasciculatus* (Engelm. ex B. D. Jackson) L. Benson var. *fasciculatus*  
 Syn.: *Echinocereus fendleri* (Engelm.) Rümpler var. *fasciculatus* (Engelm. ex B. D. Jackson) N. P. Taylor, *Echinocereus fendleri* (Engelm.) Rümpler var. *robusta* L. Benson; *Mammillaria fasciculata* Engelm.  
*Echinocereus fasciculatus* (Engelm. ex B. D. Jackson) L. Benson var. *bonkeriae* (Thornber & Bonker) L. Benson.  
 Syn.: *Echinocereus boyce-thompsonii* Orcutt var. *bonkeriae* Peebles; *Echinocereus fendleri* (Engelm.) Rümpler var. *bonkeriae* (Thornber & Bonker) L. Benson  
*Echinocereus fasciculatus* (Engelm. ex B. D. Jackson) L. Benson var. *boyce-thompsonii* (Orcutt) L. Benson  
 Syn.: *Echinocereus boyce-thompsonii* Orcutt  
*Echinocereus fendleri* (Engelm.) Rümpler var. *boyce-thompsonii* (Orcutt) L. Benson  
*Echinocereus fendleri* (Engelm.) Rümpler var. *fendleri*  
*Echinocereus fendleri* (Engelm.) Rümpler var. *recispinus* (Peebles) L. Benson

- Echinocereus ledingii* Peebles
- Echinocereus nicholii* (L. Benson) Parfitt.  
Syn.: *Echinocereus engelmannii* (Parry ex Engelm.) Lemaire var. *nicholii* L. Benson
- Echinocereus pectinatus* (Scheidw.) Engelm. var. *dasyacanthus* (Engelm.) N. P. Taylor  
Syn.: *Echinocereus pectinatus* (Scheidw.) Engelm. var. *neomexicanus* (Coul.) L. Benson
- Echinocereus polyacanthus* Engelm. (1848) var. *polyacanthus*
- Echinocereus pseudopectinatus* (N. P. Taylor) N. P. Taylor  
Syn.: *Echinocereus bristolii* W. T. Marshall var. *pseudopectinatus* N. P. Taylor, *Echinocereus pectinatus* (Scheidw.) Engelm. var. *pectinatus sensu* Kearney and Peebles, Arizona Flora, and L. Benson, The Cacti of Arizona and The Cacti of the United States and Canada.
- Echinocereus rigidissimus* (Engelm.) Hort. F. A. Haage.  
Syn.: *Echinocereus pectinatus* (Scheidw.) Engelm. var. *rigidissimus* (Engelm.) Engelm. ex Rümpler–Rainbow cactus
- Echinocereus triglochidiatus* Engelm. var. *gonacanthus* (Engelm. & Bigel.) Boiss.
- Echinocereus triglochidiatus* Engelm. var. *melanacanthus* (Engelm.) L. Benson  
Syn.: *Mammillaria aggregata* Engelm.
- Echinocereus triglochidiatus* Engelm. var. *mojavensis* (Engelm.) L. Benson
- Echinocereus triglochidiatus* Engelm. var. *neomexicanus* (Standl.) Standl. ex W. T. Marshall.  
Syn.: *Echinocereus triglochidiatus* Engelm. var. *polyacanthus* (Engelm. 1859 non 1848) L. Benson
- Echinocereus triglochidiatus* Engelm. var. *triglochidiatus*
- Echinomastus erectocentrus* (Coul.) Britt. & Rose var. *erectocentrus*  
Syn.: *Neolloydia erectocentra* (Coul.) L. Benson var. *erectocentra*
- Echinomastus intertextus* (Engelm.) Britt. & Rose  
Syn.: *Neolloydia intertexta* (Engelm.) L. Benson
- Echinomastus johnsonii* (Parry) Baxter–Beehive cactus  
Syn.: *Neolloydia johnsonii* (Parry) L. Benson
- Epithelantha micromeris* (Engelm.) Weber ex Britt. & Rose
- Ferocactus cylindraceus* (Engelm.) Orcutt var. *cylindraceus*–Barrel cactus  
Syn.: *Ferocactus acanthodes* (Lemaire) Britt. & Rose var. *acanthodes*
- Ferocactus cylindraceus* (Engelm.) Orcutt var. *eastwoodiae* (Engelm.) N. P. Taylor  
Syn.: *Ferocactus acanthodes* (Lemaire) Britt. & Rose var. *eastwoodiae* L. Benson; *Ferocactus eastwoodiae* (L. Benson) L. Benson
- Ferocactus cylindraceus* (Engelm.) Orcutt var. *lecontei* (Engelm.) H. Bravo  
Syn.: *Ferocactus acanthodes* (Lemaire) Britt. & Rose var. *lecontei* (Engelm.) Lindsay; *Ferocactus lecontei* (Engelm.) Britt. & Rose
- Ferocactus emoryi* (Engelm.) Orcutt–Barrel cactus  
Syn.: *Ferocactus covillei* Britt. & Rose
- Ferocactus wislizenii* (Engelm.) Britt. & Rose–Barrel cactus
- Lophocereus schottii* (Engelm.) Britt. & Rose–Senita
- Mammillaria grahamii* Engelm. var. *grahamii*
- Mammillaria grahamii* Engelm. var. *oliviae* (Orcutt) L. Benson  
Syn.: *Mammillaria oliviae* Orcutt
- Mammillaria heyderi* Mühlenpf. var. *heyderi*  
Syn.: *Mammillaria gummifera* Engelm. var. *applanata* (Engelm.) L. Benson
- Mammillaria heyderi* Mühlenpf. var. *macdougallii* (Rose) L. Benson  
Syn.: *Mammillaria gummifera* Engelm. var. *macdougallii* (Rose) L. Benson; *Mammillaria macdougallii* Rose
- Mammillaria heyderi* Mühlenpf. var. *meiacantha* (Engelm.) L. Benson  
Syn.: *Mammillaria gummifera* Engelm. var. *meiacantha* (Engelm.) L. Benson
- Mammillaria lasiacantha* Engelm.
- Mammillaria mainiae* K. Brand.
- Mammillaria microcarpa* Engelm.
- Mammillaria tetrancistra* Engelm.
- Mammillaria thornberi* Orcutt
- Mammillaria viridiflora* (Britt. & Rose) Bödeker.  
Syn.: *Mammillaria orestra* L. Benson
- Mammillaria wrightii* Engelm. var. *wilcoxii* (Toumey ex K. Schumann) W. T. Marshall  
Syn.: *Mammillaria wilcoxii* Toumey
- Mammillaria wrightii* Engelm. var. *wrightii*
- Opuntia acanthocarpa* Engelm. & Bigel. var. *acanthocarpa*–Buckhorn cholla
- Opuntia acanthocarpa* Engelm. & Bigel. var. *coloradensis* L. Benson
- Opuntia acanthocarpa* Engelm. & Bigel. var. *major* L. Benson  
Syn.: *Opuntia acanthocarpa* Engelm. & Bigel var. *ramosa* Peebles
- Opuntia acanthocarpa* Engelm. & Bigel. var. *thornberi* (Thornber & Bonker) L. Benson  
Syn.: *Opuntia thornberi* Thornber & Bonker
- Opuntia arbuscula* Engelm.–Pencil cholla
- Opuntia basilaris* Engelm. & Bigel. var. *aurea* (Baxter) W. T. Marshall–Yellow beavertail  
Syn.: *Opuntia aurea* Baxter
- Opuntia basilaris* Engelm. & Bigel. var. *basilaris*–Beavertail cactus
- Opuntia basilaris* Engelm. & Bigel. var. *longiareolata* (Clover & Jotter) L. Benson
- Opuntia basilaris* Engelm. & Bigel. var. *treleasei* (Coul.) Toumey
- Opuntia bigelovii* Engelm.–Teddy-bear cholla
- Opuntia campii* ined.
- Opuntia cana* Griffiths (*O. phaeacantha* Engelm. var. *laevis* X *major* and *O. gilvescens* Griffiths).

- Opuntia chlorotica* Engelm. & Bigel.–Pancake prickly-pear
- Opuntia clavata* Engelm.–Club cholla
- Opuntia curvospina* Griffiths
- Opuntia echinocarpa* Engelm. & Bigel–Silver cholla
- Opuntia emoryi* Engelm.–Devil cholla
- Syn.: *Opuntia stanlyi* Engelm. ex B. D. Jackson var. *stanlyi*
- Opuntia engelmannii* Salm-Dyck ex Engelm. var. *engelmannii*–Engelmann’s prickly-pear
- Syn.: *Opuntia phaeacantha* Engelm. var. *discata* (Griffiths) Benson & Walkington
- Opuntia engelmannii* Salm-Dyck ex Engelm. var. *flavospina* (L.Benson) Parfitt & Pinkava
- Syn.: *Opuntia phaeacantha* Engelm. var. *flavispinga* L. Benson
- Opuntia erinacea* Engelm. & Bigel. var. *erinacea*–Mohave prickly-pear
- Opuntia erinacea* Engelm. & Bigel. var. *hystricina* (Engelm. & Bigel.) L. Benson
- Syn.: *Opuntia hystricina* Engelm. & Bigel.
- Opuntia erinacea* Engelm. & Bigel. var. *ursina* (Weber) Parish–Grizzly bear prickly-pear
- Syn.: *Opuntia ursina* Weber
- Opuntia erinacea* Engelm. & Bigel. var. *utahensis* (Engelm.) L. Benson
- Syn.: *Opuntia rhodantha* Schum.
- Opuntia fragilis* Nutt. var. *brachyarthra* (Engelm. & Bigel.) Coult.
- Opuntia fragilis* Nutt. var. *fragilis*–Little prickly-pear
- Opuntia fulgida* Engelm. var. *fulgida*–Jumping chain-fruit cholla
- Opuntia fulgida* Engelm. var. *mammillata* (Schott) Coult.
- Opuntia imbricata* (Haw.) DC.–Tree cholla
- Opuntia X kelvinensis* V. & K. Grant pro sp.
- Syn.: *Opuntia kelvinensis* V. & K. Grant
- Opuntia kleiniae* DC. var. *tetracantha* (Toumey) W. T. Marshall
- Syn.: *Opuntia tetrancistra* Toumey
- Opuntia kunzei* Rose.
- Syn.: *Opuntia stanlyi* Engelm. ex B. D. Jackson var. *kunzei* (Rose) L. Benson; *Opuntia kunzei* Rose var. *wrightiana* (E. M. Baxter) Peebles; *Opuntia wrightiana* E. M. Baxter
- Opuntia leptocaulis* DC.–Desert Christmas cactus, Pencil cholla
- Opuntia littoralis* (Engelm.) Cockl. var. *vaseyi* (Coult.) Benson & Walkington
- Opuntia macrocentra* Engelm.–Purple prickly-pear
- Syn.: *Opuntia violacea* Engelm. ex B. D. Jackson var. *macrocentra* (Engelm.) L. Benson; *Opuntia violacea* Engelm. ex B. D. Jackson var. *violacea*
- Opuntia macrorhiza* Engelm. var. *macrorhiza*–Plains prickly-pear
- Syn.: *Opuntia plumbea* Rose
- Opuntia macrorhiza* Engelm. var. *pottsii* (Salm-Dyck) L. Benson
- Opuntia martiniana* (L. Benson) Parfitt
- Syn.: *Opuntia littoralis* (Engelm.) Cockerell var. *martiniana* (L. Benson) L. Benson; *Opuntia macrocentra* Engelm. var. *martiniana* L. Benson
- Opuntia nicholii* L. Benson–Navajo Bridge prickly-pear
- Opuntia parishii* Orcutt.
- Syn.: *Opuntia stanlyi* Engelm. ex B. D. Jackson var. *parishii* (Orcutt) L. Benson
- Opuntia phaeacantha* Engelm. var. *laevis* (Coult.) L. Benson
- Syn.: *Opuntia laevis* Coult.
- Opuntia phaeacantha* Engelm. var. *major* Engelm.
- Opuntia phaeacantha* Engelm. var. *phaeacantha*
- Opuntia phaeacantha* Engelm. var. *superbospina* (Griffiths) L. Benson
- Opuntia polyacantha* Haw. var. *juniperina* (Engelm.) L. Benson
- Opuntia polyacantha* Haw. var. *rufispina* (Engelm.) L. Benson
- Opuntia polyacantha* Haw. var. *trichophora* (Engelm. & Bigel.) L. Benson
- Opuntia pulchella* Engelm.–Sand cholla
- Opuntia ramosissima* Engelm.–Diamond cholla
- Opuntia santa-rita* (Griffiths & Hare) Rose–Santa Rita prickly-pear
- Syn.: *Opuntia violacea* Engelm. ex B. D. Jackson var. *santa-rita* (Griffiths & Hare) L. Benson
- Opuntia spinosior* (Engelm.) Toumey–Cane cholla
- Opuntia versicolor* Engelm.–Staghorn cholla
- Opuntia vivipara* Engelm
- Opuntia whipplei* Engelm. & Bigel. var. *multigeniculata* (Clokey) L. Benson
- Opuntia whipplei* Engelm. & Bigel. var. *whipplei*–Whipple cholla
- Opuntia wigginsii* L. Benson
- Pediocactus papyracanthus* (Engelm.) L. Benson
- Grama grass cactus
- Syn.: *Toumeyia papyracanthus* (Engelm.) Britt. & Rose
- Pediocactus simpsonii* (Engelm.) Britt & Rose var. *simpsonii*
- Peniocereus greggii* (Engelm.) Britt. & Rose var. *greggii*–Night-blooming cereus
- Syn.: *Cereus greggii* Engelm.
- Peniocereus greggii* (Engelm.) Britt & Rose var. *transmontanus*–Queen-of-the-Night
- Peniocereus striatus* (Brandegge) Buxbaum.
- Syn.: *Neoevansia striata* (Brandegge) Sanchez-Mejorada; *Cereus striatus* Brandegge; *Wilcoxia diguetii* (Webber) Peebles
- Sclerocactus parviflorus* Clover & Jotter var. *intermedius* (Peebles) Woodruff & L. Benson
- Syn.: *Sclerocactus intermedius* Peebles
- Sclerocactus parviflorus* Clover & Jotter var. *parviflorus*

- Syn.: *Sclerocactus whipplei* (Engelm. & Bigel.) Britt. & Rose var. *roseus* (Clover) L. Benson  
*Sclerocactus pubispinus* (Engelm.) L. Peebles  
*Sclerocactus spinosior* (Engelm.) Woodruff & L. Benson  
Syn.: *Sclerocactus pubispinus* (Engelm.) L. Benson var. *sileri* L. Benson  
*Sclerocactus whipplei* (Engelm. & Bigel.) Britt. & Rose  
*Stenocereus thurberi* (Engelm.) F. Buxbaum–Organ pipe cactus  
Syn.: *Cereus thurberi* Engelm.; *Lemairocereus thurberi* (Engelm.) Britt. & Rose
- CAMPANULACEAE Bellflower Family  
*Lobelia cardinalis* L. ssp. *graminea* (Lam.) McVaugh–Cardinal flower  
*Lobelia fenestralis* Cav.–Leafy lobelia  
*Lobelia laxiflora* H. B. K. var. *angustifolia* A. DC.
- CAPPARACEAE Cappar Family [=Capparidaceae]  
*Cleome multicaulis* DC.–Playa spiderflower
- CHENOPODIACEAE Goosefoot Family  
*Atriplex hymenelytra* (Torr.) Wats.
- CRASSULACEAE Stonecrop Family  
*Dudleya arizonica* (Nutt.) Britt. & Rose  
Syn.: *Echeveria pulverulenta* Nutt. ssp. *arizonica* (Rose) Clokey  
*Dudleya saxosa* (M.E. Jones) Britt. & Rose ssp. *colomiae* (Rose) Moran  
Syn.: *Echeveria collomiae* (Rose) Kearney & Peebles  
*Graptopetalum bartramii* Rose  
Syn.: *Echeveria bartramii* (Rose) K. & P.  
*Graptopetalum bartramii* Rose–Bartram’s stonecrop, Bartram’s live-forever  
Syn.: *Echeveria bartramii* (Rose) Kearney & Peebles  
*Graptopetalum rusbyi* (Greene) Rose  
Syn.: *Echeveria rusbyi* (Greene) Nels. & Macbr.  
*Sedum cockerellii* Britt.  
*Sedum griffithsii* Rose  
*Sedum lanceolatum* Torr.  
Syn.: *Sedum stenopetalum* Pursh  
*Sedum rhodanthum* Gray  
*Sedum stelliforme* Wats.
- CROSSOSOMATAACEAE Crossosoma Family  
*Apacheria chiricahuensis* C. T. Mason–Chiricahua rock flower
- CUCURBITACEAE Gourd Family  
*Tumamoca macdougalii* Rose–Tumamoc globeberry
- EUPHORBIACEAE Spurge Family  
*Euphorbia plummerae* Wats.–Woodland spurge  
*Sapium biloculare* (Wats.) Pax–Mexican jumping-bean
- FABACEAE Pea Family [=Leguminosae]  
*Astragalus corbrensis* Gray var. *maguirei* Kearney  
*Astragalus cremnophylax* Barneby var. *myriorrhaphis* Barneby–Cliff milk-vetch  
*Astragalus hypoxylus* Wats.–Huachuca milk-vetch  
*Astragalus nutriosensis* Sanderson–Nutrioso milk-vetch  
*Astragalus xiphoides* (Barneby) Barneby–Gladiator milk-vetch  
*Cercis occidentalis* Torr.–California redbud  
*Errazurizia rotundata* (Woot.) Barneby  
Syn.: *Parryella rotundata* Woot.  
*Lysiloma microphylla* Benth. var. *thorneri* (Britt. & Rose) Isely–Feather bush  
Syn.: *Lysiloma thorneri* Britt. & Rose  
*Phaseolus supinus* Wiggins & Rollins
- FOUQUIERIACEAE Ocotillo Family  
*Fouquieria splendens* Engelm.–Ocotillo, coach-whip, monkey-tail
- GENTIANACEAE Gentian Family  
*Gentianella wislizenii* (Engelm.) J. Gillett  
Syn.: *Gentiana wislizenii* Engelm.
- LAMIACEAE Mint Family  
*Hedeoma diffusum* Green–Flagstaff pennyroyal  
*Salvia dorrii* ssp. *mearnsii*  
*Trichostema micranthum* Gray
- LILIACEAE Lily Family  
*Allium acuminatum* Hook.  
*Allium bigelovii* Wats.  
*Allium biseptum* Wats. var. *palmeri* (Wats.) Cronq.  
Syn.: *Allium palmeri* Wats.  
*Allium cernuum* Roth. var. *neomexicanum* (Rydb.) Macbr.–Nodding onion  
*Allium cernuum* Roth. var. *obtusum* Ckll.  
*Allium geyeri* Wats. var. *geyeri*  
*Allium geyeri* Wats. var. *tenerum* Jones  
*Allium kunthii* Don  
*Allium macropetalum* Rydb.  
*Allium nevadense* Wats. var. *cristatum* (Wats.) Ownbey  
*Allium nevadense* Wats. var. *nevadense*  
*Allium parishii* Wats.  
*Allium plummerae* Wats.  
*Allium rhizomatum* Woot. & Standl. Incl.: *Allium glandulosum* Link & Otto *sensu* Kearney & Peebles  
*Androstephium breviflorum* Wats.–Funnel-lily  
*Calochortus ambiguus* (Jones) Ownbey  
*Calochortus aureus* Wats.  
Syn.: *Calochortus nuttallii* Torr. & Gray var. *aureus* (Wats.) Ownbey  
*Calochortus flexuosus* Wats.–Straggling mariposa  
*Calochortus gunnisonii* Wats.  
*Calochortus kennedyi* Porter var. *kennedyi*–Desert mariposa  
*Calochortus kennedyi* Porter var. *munzii* Jeps.  
*Dichlostemma pulchellum* (Salisbi) Heller var. *pauciflorum* (Torr.) Hoover

- Disporum trachycarpum* (Wats.) Benth. & Hook.  
var. *subglabrum* Kelso
- Disporum trachycarpum* (Wats.) Benth. & Hook.  
var. *trachycarpum*
- Echeandia flavescens* (Schultes & Schultes) Cruden  
Syn.: *Anthericum torreyi* Baker
- Eremocrinum albomarginatum* Jones
- Fritillaria atropurpurea* Nutt.
- Hesperocallis undulata* Gray–Ajo lily
- Lilium parryi* Wats.–Lemon lily
- Lilium umbellatum* Pursh
- Maianthemum racemosum* (L.) Link. ssp. *amplexicaule* (Nutt.) LaFrankie  
Syn.: *Smilacina racemosa* (L.) Desf. var. *amplexicaulis* (Nutt.) Wats.
- Maianthemum racemosum* (L.) Link ssp. *racemosum*–False Solomon’s seal  
Syn.: *Smilacina racemosa* (L.) Desf. var. *racemosa*;  
*Smilacina racemosa* (L.) Desf. var. *cylindrata* Fern.
- Maianthemum stellatum* (L.) Link  
Syn.: *Smilacina stellata* (L.) Desf.–Starflower
- Milla biflora* Cav.–Mexican star
- Nothoscordum texanum* Jones
- Polygonatum cobrense* (Woot. & Standl.) Gates
- Streptopus amplexifolius* (L.) DC.–Twisted stalk
- Triteleia lemmonae* (Wats.) Greene
- Triteleopsis palmeri* (Wats.) Hoover
- Veratrum californicum* Durand.–False hellebore
- Zephyranthes longifolia* Hemsl.–Plains rain lily
- Zigadenus elegans* Pursh–White camas, alkali-grass
- Zigadenus paniculatus* (Nutt.) Wats.–Sand-corn
- Zigadenus virescens* (H. B. K.) Macbr.
- MALVACEAE Mallow Family**
- Abutilon parishii* Wats.–Tucson Indian mallow
- Abutilon thurberi* Gray–Baboquivari Indian mallow
- NOLINACEAE Nolina**
- Dasyliirion wheeleri* Wats.–Sotol, desert spoon
- Nolina bigelovii* (Torr.) Wats.–Bigelow’s nolina
- Nolina microcarpa* Wats.–Beargrass, sacahuista
- Nolina parryi* Wats.–Parry’s nolina
- Nolina texana* Wats. var. *compacta* (Trel.) Johnst.–Bunchgrass
- ONAGRACEAE Evening Primrose Family**
- Camissonia exilis* (Raven) Raven
- ORCHIDACEAE Orchid Family**
- Calypso bulbosa* (L.) Oakes var. *americana* (R. Br.) Luer
- Coeloglossum viride* (L.) Hartmann var. *virescens* (Muhl.) Luer  
Syn.: *Habenaria viridis* (L.) R. Br. var. *bracteata* (Muhl.) Gray
- Corallorhiza maculata* Raf.–Spotted coral root
- Corallorhiza striata* Lindl.–Striped coral root
- Corallorhiza wisteriana* Conrad–Spring coral root
- Epipactis gigantea* Douglas ex Hook.–Giant helleborine
- Goodyera oblongifolia* Raf.
- Goodyera repens* (L.) R. Br.
- Hexalectris spicata* (Walt.) Barnhart–Crested coral root
- Listera convallarioides* (Swartz) Nutt.–Broad-leaved twayblade
- Malaxis corymbosa* (S. Wats.) Kuntze
- Malaxis ehrenbergii* (Reichb. f.) Kuntze
- Malaxis macrostachya* (Lexarza) Kuntze–Mountain malaxia  
Syn.: *Malaxis soulei* L. O. Williams
- Malaxis tenuis* (S. Wats.) Ames
- Platanthera hyperborea* (L.) Lindley var. *gracilis* (Lindley) Luer  
Syn.: *Habenaria sparsiflora* Wats. var. *laxiflora* (Rydb.) Correll
- Platanthera hyperborea* (L.) Lindley var. *hyperborea*–Northern green orchid  
Syn.: *Habenaria hyperborea* (L.) R. Br.
- Platanthera limosa* Lindl.–Thurber’s bog orchid  
Syn.: *Habenaria limosa* (Lindley) Hemsley
- Platanthera sparsiflora* (Wats.) Schlechter var. *ensifolia* (Rydb.) Luer
- Platanthera sparsiflora* (Wats.) var. *laxiflora* (Rydb.) Correll
- Platanthera sparsiflora* (Wats.) Schlechter var. *sparsiflora*–Sparsely-flowered bog orchid  
Syn.: *Habenaria sparsiflora* Wats.
- Platanthera stricta* Lindl.–Slender bog orchid  
Syn.: *Habenaria saccata* Greene; *Platanthera saccata* (Greene) Hulten
- Platanthera viridis* (L.) R. Br. var. *bracteata* (Muhl.) Gray–Long-bracted habenaria
- Spiranthes michauxiana* (La Llave & Lex.) Hemsl.
- Spiranthes parasitica* A. Rich. & Gal.
- Spiranthes romanzoffiana* Cham.–Hooded ladies tresses
- PAPAVERACEAE Poppy Family**
- Arctomecon californica* Torr. & Frém.–Golden-bear poppy, Yellow-flowered desert poppy
- PINACEAE Pine Family**
- Pinus aristata* Engelm.–Bristlecone pine
- POLYGONACEAE Buckwheat Family**
- Eriogonum apachense* Reveal
- Eriogonum capillare* Small
- Eriogonum mortonianum* Reveal–Morton’s buckwheat
- Eriogonum ripleyi* J. T. Howell–Ripley’s wild buckwheat, Frazier’s Well buckwheat
- Eriogonum thompsonae* Wats. var. *atwoodii* Reveal–Atwood’s buckwheat
- PORTULACACEAE Purslane Family**
- Talinum humile* Greene–Pinos Altos flame flower
- Talinum marginatum* Greene
- Talinum validulum* Greene–Tusayan flame flower

## PRIMULACEAE Primrose Family

- Dodecatheon alpinum* (Gray) Greene ssp. *majus* H. J. Thompson  
*Dodecatheon dentatum* Hook. ssp. *ellisiae* (Standl.) H. J. Thompson  
*Dodecatheon pulchellum* (Raf.) Merrill  
*Primula hunnewellii* Fern.  
*Primula rusbyi* Greene  
*Primula specuicola* Rydb.

## RANUNCULACEAE Buttercup Family

- Aquilegia caerulea* James ssp. *pinetorum* (Tidest.) Payson–Rocky Mountain Columbine  
*Aquilegia chrysantha* Gray  
*Aquilegia desertorum* (Jones) Ckll.–Desert columbine, Mogollon columbine  
*Aquilegia elegantula* Greene  
*Aquilegia longissima* Gray–Long Spur Columbine  
*Aquilegia micrantha* Eastw.  
*Aquilegia triternata* Payson

## ROSACEAE Rose Family

- Rosa stellata* Woot.–ssp. *abyssa* A. Phillips Grand Canyon rose  
*Vauquelinia californica* (Torr.) Sarg. ssp. *pauciflora* (Standl.) Hess & Henrickson–Few-flowered Arizona rosewood

## SCROPHULARIACEAE Figwort Family

- Castilleja mogollonica* Pennell  
*Penstemon albomarginatus* Jones  
*Penstemon bicolor* (Brandeg.) Clokey & Keck ssp. *roseus* Clokey & Keck  
*Penstemon clutei* A. Nels.  
*Penstemon distans* N. Holmgren–Mt. Trumbull beardtongue  
*Penstemon linarioides* spp. *maguirei*

## SIMAROUBACEAE Simarouba Family

- Castela emoryi* (Gray) Moran & Felger–Crucifixion thorn  
 Syn.: *Holacantha emoryi* Gray

## STERCULIACEAE Cacao Family

- Fremontodendron californicum* (Torr.) Coville–Flannel bush

- C. Salvage assessed native plants as prescribed in A.R.S. § 3-903(B)(3) that require a permit for removal:

## BIGNONIACEAE Bignonia Family

- Chilopsis linearis* (Cav.) Sweet var. *arcuata* Fosberg–Desert-willow  
*Chilopsis linearis* (Cav.) Sweet var. *glutinosa* (Engelm.) Fosberg

## FABACEAE Pea Family [=Leguminosae]

- Cercidium floridum* Benth.–Blue palo verde  
*Cercidium microphyllum* (Torr.) Rose & Johnst.–Foothill palo verde  
*Olneya tesota* Gray–Desert ironwood  
*Prosopis glandulosa* Torr. var. *glandulosa*–Honey mesquite  
 Syn.: *Prosopis juliflora* (Swartz) DC. var. *glandulosa* (Torr.) Ckll.  
*Prosopis glandulosa* Torr. var. *torreyana* (Benson) M. C. Johnst.–Western honey mesquite  
 Syn.: *Prosopis juliflora* (Swartz) DC. var. *torreyana* Benson  
*Prosopis pubescens* Benth.–Screwbean mesquite  
*Prosopis velutina* Woot.–Velvet mesquite  
 Syn.: *Prosopis juliflora* (Swartz) DC. var. *velutina* (Woot.) Sarg.  
*Psoralea spinosa* (Gray) Barneby–Smoke tree.  
 Syn.: *Dalea spinosa* Gray

- D. Harvest restricted native plants as prescribed at A.R.S. § 3-903(B)(4) that require a permit to cut or remove the plants for their by-products, fibers, or wood:

## AGAVACEAE Agave Family (including Nolinaceae)

- Nolina bigelovii* (Torr.) Wats.–Bigelow's nolina  
*Nolina microcarpa* Wats.–Beargrass, sacahuista  
*Nolina parryi* Wats.–Parry's nolina  
*Nolina texana* Wats. var. *compacta* (Trel.) Johnst.–Bunchgrass  
*Yucca baccata* Torr. var. *baccata*–Banana yucca  
*Yucca schidigera* Roezl.–Mohave yucca, Spanish dagger

## FABACEAE Pea Family [=Leguminosae]

- Olneya tesota* Gray–Desert ironwood  
*Prosopis glandulosa* Torr. var. *glandulosa*–Honey mesquite  
 Syn.: *Prosopis juliflora* (Swartz) DC. var. *glandulosa* (Torr.) Ckll.  
*Prosopis glandulosa* Torr. var. *torreyana* (Benson) M. C. Johnst.–Western honey mesquite  
 Syn.: *Prosopis juliflora* (Swartz) DC. var. *torreyana* Benson  
*Prosopis pubescens* Benth.–Screwbean mesquite  
*Prosopis velutina* Woot.–Velvet mesquite  
 Syn.: *Prosopis juliflora* (Swartz) DC. var. *velutina* (Woot.) Sarg.

**Historical Note**

New Section recodified from 3 A.A.C. 4, Article 6 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Amended by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1).



# Chapter Divider Page

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**TITLE 3. AGRICULTURE**  
**CHAPTER 4. DEPARTMENT OF AGRICULTURE**  
**PLANT SERVICES DIVISION**

Authority: A.R.S. §§ 3-107, 3-201 et seq., 3-441 et seq., and 3-481 et seq.

*Title 3, Chapter 4, Article 1, Sections R3-4-101 through R3-4-109 renumbered from Title 3, Chapter 1, Article 1, Sections R3-1-01 through R3-1-09; Title 3, Chapter 4, Article 2, Sections R3-4-201 through R3-4-248 renumbered from Title 3, Chapter 1, Article 2, Sections R3-1-50 through R3-1-77; Title 3, Chapter 4, Article 3, Sections R3-4-301 through R3-4-307 renumbered from Title 3, Chapter 1, Article 3, Sections R3-1-301 through R3-1-307; Title 3, Chapter 4, Article 4, Sections R3-4-401 through R3-4-408 renumbered from Title 3, Chapter 1, Article 4, Sections R3-1-401 through R3-1-408; Title 3, Chapter 4, Article 5, Sections R3-4-501 through R3-4-504 renumbered from Title 3, Chapter 1, Article 5, Sections R3-1-501 through R3-1-504; Title 3, Chapter 4, Article 6, Sections R3-4-601 through R3-4-633 and Appendix 1 renumbered from Title 3, Chapter 1, Article 6, Sections R3-1-601 through R3-1-633 and Appendix 1; Title 3, Chapter 4, Article 7, Sections R3-4-701 through R3-4-708 renumbered from Title 3, Chapter 7, Article 1, Sections R3-7-101 through R3-7-108; Title 3, Chapter 4, Article 8, Sections R3-4-801 through R3-4-807 renumbered from Title 3, Chapter 7, Article 2, Sections R3-7-201 through R3-7-207 (Supp. 91-4).*

**ARTICLE 1. GENERAL PROVISIONS**

*Title 3, Chapter 4, Article 1, Sections R3-4-101 through R3-4-109 renumbered from Title 3, Chapter 1, Article 1, Sections R3-1-01 through R3-1-09 (Supp. 91-4).*

Section

R3-4-101.	Definitions
R3-4-102.	Licensing Time-frames
R3-4-103.	Repealed
R3-4-104.	Repealed
R3-4-105.	Repealed
R3-4-106.	Repealed
R3-4-107.	Repealed
R3-4-108.	Repealed
R3-4-109.	Repealed
Table 1.	Time-frames (Calendar Days)

**ARTICLE 2. QUARANTINE**

*Title 3, Chapter 4, Article 2, Sections R3-4-201 through R3-4-248 renumbered from Title 3, Chapter 1, Article 2, Sections R3-1-50 through R3-1-77 (Supp. 91-4).*

Section

R3-4-201.	Definitions
R3-4-202.	Transportation and Packaging
R3-4-203.	Repealed
R3-4-204.	Boll Weevil and Pink Bollworm Pests: Interior Quarantine
R3-4-205.	Renumbered
R3-4-206.	Repealed
R3-4-207.	Repealed
R3-4-208.	Repealed
R3-4-209.	Repealed
R3-4-210.	Repealed
R3-4-211.	Repealed
R3-4-212.	Repealed
R3-4-213.	Repealed
R3-4-214.	Repealed
R3-4-215.	Repealed
R3-4-216.	Repealed
R3-4-217.	Repealed
R3-4-218.	Boll Weevil and Pink Bollworm Pests: Exterior Quarantine
R3-4-219.	Citrus Fruit Surface Pest
R3-4-220.	Citrus Nursery Stock Pests
R3-4-221.	Repealed
R3-4-222.	Repealed
R3-4-223.	Repealed
R3-4-224.	Repealed
R3-4-225.	Repealed
R3-4-226.	Scale Insect Pests
R3-4-227.	Repealed

R3-4-228.	European Corn Borer
R3-4-229.	Nut Tree Pests
R3-4-230.	Repealed
R3-4-231.	Nut Pests
R3-4-232.	Repealed
R3-4-233.	Lettuce Mosaic Virus
R3-4-234.	Nematode Pests
R3-4-235.	Repealed
R3-4-236.	Repealed
R3-4-237.	Repealed
R3-4-238.	Whitefly Pests
R3-4-239.	Imported Fire Ants
R3-4-240.	Apple Maggot and Plum Curculio
R3-4-241.	Lethal Yellowing of Palms
R3-4-242.	Brown Citrus Aphid
R3-4-243.	Repealed
R3-4-244.	Regulated and Restricted Noxious Weeds
R3-4-245.	Prohibited Noxious Weeds
R3-4-246.	Caribbean Fruit Fly
R3-4-247.	Repealed
R3-4-248.	Japanese beetle

**ARTICLE 3. NURSERY CERTIFICATION PROGRAM**

*Title 3, Chapter 4, Article 3, Sections R3-4-301 through R3-4-307 renumbered from Title 3, Chapter 1, Article 3, Sections R3-1-301 through R3-1-307 (Supp. 91-4).*

*Article 3 consisting of Sections R3-4-301 through R3-4-307 adopted effective January 17, 1989.*

Section

R3-4-301.	Nursery Certification
R3-4-302.	Repealed
R3-4-303.	Repealed
R3-4-304.	Repealed
R3-4-305.	Repealed
R3-4-306.	Repealed
R3-4-307.	Repealed

**ARTICLE 4. SEEDS**

*Title 3, Chapter 4, Article 4, Sections R3-4-401 through R3-4-408 renumbered from Title 3, Chapter 1, Article 4, Sections R3-1-401 through R3-1-408 (Supp. 91-4).*

*Article 4 consisting of Sections R3-4-110 through R3-4-117 renumbered without change as Article 4, Sections R3-4-401 through R3-4-408 (Supp. 89-1).*

Section

R3-4-401.	Definitions
R3-4-402.	Labeling
R3-4-403.	Noxious Weed Seeds
R3-4-404.	Germination Standards

R3-4-405.	Seed-certifying Agencies
R3-4-406.	Sampling and Analyzing Seed
R3-4-407.	Phytosanitary Field Inspection; Fee
R3-4-408.	Licenses: Seed Dealer and Seed Labeler; Fees
R3-4-409.	Violations and Penalties

**ARTICLE 5. COLORED COTTON**

(Authority: A.R.S. § 3-205.02 et seq.)

*Article 5, consisting of Section R3-4-501 renumbered from R3-4-205 and amended, effective April 9, 1998 (Supp. 98-2).*

*Article 5, consisting of Sections R3-4-501 through R3-4-506, repealed by summary action with an interim effective date of February 10, 1995; interim effective date of February 10, 1995 now the permanent date (Supp. 96-3).*

*Article 5, consisting of Sections R3-4-501 through R3-4-505 adopted effective October 15, 1993 (Supp. 93-4).*

*Article 5, consisting of Sections R3-4-501 through R3-4-504 repealed effective October 15, 1993 (Supp. 93-4).*

*Title 3, Chapter 4, Article 5, Sections R3-4-501 through R3-4-504 renumbered from Title 3, Chapter 1, Article 5, Sections R3-1-501 through R3-1-504 (Supp. 91-4).*

*Article 5 consisting of Sections R3-4-120 through R3-4-122 renumbered without change as Article 5, Sections R3-4-501 through R3-4-503 (Supp. 89-1).*

## Section

R3-4-501. Colored Cotton Production and Processing

**ARTICLE 6. RECODIFIED**

*Article 6, consisting of Sections R3-4-601 through R3-4-611 and Appendix A, recodified to 3 A.A.C. 3, Article 11 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1).*

*Article 6, consisting of Sections R3-4-601 through R3-4-618 and Appendix A, adopted effective July 6, 1993 (Supp. 93-3).*

*Article 6, consisting of Sections R3-4-601 through R3-4-633 and Appendix A, repealed effective July 6, 1993 (Supp. 93-3).*

*Title 3, Chapter 4, Article 6, Sections R3-4-601 through R3-4-633 and Appendix 1 renumbered from Title 3, Chapter 1, Article 6, Sections R3-1-601 through R3-1-633 and Appendix 1.*

*Article 6 consisting of Sections R3-4-130 through R3-4-141 renumbered without change as Article 6, Sections R3-4-601 through R3-4-612 (Supp. 89-1).*

## Section

R3-4-601.	Recodified
R3-4-602.	Recodified
R3-4-603.	Recodified
R3-4-604.	Recodified
R3-4-605.	Recodified
R3-4-606.	Recodified
R3-4-607.	Recodified
R3-4-608.	Recodified
R3-4-609.	Recodified
R3-4-610.	Recodified
R3-4-611.	Recodified
R3-4-612.	Repealed
R3-4-613.	Repealed
R3-4-614.	Repealed
R3-4-615.	Repealed
R3-4-616.	Renumbered
R3-4-617.	Repealed
R3-4-618.	Renumbered

R3-4-619.	Repealed
R3-4-620.	Repealed
R3-4-621.	Repealed
R3-4-622.	Repealed
R3-4-623.	Repealed
R3-4-624.	Repealed
R3-4-625.	Repealed
R3-4-626.	Repealed
R3-4-627.	Repealed
R3-4-628.	Repealed
R3-4-629.	Repealed
R3-4-630.	Repealed
R3-4-631.	Repealed
R3-4-632.	Repealed
R3-4-633.	Repealed

Appendix A. Recodified

**ARTICLE 7. FRUIT AND VEGETABLE STANDARDIZATION**

(Authority: A.R.S. § 3-481 et seq.)

*Title 3, Chapter 4, Article 7, Sections R3-4-701 through R3-4-708 renumbered from Title 3, Chapter 7, Article 1, Sections R3-7-101 through R3-7-108 (Supp. 91-4).*

## Section

R3-4-701.	Apple Standards
R3-4-702.	Apricot Standards
R3-4-703.	Asparagus Standards
R3-4-704.	Beet and Turnip Standards
R3-4-705.	Broccoli Standards
R3-4-706.	Brussels Sprouts Standards
R3-4-707.	Cabbage Standards
R3-4-708.	Cantaloupe Standards; Maturity Sampling; Packing Arrangements
R3-4-709.	Carrot Standards
R3-4-710.	Cauliflower Standards
R3-4-711.	Celery Standards
R3-4-712.	Cherry Standards
R3-4-713.	Corn Standards
R3-4-714.	Endive, Escarole, or Chicory Standards
R3-4-715.	Greens Standards (Collard, Rapini, Mustard, and Turnip)
R3-4-716.	Head Lettuce Standards
R3-4-717.	Melon Standards (Persian Melons, Casabas, Crenshaw, Honeydew, Honeyball, Other Specialty Melons, and Watermelons); Maturity Sampling
R3-4-718.	Nectarine Standards
R3-4-719.	Okra Standards
R3-4-720.	Dry Onion Standards
R3-4-721.	Pea Standards
R3-4-722.	Peach Standards
R3-4-723.	Pear Standards
R3-4-724.	Sweet Pepper Standards
R3-4-725.	Fresh Plum and Prune Standards
R3-4-726.	Potato Standards
R3-4-727.	Romaine Standards
R3-4-728.	Spinach Standards
R3-4-729.	Strawberry Standards
R3-4-730.	String Bean Standards
R3-4-731.	Summer Squash Standards
R3-4-732.	Sweet Potato Standards
R3-4-733.	Table Grape Standards
R3-4-734.	Tomato Standards
R3-4-735.	Winter Squash Standards
R3-4-736.	Standards for Unlisted Fresh Fruits and Vegetables, Experimental Product Standards

- R3-4-737. Container Labeling for Fruit and Vegetables
- R3-4-738. Inspection and Representative Sampling for Fruit and Vegetables
- R3-4-739. Reconditioning for Fruit and Vegetables
- R3-4-740. Experimental Pack and Product Permits for Fruit and Vegetables
- R3-4-741. Inspection Fee
- R3-4-742. Recordkeeping and Reporting Requirements for Fruit and Vegetable Commission Merchants
- R3-4-743. Recordkeeping and Reporting Requirements for Fruit and Vegetable Shippers

## ARTICLE 8. CITRUS FRUIT STANDARDIZATION

(Authority: A.R.S. § 3-441 et seq.)

*Title 3, Chapter 4, Article 8, Sections R3-4-801 through R3-4-807 renumbered from Title 3, Chapter 7, Article 2, Sections R3-7-201 through R3-7-207 (Supp. 91-4).*

### Section

- R3-4-801. Orange and Grapefruit Standards
- R3-4-802. Lemon Standards
- R3-4-803. Lime Standards
- R3-4-804. Tangerine, Tangelo, and Mandarin Standards
- R3-4-805. Serious Defects in Citrus Fruit
- R3-4-806. Tolerance for Serious Defects
- R3-4-807. Freezing Damage
- R3-4-808. Standards for Unlisted Citrus Fruit, Experimental Product Standards
- R3-4-809. Bulk Sale of Citrus Fruit; Non-licensed Purchaser
- R3-4-810. Packaged Count and Average Diameter
- R3-4-811. Container Labeling for Citrus Fruit
- R3-4-812. Inspections and Representative Sampling for Citrus Fruit
- R3-4-813. Reconditioning for Citrus Fruit
- R3-4-814. Experimental Pack and Product Permits for Citrus Fruit
- R3-4-815. Recordkeeping and Reporting Requirements for Citrus Fruit Commission Merchants
- R3-4-816. Recordkeeping and Reporting Requirements for Citrus Fruit Shippers

## ARTICLE 9. BIOTECHNOLOGY

*Article 9, consisting of Section R3-4-901, adopted effective November 22, 1993 (Supp. 93-4).*

### Section

- R3-4-901. Genetically Engineered Organisms and Products

## ARTICLE 1. GENERAL PROVISIONS

### R3-4-101. Definitions

In addition to the definitions provided in A.R.S. §§ 3-201, 3-231, 3-441, and 3-481, the following definitions apply to this Chapter:

“Appliance” means any box, tray, container, ladder, tent, vehicle, implement, or any article or thing that is or may be used in growing, harvesting, handling, packing, or transporting any agricultural commodity.

“Aquatic” means living or growing in or on water.

“Bulk container” means a container used solely for transporting a commodity in bulk quantities.

“Carrier” means any plant or thing that can transport or harbor a plant pest.

“Certificate” means an original document issued by the Department, the United States Department of Agriculture, or authorized officer of the state of origin, stating name, quantity,

and nature of the regulated commodity, and the information required by a specific regulation.

“Commodity” means any plant, produce, soil, material, or thing that may be subject to federal and state laws and rules.

“Container” means any box, crate, lug, chest, basket, carton, barrel, keg, drum, can, sack, or other receptacle for a commodity.

“Cotton lint” means the remnant produced when cottonseed is processed in a gin.

“Cotton plant” means all parts of *Gossypium* spp. whether wild or domesticated, except manufactured cotton products.

“Cotton products” include seed cotton, cotton lint, cotton linters, motes, cotton waste, gin trash, cottonseed, and cotton hulls.

“Cotton stubble” means the basal part of a cotton plant that remains attached to the soil after harvest.

“Cotton waste” includes all waste products from the processing of cotton at gins and cottonseed-oil mills, in any form or under any trade designation.

“Defoliate” means to remove the leaves from a plant.

“Diseased” means an abnormal condition of a plant resulting from an infection.

“Gin trash” means organic waste or materials resulting from ginning cotton.

“Head leaves” means all leaves that enfold the compact portion of a head of lettuce or cabbage.

“Host” means a plant on or in which a pest can live or reproduce, or both.

“Husk” means the membranous outer envelope of many seeds and fruit, such as an ear of corn or a nut.

“Infested” means any plant or other material on or in which a pest is found.

“Inspector” means an employee of the Department or other governmental agency who enforces any law or rule of the Department.

“Label” means all tags and other written, printed, or graphic representations in any form, accompanying or pertaining to a plant or other commodity.

“Lot” means any one group of plants or things, whether or not containerized that is set apart or is separate from any other group.

“Nursery” means real property or other premises on or in which nursery stock is propagated, grown, or cultivated or from which source nursery stock is offered for distribution or sale. (A.R.S. § 3-201(5))

“Permit” means an official document authorizing the movement of a host plant and carrier.

“Person” means an individual, partnership, corporation, association, governmental subdivision or unit of a governmental subdivision, a public or private organization of any character, or another agency.

“Plant” or “crop” includes every kind of vegetation, wild or domesticated, and any part thereof, as well as seed, fruit or other natural product of such vegetation. (A.R.S. § 3-201(8))

“Reshipment” means the shipment of a commodity after receipt from another shipping point.

“Sell” means to exchange for money or its equivalent including to offer, expose, or possess a commodity for sale or to otherwise exchange, barter, or trade.

“Serious damage” means any injury or defect rising from any circumstance, natural or mechanical, that affects the appearance or the edible or shipping quality of a commodity, or lot.

“Soil” means any non-liquid combination of organic, or organic and inorganic material in which plants can grow.

“Stub or soca cotton” means cotton stalks of a previous crop that begin to show signs of growth.

“Subcontainer” means any container being used within another container.

“Transport” means moving an article from one point to another.

“Treatment” means an application of a substance as either a spray, mist, dust, granule, or fumigant; or a process in which a substance or procedure is used to control or eradicate a plant pest.

“Vector” means an organism (usually an insect) that may carry a pathogen from one host plant to another.

“Vehicle” means an automotive device, such as a car, bus, truck, or private or recreational vehicle.

“Volunteer cotton” means a sprout from seed of a previous crop.

“Wrapper leaves” means all leaves that do not closely enfold the compact portion of the head of lettuce or cabbage.

#### Historical Note

Former Rule 1; Amended effective June 16, 1977 (Supp. 77-3). Section R3-1-01 renumbered to R3-4-101 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2). New Section R3-4-101 renumbered from R3-4-102 without change, effective October 8, 1998 (Supp. 98-4). Amended by final rulemaking at 5 A.A.R. 2521, effective July 15, 1999 (Supp. 99-3). Amended by final rulemaking at 19 A.A.R. 3860, effective January 4, 2014 (Supp. 13-4).

#### R3-4-102. Licensing Time-frames

- A. Overall time-frame. The Department shall issue or deny a license within the overall time-frames listed in Table 1 after receipt of the complete application. The overall time-frame is the total of the number of days provided for the administrative completeness review and the substantive review.
- B. Administrative completeness review.
  1. The administrative completeness review time-frame established in Table 1 begins on the date the Department receives the application. The Department shall notify the applicant in writing within the administrative completeness review time-frame whether the application or request is incomplete. The notice shall specify what information is missing. If the Department does not provide notice to the applicant within the administrative completeness review time-frame, the Department considers 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 date the Department mails the notice of missing information to the applicant until the date the Department receives the information.

tion to the applicant until the date the Department receives the information.

3. If the applicant fails to submit the missing information before the expiration of the completion request period, the Department shall close the file, unless the applicant requests an extension. An applicant whose file has been closed may obtain a license by submitting a new application.

#### C. Substantive review. The substantive review time-frame established in Table 1 shall begin after the application is administratively complete.

1. If the Department makes a comprehensive written request for additional information, the applicant shall submit the additional information identified by the request within the additional information period provided in Table 1. The substantive review time-frame is suspended from the date of the Department request until the information is received by the Department. If the applicant fails to provide the information identified in the written request within the additional information period, the Department shall deny the license.
2. The Department shall issue a written notice granting or denying a license within the substantive review time-frame. If the application is denied, the Department 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.

#### Historical Note

Former Rule 2; Amended effective June 19, 1978 (Supp. 78-3). Section R3-1-02 renumbered to R3-4-102 (Supp. 91-4). Section repealed, new Section adopted effective January 6, 1994 (Supp. 94-1). Section R3-4-102 renumbered to R3-4-101; new Section R3-4-102 adopted effective October 8, 1998 (Supp. 98-4).

#### R3-4-103. Repealed

#### Historical Note

Former Rule 3. Section R3-1-03 renumbered to R3-4-103 (Supp. 91-4). Repealed effective September 22, 1994 (Supp. 94-3).

#### R3-4-104. Repealed

#### Historical Note

Former Rule 4. Section R3-1-04 renumbered to R3-4-104 (Supp. 91-4). Repealed effective September 22, 1994 (Supp. 94-3).

#### R3-4-105. Repealed

#### Historical Note

Former Rule 5. Section R3-1-05 renumbered to R3-4-105 (Supp. 91-4). Amended effective September 22, 1994 (Supp. 94-3). Section repealed by final rulemaking at 6 A.A.R. 41, effective December 8, 1999 (Supp. 99-4).

#### R3-4-106. Repealed

#### Historical Note

Former Rule 6. Section R3-1-06 renumbered to R3-4-106 (Supp. 91-4). Repealed effective September 22, 1994 (Supp. 94-3).

#### R3-4-107. Repealed

#### Historical Note

Former Rule 7. Section R3-1-07 renumbered to R3-4-107 (Supp. 91-4). Amended effective September 22, 1994

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(Supp. 94-3). Section repealed by final rulemaking at 19 A.A.R. 3860, effective January 4, 2014 (Supp. 13-4).

**R3-4-109. Repealed****Historical Note**

Former Rule 9. Section R3-1-09 renumbered to R3-4-109 (Supp. 91-4). Repealed effective September 22, 1994 (Supp. 94-3).

**R3-4-108. Repealed****Historical Note**

Former Rule 8. Section R3-1-08 renumbered to R3-4-108 (Supp. 91-4). Repealed effective September 22, 1994 (Supp. 94-3).

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

License	Authority	Administrative Completeness Review	Response to Completion Request	Substantive Completeness Review	Response to Additional Information	Overall Time-frame
<b>QUARANTINE</b>						
Boll Weevil and Pink Boll-worm	R3-4-204(D)	14	14	30	30	44
Small-Grain Crop Approval	R3-4-204(E)(4)(b)	14	14	30	30	44
Boll Weevil and Pink Boll-worm	R3-4-218	14	14	30	30	44
Citrus Fruit Surface Pest	R3-4-219	14	14	60	30	74
European Corn Borer	R3-4-228	14	14	30	30	44
Lettuce Mosaic	R3-4-233	14	14	30	30	44
Noxious Weeds Regulated and Restricted Prohibited	R3-4-244 R3-4-245	14	14	30	30	44
Plum Curculio and Apple Maggot	R3-4-240	14	14	60	30	74
Colored Cotton	A.R.S. § 3-205.02 R3-4-501	14	0	0	0	14
<b>NURSERY</b>						
General Nursery Stock Inspection	R3-4-301(B)	30	14	1 yr	14	1 yr, 30 days
Special Nursery Stock Inspection: Ozonium Root Rot	R3-4-301(C)					
• Method of Growing New Renewal		7 7 7	14 14 14	60 30 4 yrs	14 14 14	67 37 4 yrs, 7 days
• Indicator Crop Planted on Applicant's Property						
Special Nursery Stock Inspection: Rose Mosaic	R3-4-301(C)	7	14	180	14	187
Special Nursery Stock Inspection: Brown Garden Snail	R3-4-301(C)	7	14	30	14	37
Special Nursery Stock Inspection: Other	R3-4-301(C)	7	14	30	14	37
Phytosanitary Field Inspection	A.R.S. § 3-233(A)(7) R3-4-407	30	7	210	7	240
<b>STANDARDIZATION</b>						
Experimental Pack and Product for Fruit and Vegetables	A.R.S. § 3-487 R3-4-740	7	7	7	7	14

Experimental Pack and Product for Citrus Fruit	A.R.S. § 3-445 R3-4-814	7	7	7	7	14
Citrus Fruit Dealer, Packer, or Shipper License	A.R.S. § 3-449	14	14	14	14	28
Fruit and Vegetable Dealer, Packer, or Shipper License	A.R.S. § 3-492	14	14	14	14	28
<b>SEED DEALERS AND LABELERS</b>						
Seed Dealer	A.R.S. § 3-235 R3-4-408	14	14	14	14	28
Seed Labeler	A.R.S. § 3-235 R3-4-408	14	14	14	14	28

**Historical Note**

Table 1 adopted effective October 8, 1998 (Supp. 98-4). Amended by final rulemaking at 7 A.A.R. 3812, effective August 10, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 3633, effective August 7, 2002 (Supp. 02-3). Amended by final rulemaking at 8 A.A.R. 4454, effective October 2, 2002 (Supp. 02-4). Amended Section references under Arizona Native Plants to correspond to recodification at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1). Amended by final rulemaking at 10 A.A.R. 2665, effective June 8, 2004 (Supp. 04-2). Amended by final rulemaking at 19 A.A.R. 3860, effective January 4, 2014 (Supp. 13-4).

**ARTICLE 2. QUARANTINE****R3-4-201. Definitions**

The following definitions apply to this Article:

“Associate Director” means the Associate Director of the Plant Services Division.

“Common carrier” means any person transporting a commodity or appliance for compensation or commercial purpose.

“Compliance agreement” means a written agreement or permit between a person and the Department for the purpose of allowing the movement or production of a regulated commodity or appliance from a quarantined area of this state and containing demonstrated safeguarding measures to ensure compliance with the purposes of A.R.S. Title 3, Chapter 2, Article 1.

“Consumer container” means a container that is produced or distributed for retail sale or for consumption by an individual.

“Cotton harvesting machine” means any machine used to pick or harvest raw cotton in a field.

“Designated treatment area” means an area temporarily approved by the Department for the holding and treatment of a commodity or appliance for a pest in cases where a quarantine holding area does not exist.

“Epiphytically” means the function of a plant growing on another plant or object but that does not require the other plant or object as a source of nutrients.

“Fumigate” means to apply a gaseous substance to a commodity or appliance in a closed area to eradicate a pest.

“Hull” means the dry outer covering of a seed or nut.

“Infected” means any plant or other material on or in which a disease is found.

“Limited permit” means a permit issued by the Department to a common carrier or responsible party to transport a commodity or appliance that would otherwise be restricted.

“Master permit” means a permit issued by the Department to another state department of agriculture that gives that other state authority to certify, in accordance with the terms of the permit, that a regulated commodity or appliance may enter Arizona without a quarantine compliance certificate.

“Origin inspection agreement” means a permit issued by the Department to a person that specifies terms to ship or transport

a regulated commodity or appliance into Arizona, which importation would otherwise be prohibited by this Article, and that the origin state department of agriculture agrees with.

“Package” means (i) any box, bag, or envelope used for the shipment of a commodity or appliance through postal and parcel services or (ii) individual packets of seeds for planting.

“Pest free” means apparently free from all regulated plant pests, as determined by an inspection.

“Phytosanitary certificate” means a certificate issued by a regulatory official for the purpose of certifying a commodity or appliance as pest free.

“Private carrier” means any person transporting a commodity or appliance for a noncommercial purpose.

“Quarantine compliance certificate” means a certificate issued by a plant regulatory official of the originating state that establishes that a commodity or appliance has been treated or inspected to comply with Arizona quarantine rules and orders and includes a certificate of inspection.

“Receiver” means any person or place of business listed on a bill of lading, manifest, or freight bill as a consignee or destination for a commodity or appliance.

“Regulated plant pest” means all live life stages of an arthropod, disease, plant, nematode, or snail that is regulated or considered under quarantine by a state or federal law, rule or order enforced by the Department.

“Responsible party” means a common carrier, person, or place of business that is legally responsible for the possession of a commodity or appliance.

“Treatment Manual” means the USDA-APHIS-PPQ Treatment Manual, T301—Cotton and Cotton Products, revised March 2013. The Treatment Manual is incorporated by reference, does not include any later amendments or editions, and is available from the Department and online at [http://www.aphis.usda.gov/import\\_export/plants/manuals/ports/downloads/treatment.pdf](http://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/treatment.pdf).

**Historical Note**

Former Rule, Quarantine Regulation 2; Amended effective July 1, 1975 (Supp. 75-1). Former Section R3-4-50 repealed, new Section R3-4-50 adopted effective October 23, 1978 (Supp. 78-5). Section R3-1-50 renumbered to



R3-4-201 (Supp. 91-4). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 2521, effective July 15, 1999 (Supp. 99-3). Amended by final rulemaking at 19 A.A.R. 3860, effective January 4, 2014 (Supp. 13-4).

### **R3-4-202. Transportation and Packaging**

- A.** Any commodity shipped or transported into the state shall be inspected to determine whether the commodity is free of all pests subject to federal and state laws and rules.
- B.** Each commodity shipped or transported into the state shall display the following information on a bill of lading, manifest, freight bill, or on the outside of the carton;
  - 1. The name and address of the shipper and receiver;
  - 2. A certificate of inspection for nursery stock, if applicable;
  - 3. The botanical or common name of the commodity;
  - 4. The quantity of each type of commodity;
  - 5. The state or foreign country where each commodity originated;
  - 6. Any other certificate required by this Article.
- C.** Packaging.
  - 1. Any commodity shipped or transported into the state shall be packaged or wrapped in a manner to allow inspection by an inspector.
  - 2. The following and other similar types of packages are prohibited:
    - a. Packages that cannot be opened without destroying either the package or its contents;
    - b. Packages that cannot, once opened, be resealed after inspection without the inspector supplying additional packing material to protect the contents;
    - c. Commodities that are packaged or sealed with wire or seals that cannot be opened and resealed without special tools or equipment;
    - d. Clear or colored waxes applied to a commodity that prevent inspection.
- D.** Restrictions.
  - 1. Nursery stock shipments shall not enter Arizona between 8:00 a.m. Friday and 12:01 a.m. Monday, or during a legal holiday.
  - 2. Common and private carriers. A carrier shall declare all commodities at a port-of-entry.
    - a. All carriers shall hold a commodity until it is inspected by an inspector and a Certificate of Release, under A.R.S. § 3-209, is issued. The Director may authorize a carrier to deliver a commodity to a consignee before the inspection.
      - i. If the commodity requiring inspection cannot be adequately inspected, the inspector may place the commodity under a "Warning-Hold for Agricultural Inspection."
      - ii. The inspector may seal the truck to prevent the likelihood of spreading harmful pests.
    - b. When a carrier enters the state at a port-of-entry where agriculture inspections are performed, the driver shall:
      - i. Provide the inspector with the bill of lading, manifest, or a short-form manifest signed by the company's authorized agent responsible for supervising the loading of the contents in the shipment;
      - ii. Open the vehicle and expose the contents for inspection; and
      - iii. Assist the inspector in gaining access to the contents.
    - c. When a carrier enters the state at a port-of-entry where no agricultural inspections are performed, the carrier shall follow procedures specified in subsection (D)(2)(b), proceed to destination for inspection, and provide the following information on a Load Report form:
      - i. The name, address, and telephone number of the shipper;
      - ii. The name, address, and telephone number of the primary receiver;
      - iii. The name and address of the carrier;
      - iv. The tractor unit number and trailer license number; and
      - v. The name and address of additional receivers, if any.
- 3. Bulk mail facility. All commodities entering a bulk mail facility shall be held for inspection. The commodity shall not be released until an inspector inspects the commodity and issues a Certificate of Release.
- 4. Railroad. Any commodity shipped by railroad shall be inspected at destination. The responsible party shall notify the Director in advance of the shipment to schedule an inspection of the commodity.
- 5. Out-of-state destination. If a commodity requiring inspection is shipped to a point outside the state, and is confirmed by a short-form manifest, freight bill, or bill of lading, the inspector shall give the driver a notice in writing, or by transit stamp, that the shipment is under quarantine while in the state, and it is unlawful to dispose of the shipment in any way unless the shipment is inspected and released by an inspector.
- 6. Certificate of Release. Any person receiving a commodity from a post office, United Parcel Service terminal, or any carrier without a Certificate of Release shall immediately notify the Department and request an inspection.
- E.** Disposition of commodity. When a carrier is in possession of, or responsible for, a commodity inspected by an inspector and found in violation of Arizona quarantine laws, and elects to ship the commodity out-of-state:
  - 1. The inspector shall issue a "Warning-Hold for Agricultural Inspection" notice to the carrier. The carrier shall hold the notice until the commodity is removed from the state through a port-of-entry designated by the inspector and the removal is noted on the notice.
  - 2. The carrier shall surrender the "Warning-Hold for Agricultural Inspection" notice (driver's copy) at the port-of-entry specified on the notice.
- F.** Violations.
  - 1. The inspector shall place any commodities not meeting the requirements of subsections (C)(1) and (C)(2) under quarantine and notify the shipper in writing of the following options:
    - a. Reship the commodity out-of-state;
    - b. Provide the necessary labor and material to open the package and resealed it after inspection; or
    - c. Under the supervision of an inspector, destroy the shipment.
  - 2. Any person who violates any of the following provisions shall submit the load for complete inspection at a port-of-entry, or where apprehended:
    - a. Fails to comply with requirements on the "Warning-Hold for Agricultural Inspection" notice;
    - b. Fails to comply with the inspector's instructions;
    - c. Breaks the seals of a sealed vehicle; or
    - d. Delivers a product under quarantine before it is released by an inspector, or authorized by the Director.

**Historical Note**

Former Rule, Quarantine Regulation 3. Section R3-1-51 renumbered to R3-4-202 (Supp. 91-4). Section repealed by final rulemaking at 5 A.A.R. 2521, effective July 15, 1999 (Supp. 99-3). New Section R3-4-202 renumbered from R3-4-201 and amended by final rulemaking at 19 A.A.R. 3860, effective January 4, 2014 (Supp. 13-4).

**R3-4-203. Repealed****Historical Note**

Former Rule, Quarantine Regulation 4. Repealed effective October 23, 1978 (Supp. 78-5). Section R3-1-52 renumbered to R3-4-203 (Supp. 91-4).

**R3-4-204. Boll Weevil and Pink Bollworm Pests: Interior Quarantine****A. Definitions.** The following terms apply to this Section:

1. "Crop remnant" means the stalks, leaves, bolls, lint, pods, and seeds of cotton;
2. "Pests" means any of the following:
  - a. Pink bollworm, *Pectinophora gossypiella* (Saunders); or
  - b. Boll weevil complex, *Anthonomus grandis* (Boheman) complex.

**B. Regulated commodities and appliances.**

1. Cotton, all parts;
2. Cotton gin trash;
3. Used cotton harvesting machines; and
4. Other materials, products, and equipment that are means of disseminating or proliferating the pests.

**C. Cotton gin trash.** Any person operating an Arizona cotton gin shall daily destroy cotton gin trash by using a method prescribed in the Treatment Manual.**D. Restrictions.**

1. A person shall not ship or transport a regulated commodity or appliance from an area infested with pests except pursuant to a limited permit issued by or a compliance agreement with the Department.
2. Any person intending to ship or transport a regulated commodity pursuant to a limited permit or compliance agreement shall provide the Department with the following information before the date of movement or shipment:
  - a. The quantity of the regulated commodity or appliance to be moved;
  - b. The location of the commodity or appliance;
  - c. The names and addresses of the consignee and consignor;
  - d. The method of shipment; and
  - e. The scheduled date of the shipment.
3. The shipper shall attach all permits and compliance agreements to the manifest, waybill, or bill of lading which shall accompany the shipment.
4. Permits and compliance agreements shall specify the manner of handling or treating a regulated commodity or appliance. Pink bollworm and boll weevil treatment shall be under official supervision and applied as prescribed in the Treatment Manual.

**E. Cultural practices.**

1. Arizona's cultural zones are:
  - a. Zone "A" -- Yuma County west of a line extended directly north and directly south of Avenue 58E.
  - b. Zone "B" -- Cochise County, Graham County, and Greenlee County.
  - c. Zone "C" -- Mohave County and La Paz County, except for the following: T6N, R11W, 12W, 13W;

T5N, R12W, 13W; T4N, R12W, 14W, 15W; T3N, R10W, 11W; and T2N, R11W.

- d. Zone "D" -- Pima County; the following portions of Pinal County: T10S, R10E, sections 34-36; T10S, R11E, section 31; T7S, R16E; T6S, R16E; T5S, R15E; T5S, R16E and T4S, R14E; and the following portions of the Aguila area: T6N, R8W; T7N, R8W, 9W, 10W; T7N, R11W, other than sections 24, 25 and 36; and T8N, R9W, sections 31-36.
- e. Zone "E" -- All portions of the state not included in zones "A", "B", "C", and "D."
2. No stub, soca, or volunteer cotton shall be grown in or allowed to grow in the state. The landowner or grower shall be responsible for eliminating stub, soca, or volunteer cotton.
3. Tillage deadline. Except as provided in subsection (E)(4), a grower shall ensure that a crop remnant of a host plant remaining in the field after harvest is shredded and the land tilled to destroy the host plant and its root system so no stalks remain attached to the soil before the following dates or before planting another crop, whichever occurs earlier: Zone "A", January 15; Zone "B", March 1; Zone "C", February 15; Zone "D", March 1; Zone "E", February 15.
4. Rotational crop following cotton harvest.
  - a. If a grower elects to plant a small-grain crop following a cotton harvest, the grower may, after the host plant is shredded, irrigate and plant with wheat, barley, or oats (or other similar small-grain crops approved in writing by the Associate Director before planting) instead of tilling as prescribed in subsection (E)(3). The small-grain crop shall be planted before the tillage deadline for the zone.
  - b. The Associate Director shall approve small-grain crops other than wheat, barley, and oats, if the planting, growth, and harvest cycles of the small-grain crop prevents the maturation of stub, soca, or volunteer cotton. A grower shall submit a written request for approval of a small-grain crop, other than wheat, barley, or oats, at least 15 days before the tillage deadline for the zone. The written request shall include the scientific and common name of the proposed small-grain crop and the estimated date of harvest.
  - c. If a grower elects to plant a crop other than an approved small-grain crop following a cotton harvest, the requirements specified in subsection (E)(3) apply.
5. Planting dates.
  - a. A grower who meets the tillage deadline specified in subsection (E)(3) for the preceding cotton crop year shall not plant cotton earlier than 15 days after the tillage deadline for the zone.
  - b. A grower who does not meet the tillage deadline specified in subsection (E)(3) for the preceding cotton crop year shall not plant cotton on a farm until 15 days after the grower ensures that all crop remnants of a host plant remaining in the fields after harvest are shredded and the land tilled to destroy the host plant and its root system so no stalks remain attached to the soil.
6. Dry planting. Any grower who meets the tillage deadline for the zone may dry plant cotton five days after the tillage deadline for that zone, but shall not water until 15 days after the tillage deadline for that zone.

7. An inspector shall give written notice to any owner or person in charge or control of the nuisance found in violation of subsection (E). The processes established in subsections (E)(3) and (E)(4) shall be repeated, as necessary, to destroy the pests.

**F. Advisory Committee.** The Director, as necessary, shall appoint an advisory committee composed of the nominated representatives of the Arizona Cotton Growers Association and the Arizona Cotton Research and Protection Council and such other individuals as may be necessary to make recommendations to the Department on amendments to this Section.

#### Historical Note

Former Rule, Quarantine Regulation 5. Amended effective January 24, 1978 (Supp. 78-1). Former Section R3-4-53 repealed, new Section R3-4-53 adopted effective December 2, 1982. See also R3-4-53.01 through R3-4-53.07 (Supp. 82-6). Section R3-1-53 renumbered to R3-4-204 (Supp. 91-4). Section repealed, new Section adopted effective May 7, 1993 (Supp. 93-2). Amended effective September 22, 1994 (Supp. 94-3). Amended effective July 10, 1995 (Supp. 95-3). Amended effective November 7, 1996 (Supp. 96-4). Amended by final rulemaking at 5 A.A.R. 2521, effective July 15, 1999 (Supp. 99-3). Amended by final rulemaking at 6 A.A.R. 2082, effective May 15, 2000 (Supp. 00-2). Amended by final rulemaking at 19 A.A.R. 3860, effective January 4, 2014 (Supp. 13-4).

#### R3-4-205. Renumbered

##### Historical Note

Adopted effective December 2, 1982. See also R3-4-53 and R3-4-53.02 through R3-4-53.07 (Supp. 82-6). Section R3-1-53.01 renumbered to R3-4-205 (Supp. 91-4). Repealed effective May 7, 1993 (Supp. 93-2). New Section adopted effective December 20, 1994 (Supp. 94-4). Section R3-4-205 renumbered to R3-4-501 and amended, effective April 9, 1998 (Supp. 98-2).

#### R3-4-206. Repealed

##### Historical Note

Adopted effective December 2, 1982. See also R3-4-53, R3-4-53.01 and R3-4-53.03 through R3-4-53.07 (Supp. 82-6). Section R3-1-53.02 renumbered to R3-4-206 (Supp. 91-4). Repealed effective May 7, 1993 (Supp. 93-2).

#### R3-4-207. Repealed

##### Historical Note

Adopted effective December 2, 1982. See also R3-4-53, R3-4-53.01, R3-4-53.02 and R3-4-53.04 through R3-4-53.07 (Supp. 82-6). Section R3-1-53.03 renumbered to R3-4-207 (Supp. 91-4). Repealed effective May 7, 1993 (Supp. 93-2).

#### R3-4-208. Repealed

##### Historical Note

Adopted effective December 2, 1982. See also R3-4-53, R3-4-53.01 through R3-4-53.03 and R3-4-53.05 through R3-4-53.07 (Supp. 82-6). Section R3-1-53.04 renumbered to R3-4-208 (Supp. 91-4). Repealed effective May 7, 1993 (Supp. 93-2).

#### R3-4-209. Repealed

##### Historical Note

Adopted effective December 2, 1982. See also R3-4-53, R3-4-53.01 through R3-4-53.04, R3-4-53.06, and R3-4-

53.07 (Supp. 82-6). Amended effective October 21, 1983 (Supp. 83-5). Amended effective July 24, 1985 (Supp. 85-4). Amended effective May 5, 1986 (Supp. 86-3). Amended effective May 10, 1988 (Supp. 88-2). Amended subsection (B) effective December 27, 1988 (Supp. 88-4). Amended effective December 22, 1989 (Supp. 89-4). Section R3-1-53.06 renumbered to R3-4-209 (Supp. 91-4). Repealed effective May 7, 1993 (Supp. 93-2).

#### R3-4-210. Repealed

##### Historical Note

Adopted effective December 2, 1982. See also R3-4-53, R3-4-53.01 through R3-4-53.05 and R3-4-53.07 (Supp. 82-6). Section R3-1-53.06 renumbered to R3-4-210 (Supp. 91-4). Repealed effective May 7, 1993 (Supp. 93-2).

#### R3-4-211. Repealed

##### Historical Note

Adopted effective December 2, 1982. See also R3-4-53, R3-4-53.01 through R3-4-53.06 (Supp. 82-6). Section R3-1-53.07 renumbered to R3-4-211 (Supp. 91-4). Repealed effective May 7, 1993 (Supp. 93-2).

#### R3-4-212. Repealed

##### Historical Note

Former Rule, Quarantine Regulation 6. Amended effective July 1, 1975 (Supp. 75-1). Amended effective April 26, 1976 (Supp. 76-2). Amended effective June 16, 1977 (Supp. 77-3). Repealed effective June 19, 1978 (Supp. 78-3). Adopted as an emergency effective October 21, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-5). Adopted as an emergency effective January 19, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-1). Emergency expired. Former Section R3-4-54 adopted as an emergency now adopted without change effective May 15, 1984. See also R3-4-54.01 thru R3-4-54.05 (Supp. 84-3). Section R3-1-54 renumbered to R3-4-212 (Supp. 91-4). Repealed effective April 3, 1997 (Supp. 97-2).

#### R3-4-213. Repealed

##### Historical Note

Adopted as an emergency effective October 21, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-5). Adopted as an emergency effective January 19, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-1). Emergency expired. Former Section R3-4-54.01 adopted as an emergency now adopted and amended effective May 15, 1984. See also R3-4-54, R3-4-54.02 thru R3-4-54.05 (Supp. 84-3). Section R3-1-54.01 renumbered to R3-4-213 (Supp. 91-4). Repealed effective April 3, 1997 (Supp. 97-2).

#### R3-4-214. Repealed

##### Historical Note

Adopted as an emergency effective October 21, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-5). Adopted as an emergency effective January 19, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-1). Emergency expired. Former Section R3-4-54.02 adopted as an emergency now adopted and amended effective May 15, 1984. See also R3-4-54, R3-4-54.01, R3-4-54.03 thru R3-4-54.05 (Supp. 84-3). Section R3-1-54.02 renumbered to R3-4-214 (Supp. 91-4). Repealed effective April 3, 1997 (Supp. 97-2).

**R3-4-215. Repealed****Historical Note**

Adopted as an emergency effective October 21, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-5). Adopted as an emergency effective January 19, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-1). Emergency expired. Former Section R3-4-54.03 adopted as an emergency now adopted and amended effective May 15, 1984. See also R3-4-54, R3-4-54.01, R3-4-54.02, R3-4-54.04 and R3-4-54.05 (Supp. 84-3). Section R3-1-54.03 renumbered to R3-4-215 (Supp. 91-4). Repealed effective April 3, 1997 (Supp. 97-2).

**R3-4-216. Repealed****Historical Note**

Adopted as an emergency effective October 21, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-5). Adopted as an emergency effective January 19, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-1). Emergency expired. Former Section R3-4-54.04 adopted as an emergency now adopted and amended effective May 15, 1984. See also R3-4-54, R3-4-54.01 thru R3-4-54.03, and R3-4-54.05 (Supp. 84-3). Section R3-1-54.04 renumbered to R3-4-216 (Supp. 91-4). Repealed effective April 3, 1997 (Supp. 97-2).

**R3-4-217. Repealed****Historical Note**

Adopted effective May 15, 1984. See also R3-4-54, R3-4-54.01 thru R3-4-54.04 (Supp. 84-3). Section R3-1-54.05 renumbered to R3-4-217 (Supp. 91-4). Repealed effective April 3, 1997 (Supp. 97-2).

**R3-4-218. Boll Weevil and Pink Bollworm Pests: Exterior Quarantine****A. Definitions**

1. "Cotton appliance" means a container used in handling cotton, including sacks, bags, tarps, boxes, crates, and machinery used in planting, harvesting and transporting cotton.
2. "Cottonseed" means a seed derived from cotton plants which is destined for propagation or other use.
3. "Fumigation certificate" means a quarantine compliance certificate that specifies the fumigation chemical used, the treatment schedule, and the commodity treated.
4. "Hibiscus" means all parts of *Hibiscus* spp.
5. "Pest" means any of the following:
  - a. Boll weevil, *Anthonomus grandis* (Boheman); or
  - b. Pink bollworm, *Pectinophora gossypiella* (Saunders).
6. "Spanish moss" means all parts of *Tillandsia usneoides*.

**B. Area under quarantine.**

1. Boll weevil. In the state of Texas, the following counties: Anderson, Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bell, Bexar, Blanco, Bosque, Bowie, Brazoria, Brazos, Brooks, Burleson, Burnett, Caldwell, Calhoun, Cameron, Camp, Cass, Chambers, Cherokee, Collin, Colorado, Comal, Cooke, Coryell, Dallas, Delta, Denton, De Witt, Dimmit, Duval, Ellis, Falls, Fannin, Fayette, Fort Bend, Franklin, Freestone, Frio, Galveston, Gillespie, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Hamilton, Hardin, Harris, Harrison, Hays, Henderson, Hidalgo, Hill, Hood, Hopkins, Houston, Hunt, Jack, Jackson, Jasper, Jefferson, Jim Hogg, Jim Wells, Johnson, Karnes, Kaufman, Kendall, Kenedy, Kinney, Kleberg, Lamar, Lampasas, La Salle, Lavaca, Lee,

Leon, Liberty, Limestone, Live Oak, Llano, Madison, Marion, Matagorda, Maverick, McLennan, McMullen, Medina, Milam, Mills, Montague, Montgomery, Morris, Nacogdoches, Navarro, Newton, Nueces, Orange, Panola, Parker, Polk, Rains, Red River, Refugio, Robertson, Rockwall, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, San Saba, Shelby, Smith, Somervell, Starr, Tarrant, Titus, Travis, Trinity, Tyler, Upshur, Uvalde, Van Zandt, Victoria, Walker, Waller, Washington, Webb, Wharton, Willacy, Williamson, Wilson, Wise, Wood, Zapata, and Zavala.

2. Pink bollworm. New Mexico, Texas, and the following counties of California: Fresno, Imperial, Inyo, Kern, Kings, Los Angeles, Madera, Merced, Orange, Riverside, San Bernardino, San Benito, San Diego, and Tulare.

**C. Regulated commodities and appliances.**

1. Gin trash,
2. Cotton lint,
3. Cottonseed,
4. Used cotton appliances that have any cotton plants attached or contained therein,
5. Cotton plants,
6. Spanish moss, and
7. Hibiscus plants.

**D. Restrictions. A person shall not ship or transport into Arizona from an area under quarantine:**

1. For the pink bollworm, any regulated commodity or appliance that is not accompanied by a permit or certificate required by 7 CFR 301.52 et seq., revised January 1, 2013. This incorporation by reference does not include any later amendments or editions and is available from the Department and online at <http://www.gpo.gov/fdsys/>.
2. For the boll weevil,
  - a. Gin trash, cotton lint, cottonseed, or used cotton appliances that have any cotton plants attached or contained therein unless the commodity or appliance is accompanied by an original fumigation certificate attesting the commodity or appliance has been fumigated as prescribed in the Treatment Manual.
  - b. Cotton plants or hibiscus plants unless the commodity is accompanied by an original quarantine compliance certificate attesting the commodity was treated with a chemical to kill the pest and was visually inspected and found free of all live life stages of the pest within five days of shipment.
  - c. Spanish moss, unless the commodity is accompanied by an original quarantine compliance certificate attesting the commodity was treated by one of the following methods:
    - i. Commercial drying; or
    - ii. Chemical treatment using a pesticide registered and labeled for use on the commodity to kill all live life stages of the pest.

**Historical Note**

Former Rule, Quarantine Regulation 7. Section R3-4-55 repealed, new Section adopted effective August 16, 1990 (Supp. 90-3). Section R3-1-55 renumbered to R3-4-218 (Supp. 91-4). Appendix to R3-4-218 removed; R3-4-218 amended by final rulemaking effective January 4, 2014 (Supp. 13-4).

**R3-4-219. Citrus Fruit Surface Pest****A. Definitions.**

"Pest" means all life stages of the following:  
*Aonidiella aurantii*, California red scale;  
*Aonidiella citrina*, Yellow scale;

*Asynonychus godmani*, Fuller rose beetle;  
*Chrysomphalus aonidum*, Florida red scale;  
*Cornuaspis beckii*, Purple scale;  
*Lepidosaphes gloverii*, Glover scale;  
*Maconellicoccus hirsutus*, Pink hibiscus mealybug;  
*Parlatoria pergandii*, Chaff scale;  
*Phyllocoptruta oleivora*, Citrus rust mite; or  
*Pseudococcus comstocki*, Comstock mealybug.

**B.** Area under quarantine. All states, territories, and districts of the United States, except the state of Arizona.

**C.** Regulated commodities and appliances.

1. Commodities. The fresh fruit of all species, varieties, and hybrids of the genera *Citrus*, *Fortunella*, and *Poncirus*.
2. Appliances. An appliance used in a citrus grove, citrus nursery, or other area to pick, pack, or handle a regulated commodity listed in subsection (C)(1).

**D.** Restrictions.

1. A person who ships into Arizona a regulated commodity or appliance listed in subsection (C) shall ensure that the commodity or appliance is free of stems, leaves, and plant parts.
2. A person shall not ship into Arizona a regulated commodity or appliance from an area under quarantine unless each shipment is accompanied by an original certificate issued by a plant regulatory official of the state of origin attesting that the regulated commodity or appliance was treated by a method listed in subsection (F), under the official's supervision.

**E.** Exemption. The Director shall issue a permit to allow a regulated commodity from an area under quarantine to enter Arizona without treatment as prescribed in subsection (F) if the applicant complies with all conditions of the permit and the regulated commodity:

1. Originates from an area that a plant regulatory official of the state of origin certifies as pest-free; or
2. Is shipped to an Arizona juicing facility located outside of Yuma County; or
3. Is commercially packaged and is shipped to an Arizona business that will redistribute the regulated commodity out-of-state.

**F.** Treatment.

1. Hydrogen cyanide fumigation. The regulated commodity shall be treated for one hour at the following rate:

Pulp Temperature	Rate per 100 cu. ft.
60° F to 85° F	25 cc HCN gas

2. Methyl bromide fumigation (Q label). The regulated commodity shall be treated for two hours at one of the following rates:

Pulp Temperature	Rate per 1000 cu. ft.
60° F to 79° F	3 lbs.
80° F or higher	2 1/2 lbs.

3. Irradiation. The regulated commodity shall be treated at a rate approved by the Director.
4. Steam treatment. The regulated appliance shall be cleaned to remove all fruit, leaves, stems, and other debris and then steam-treated.
5. Other treatment. The regulated commodity or appliance shall be treated by any other method approved by the Director.

**G.** Disposition of regulated commodity or appliance not in compliance. A regulated commodity or appliance shipped into Arizona in violation of this Section shall be destroyed, treated, or

transported out of state as prescribed at A.R.S. Title 3, Chapter 2, Article 1.

#### Historical Note

Former Rule, Quarantine Regulation 8. Repealed effective December 19, 1980 (Supp. 80-6). Adopted as an emergency effective April 11, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-2). Emergency adoption expired. Permanent rule adopted effective November 15, 1984 (Supp. 84-6). Former Section R3-4-56 repealed, former Sections R3-4-56.01 through R3-4-56.04 renumbered and amended as Section R3-4-56 effective June 20, 1986 (Supp. 86-3). Repealed June 29, 1990 (Supp. 90-2). New Section adopted effective April 11, 1991 (Supp. 91-2). Section R3-1-56 renumbered to R3-4-219 (Supp. 91-4). Amended by final rulemaking at 10 A.A.R. 3380, effective October 2, 2004 (Supp. 04-3).

#### R3-4-220. Citrus Nursery Stock Pests

**A.** Definitions. "Pest" means any of the following viral diseases or arthropods:

1. Viral diseases:  
Cachexia (CVd-II),  
Citrus Exocortis Virus (CEVd),  
Citrus Psorosis Virus (CPsV), or  
Citrus Tristeza Virus (CTV).
2. Arthropods. All life stages of:  
*Aceria sheldoni*, Citrus bud mite;  
*Maconellicoccus hirsutus*, Pink hibiscus mealybug;  
*Phyllocoptruta oleivora*, Citrus rust mite; or  
*Pseudococcus comstocki*, Comstock mealybug.

**B.** Area under quarantine. All states, territories, and districts of the United States, except the state of Arizona.

**C.** Regulated commodities and appliances.

1. Commodities. A plant or plant part, except seed or attached green fruit, of all species, varieties, or hybrids of the genera *Citrus*, *Eremocitrus*, *Fortunella*, *Poncirus*, and *Microcitrus*.
2. Appliances. An appliance used in a citrus grove, citrus nursery, or other area to handle citrus nursery stock listed in subsection (C)(1).

**D.** Restrictions.

1. A person may ship a regulated commodity into Arizona from an area under quarantine if the regulated commodity is accompanied by a certificate issued by a plant regulatory official from the origin state, attesting that the commodity:
  - a. Originates from an area not under quarantine for citrus tristeza virus, and
  - b. Originates from a source tree that is:
    - i. Tested for Cachexia, citrus exocortis virus, and citrus psorosis virus; or
    - ii. From budwood tested for Cachexia, citrus exocortis virus, and citrus psorosis virus; and
    - iii. Tested annually for citrus tristeza virus; and
  - c. Was treated within five days before shipment with a chemical to kill the arthropod pests listed in subsection (A)(2), and that the commodity is free of all live life stages of the arthropod pests listed in subsection (A)(2).
2. A person shall not ship a Meyer lemon plant or plant part, except fruit, into Arizona. An exception is allowed for the selection Improved Meyer lemon plant or plant part, which may be shipped into Arizona in compliance with this Section.
3. A person shipping a regulated commodity into Arizona shall attach a single tag or label to each plant or plant

part, or to each individual container containing a plant or plant part, that is intended for resale by an Arizona receiver. The tag or label shall contain the following information separately provided for each scion variety grafted to a single rootstock:

- a. Name and address of the nursery that propagated the plant,
  - b. Scion variety name,
  - c. Scion variety registration number, and
  - d. Rootstock variety name.
4. A person shipping a regulated commodity into Arizona shall ensure the commodity complies with the entry requirements prescribed in R3-4-226 and R3-4-238.
  5. A person may ship a regulated appliance into Arizona if the appliance is accompanied by a certificate issued by a plant regulatory official from the origin state. The certificate shall state that the appliance was treated within five days before shipment with a chemical to kill the arthropod pests listed in subsection (A)(2), and that the appliance is free of all live life stages of the arthropod pests listed in subsection (A)(2).

- E. Disposition of regulated commodity or appliance not in compliance. A regulated commodity or appliance shipped into Arizona in violation of this Section shall be destroyed, treated, or transported out-of-state as prescribed at A.R.S. Title 3, Chapter 2, Article 1.

#### Historical Note

Former Rule, Quarantine Regulation 9. Amended effective July 1, 1975 (Supp. 75-1). Former Section R3-4-57 amended and renumbered as R3-4-57 through R3-4-57.05 effective February 16, 1982 (Supp. 82-1). Section repealed, new Section adopted effective June 14, 1990 (Supp. 90-2). Section R3-1-57 renumbered to R3-4-220 (Supp. 91-4). Amended by final rulemaking at 10 A.A.R. 3380, effective October 2, 2004 (Supp. 04-3). Amended by final rulemaking at 12 A.A.R. 4065, effective December 4, 2006 (Supp. 06-4).

#### R3-4-221. Repealed

#### Historical Note

Former Section R3-4-57 amended and renumbered as R3-4-57 through R3-4-57.05 effective February 16, 1982 (Supp. 82-1). Repealed effective June 14, 1990 (Supp. 90-2). Section R3-1-57.01 renumbered to R3-4-221 (Supp. 91-4).

#### R3-4-222. Repealed

#### Historical Note

Former Section R3-4-57 amended and renumbered as R3-4-57 through R3-4-57.05 effective February 16, 1982 (Supp. 82-1). Repealed effective June 14, 1990 (Supp. 90-2). Section R3-1-57.02 renumbered to R3-4-222 (Supp. 91-4).

#### R3-4-223. Repealed

#### Historical Note

Former Section R3-4-57 amended and renumbered as R3-4-57 through R3-4-57.05 effective February 16, 1982 (Supp. 82-1). Repealed effective June 14, 1990 (Supp. 90-2). Section R3-1-57.03 renumbered to R3-4-223 (Supp. 91-4).

#### R3-4-224. Repealed

#### Historical Note

Former Section R3-4-57 amended and renumbered as R3-4-57 through R3-4-57.05 effective February 16, 1982

(Supp. 82-1). Repealed effective June 14, 1990 (Supp. 90-2). Section R3-1-57.04 renumbered to R3-4-224 (Supp. 91-4).

#### R3-4-225. Repealed

#### Historical Note

Former Section R3-4-57 amended and renumbered as R3-4-57 through R3-4-57.05 effective February 16, 1982 (Supp. 82-1). Repealed effective June 14, 1990 (Supp. 90-2). Section R3-1-57.05 renumbered to R3-4-225 (Supp. 91-4).

#### R3-4-226. Scale Insect Pests

- A. Definitions.  
“Pest” means all life stages of the following:  
*Aonidiella aurantii*, California red scale;  
*Aonidiella citrine*, Yellow scale;  
*Chrysomphalus aonidum*, Florida red scale; or  
*Pulvinaria psidi*, Green shield scale.
- B. Area under quarantine. The entire states of Alabama, Arkansas, California, Florida, Georgia, Hawaii, Louisiana, Mississippi, and Texas, and the Commonwealth of Puerto Rico.
- C. Regulated commodities. Plants and all plant parts, except seed, of the genera listed below:  
*Camellia*,  
*Chrysalidocarpus*,  
*Citrus*,  
*Cycas*,  
*Dracaena*,  
*Eremocitrus*,  
*Euonymus*,  
*Ficus*,  
*Fortunella*,  
*Ilex*,  
*Ligustrum*,  
*Microcitrus*,  
*Poncirus*, and  
*Rosa*
- D. Restrictions. A person may ship a regulated commodity to Arizona from an area under quarantine if each shipment is accompanied by a certificate issued by a plant regulatory official of the origin state within five days before shipment attesting that one of the following is true:
  1. A regulated commodity of the genera *Citrus*, *Eremocitrus*, *Fortunella*, *Microcitrus*, and *Poncirus* was treated with a chemical to kill the pests listed in subsection (A) and was visually inspected and found free of all live life stages of the pests listed in subsection (A);
  2. A regulated commodity not listed in subsection (D)(1):
    - a. Was treated with a chemical to kill the pests listed in subsection (A) and was visually inspected and found free of all live life stages of the pests listed in subsection (A); or
    - b. Originated from a nursery with a pest management program recognized and monitored by the origin state to control the pests listed in subsection (A), and was visually inspected and found free of all live life stages of the pests listed in subsection (A).
- E. Disposition of regulated commodity not in compliance. A regulated commodity shipped into Arizona in violation of this Section shall be destroyed, treated, or transported out-of-state as prescribed at A.R.S. Title 3, Chapter 2, Article 1.

#### Historical Note

Former Rule, Quarantine Regulation 10; Amended effective August 31, 1981 (Supp. 81-4). Former Section R3-4-58 repealed, new Section R3-4-58 adopted effective July

13, 1989 (Supp. 89-3). Section R3-1-58 renumbered to R3-4-226 (Supp. 91-4). Amended by final rulemaking at 10 A.A.R. 3380, effective October 2, 2004 (Supp. 04-3). Amended by final rulemaking at 12 A.A.R. 4065, effective December 4, 2006 (Supp. 06-4).

### R3-4-227. Repealed

#### Historical Note

Former Rule, Quarantine Regulation 11. Section R3-1-59 renumbered to R3-4-227 (Supp. 91-4). Repealed effective April 3, 1997 (Supp. 97-2).

### R3-4-228. European Corn Borer

#### A. Definitions. The following terms apply in this Section:

“Corn” means *Zea* spp.

“Fragment” means a portion of a regulated commodity that cannot pass through a 1/2” aperture or a completely whole, round, and uncrushed piece of cob, stalk, or stem of at least 1” in length and 3/16” in diameter.

“Pest” means all life stages of the European corn borer, *Ostrinia nubilalis*.

“Shelled grain” means the seed or kernel of corn or sorghum that has been separated from every other plant part.

“Sorghum” means *Sorghum* spp.

#### B. Area under quarantine.

1. The entire states of Alabama, Arkansas, Colorado, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.
2. The District of Columbia.
3. In the state of Florida, the following counties: Calhoun, Escambia, Gadsden, Hamilton, Holmes, Jackson, Jefferson, Madison, Okaloosa, and Santa Rosa.
4. In the state of Louisiana, the following parishes: Bossier, Caddo, Concordia, East Carroll, Franklin, Madison, Morehouse, Natchitoches, Ouachita, Red River, Richland, Tensas, and West Carroll.
5. In the state of New Mexico, the following counties: Chaves, Curry, Quay, Roosevelt, San Juan, Santa Fe, Torrance, Union, and Valencia.
6. In the state of Texas, the following counties: Bailey, Carson, Castro, Dallam, Deaf Smith, Floyd, Gray, Hale, Hansford, Hartley, Hutchinson, Lamb, Lipscomb, Moore, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, and Swisher.

#### C. Regulated commodities. The plants corn and sorghum and every plant part, including seed, shelled grain, stalks, ears, cobs, fragments, and debris are regulated commodities under this Section.

#### D. Restrictions. A person shall not ship into Arizona a regulated commodity from an area under quarantine unless each shipment is accompanied by an original certificate, issued by a plant regulatory official of the state of origin, attesting that the regulated commodity was treated by a method listed in subsection (F), under the official’s supervision.

#### E. Exemptions.

1. Treatment prescribed in subsection (F) is waived for all of the following:

- a. Shelled grain, if the grain is accompanied by an original certificate issued by a plant regulatory official of the state of origin attesting that:

- i. The shelled grain was passed through a 1/2” or smaller-size mesh screen at the place of origin, and

- ii. The shipment is free of plant fragments capable of harboring the larval life stage of the pest;

- b. Commercially packaged shelled popcorn, planting seed, and grain for human consumption; or

- c. A regulated commodity manufactured or processed by a method that eliminates the pest.

2. The Director shall issue a permit to allow a regulated commodity from an area under quarantine, other than one exempt under subsection (E)(1), to enter Arizona without the treatment prescribed in subsection (F) if the regulated commodity originates from an area certified as pest free by a plant regulatory official of the state of origin.

#### F. Treatment.

1. Methyl bromide fumigation (Q label) applied at label rates.

2. Any other treatment approved by the Director.

#### G. Disposition. If a person ships a regulated commodity into Arizona in violation of this Section, the regulated commodity shall be destroyed, treated, or transported out-of-state as prescribed in A.R.S. Title 3, Chapter 2, Article 1.

#### Historical Note

Former Rule, Quarantine Regulation 12. Amended effective July 1, 1975 (Supp. 75-1). Amended effective June 19, 1978 (Supp. 78-3). Amended subsection (C) effective January 21, 1981 (Supp. 81-1). Amended effective August 11, 1987 (Supp. 87-3). Section R3-1-60 renumbered to R3-4-228 (Supp. 91-4). Amended by final rulemaking at 10 A.A.R. 3374, effective October 2, 2004 (Supp. 04-3).

### R3-4-229. Nut Tree Pests

#### A. In addition to the definitions provided in A.R.S. § 3-201 and R3-4-102, the following terms apply to this Section:

1. “Brooming” means a virus-like disease that drastically reduces nut production and sometimes causes death of the host tree.

2. “Pest” means any of the following:

- a. Pecan leaf casebearer, *Acrobasis juglandis* (LeBaron);
- b. Pecan nut casebearer, *Acrobasis nuxvorella* (Neunzig);
- c. Pecan phylloxera, *Phylloxera devastatrix*;
- d. The pathogen that causes brooming disease of walnut.

#### B. Area under quarantine: All states, districts, and territories of the United States except California.

#### C. Infested area.

1. For *Arcobasis* spp.: All states and districts east of and including the states of Montana, Wyoming, Colorado, Oklahoma, and Texas; in New Mexico, the counties of Chaves, Lea, Roosevelt, Eddy, Dona Ana, Otero, and Quay.
2. For pecan phylloxera: Alabama, Arkansas, Louisiana, Mississippi, Oklahoma, and Texas.
3. For brooming disease of walnut: All states and districts east of and including Montana, Wyoming, Colorado, and New Mexico.

#### D. Commodities covered:

1. All species and varieties of the following trees and all plant parts capable of propagation, except the nuts. Plant parts include buds, scions, and rootstocks:
    - a. Hickory and pecan (*Carya* spp.);
    - b. Walnut and butternut (*Juglans* spp.);
  2. Pecan firewood;
  3. Any used appliance, used box, or sack used during the growing, harvesting, handling, transporting, or storing nuts and hulls.
- E. Restrictions:**
1. The commodities listed in subsection (D)(1) shall be admitted into Arizona:
    - a. From the infested area prescribed in subsections (C)(1) and (C)(2) if treated at origin and each lot or shipment is accompanied by a certificate issued by the origin state department of agriculture affirming the commodity has been treated in accordance with subsection (F);
    - b. From an area under quarantine outside the infested area, if each lot or shipment is accompanied by a certificate issued by the origin state department of agriculture affirming that the commodities originated in a county not known to be infested with the pests listed in subsections (A)(2)(a), (b), and (c).
  2. The commodities listed in subsection (D)(1)(b) shall be:
    - a. Prohibited from entering Arizona from the infested area prescribed in subsection (C)(3);
    - b. Admitted into Arizona from an area under quarantine outside the infested area prescribed in subsection (C)(3), if each lot or shipment is accompanied by a certificate issued by the origin state department of agriculture affirming brooming is unknown in the origin county.
  3. The commodities listed in subsections (D)(2) and (D)(3) are prohibited from entering the state unless fumigated as prescribed in subsection (F)(1).
- F. Treatments:**
1. Methyl bromide fumigation at normal atmospheric pressure, with circulations maintained for 30 minutes, as follows:
    - a. 2 lbs. per 1,000 cu.ft. for four hours at 70° F or more,
    - b. 3 lbs. per 1,000 cu.ft. for four hours at 60-69° F.
  2. A hot-water dip at 140° F or more for a minimum of 30 continuous seconds.
  3. Appliances.
    - a. Steam-cleaned, inspected, and certified free from debris by the origin state, or
    - b. Cold treatment in a cold storage chamber at or below 0° F for at least seven consecutive days (168 hours).
  4. Any other treatment approved by the Associate Director.

#### Historical Note

Former Rule, Quarantine Regulation 13. Amended subsections (C), (E) and (G) effective May 5, 1986 (Supp. 86-3). Section R3-1-61 renumbered to R3-4-229 (Supp. 91-4). Amended effective January 16, 1996 (Supp. 96-1). Amended by final rulemaking at 6 A.A.R. 41, effective December 8, 1999 (Supp. 99-4). Subsection citation in subsection (E)(1)(b) amended to correct manifest typographical error (Supp. 03-2).

#### R3-4-230. Repealed

#### Historical Note

Former Rule, Quarantine Regulation 14. Section R3-1-62 renumbered to R3-4-230 (Supp. 91-4). Section repealed

by final rulemaking at 10 A.A.R. 3380, effective October 2, 2004 (Supp. 04-3).

#### R3-4-231. Nut Pests

- A. Definition.** In addition to the definitions provided in A.R.S. § 3-201 and R3-4-102, the following term applies to this Section:
- “Pest” means any of the following:
1. Pecan weevil, *Curculio caryae* (Horn);
  2. Butternut curculio, *Conotrachelus juglandis* LeC;
  3. Black walnut curculio, *Conotrachelus retentus* Say;
  4. Hickory shuckworm, *Laspeyresia caryana* (Fitch).
- B. Area under quarantine:**
1. Pecan weevil: All states and districts of the United States except California and New Mexico.
  2. Hickory shuckworm: The New Mexico counties of Lea, Eddy, and Dona Ana, and all other states and districts of the United States except California.
  3. Black walnut curculio and butternut curculio: All states and districts of the United States except California.
- C. Commodities covered:**
1. Nuts of all species and varieties of hickory, pecan (*Carya* spp.), walnut and butternut (*Juglans* spp.), except extracted nut meats.
  2. Any used appliance, used box or sack used during growing, harvesting, handling, transporting, or storing nuts and hulls.
- D. Restrictions:**
1. A commodity listed in subsection (C)(1), originating in or shipped from the area under quarantine, shall be admitted into Arizona if the commodity has been cleaned of husks, hulls, debris, and sticktights and each lot or shipment is accompanied by a certificate issued by the origin state department of agriculture affirming the commodity has been treated in accordance with subsection (E).
  2. A commodity listed in subsection (C)(2) shall be admitted into Arizona if the commodity has been fumigated as prescribed in subsections (E)(3) and (E)(4).
- E. Treatment:**
1. Cold treatment: The commodities shall be held in a cold storage chamber at or below 0° F for at least seven consecutive days (168 hours). The treatment shall not start until the entire content of the lot of nuts has reached 0° F.
  2. A hot-water bath treatment at 140° F for a minimum of five continuous minutes. Water temperature shall be maintained at or above 140° F during the entire treatment period.
  3. Methyl bromide fumigation at normal atmospheric pressure, with circulations maintained for 30 continuous minutes, as follows:
    - a. 2 lbs. per 1,000 cu. ft. for four hours at least 70° F, or
    - b. 3 lbs. per 1,000 cu. ft. for four hours at 60-69° F.
  4. Appliances.
    - a. Steam-cleaned, inspected, and certified free from debris by the origin state,
    - b. Cold treatment in a cold storage chamber at or below 0° F for at least seven consecutive days (168 hours).

#### Historical Note

Former Rule, Quarantine Regulation 15. Amended effective July 13, 1989 (Supp. 89-3). Section R3-1-63 renumbered to R3-4-231 (Supp. 91-4). Amended by final rulemaking at 6 A.A.R. 41, effective December 8, 1999 (Supp. 99-4).



**R3-4-232. Repealed****Historical Note**

Former Rule, Quarantine Regulation 16. Repealed effective February 16, 1979 (Supp. 79-1). Section R3-1-64 renumbered to R3-4-232 (Supp. 91-4).

**R3-4-233. Lettuce Mosaic Virus**

**A. Definitions.** In addition to the definitions provided in R3-4-101, the following terms apply to this Section:

1. "Breeder seed" means unindexed lettuce seed that a lettuce breeder or researcher controls, and that is not available for commercial sale or propagation.
2. "Breeder trial" means breeder seed grown to develop a new variety of lettuce.
3. "Mosaic-indexed" means that a laboratory tested at least 30,000 lettuce seeds from a seed lot and found that all sampled seeds were determined to be free from lettuce mosaic virus.
4. "Pest" means lettuce mosaic virus.
5. "Unindexed lettuce seed" means lettuce seed that is not mosaic-indexed.

**B. Area Under Quarantine:** All states, districts, and territories of the United States.

**C. Regulated Commodities:** Plants and plant parts, including seeds, of all varieties of lettuce, *Lactuca sativa*.

**D. Restrictions.**

1. A person shall not import into, transport within, plant, or sell in Arizona unindexed lettuce seed unless the unindexed lettuce seed is exempted under subsection (E) or the person obtains a permit as prescribed in subsection (G).
2. Each container or subcontainer of mosaic-indexed seed shall bear a label with the statement "Zero infected seeds per 30,000 tested (0 in 30,000)" as well as the name of the certified or accredited laboratory that tested the seed under subsection (D)(5).
3. A person shall not import into, transport within, plant, or sell in Arizona lettuce transplants unless the transplants are exempted under subsection (E), or unless an original certificate, issued by the origin state, accompanies the shipment. The certificate shall declare:
  - a. The name of the exporter,
  - b. The variety name and lot number of the seed from which the transplants were grown, and
  - c. Verification that the seeds from which the transplants were grown were mosaic-indexed.
4. A grower shall disk or otherwise destroy all lettuce fields within 10 days after the last day of commercial harvest or abandonment, unless prevented by documented weather conditions or circumstances beyond the control of the grower.
5. Laboratories that index lettuce seed that is shipped to Arizona shall be certified by the agricultural department of the laboratory's state of origin or by the Arizona Department of Agriculture, in accordance with A.R.S. § 3-145, or shall be accredited by the National Seed Health System. Laboratories shall provide a copy of their certificate or accreditation letter to the Arizona Department of Agriculture by January 1 of the year that shipping will take place.

**E. Exemptions.** The requirements of subsection (D) do not apply to:

1. Lettuce seed sold in retail packages of 1 oz. or less to the homeowner for noncommercial planting,
2. Shipments of lettuce transplants consisting of five flats or less per receiver for noncommercial planting,

3. Breeder trials for a plot of 1/20 of an acre or less, or
4. Breeder trials for a plot of greater than 1/20 of an acre but no more than 1.25 acres provided the breeder or researcher:

- a. Places a flag, marked with a trial identification number, at each corner of a breeder trial plot;
- b. Provides the following written information to the Department within 10 business days of planting breeder seed:
  - i. GPS coordinates for each breeder trial plot using NAD 83 decimal degrees;
  - ii. A detailed map showing the location of each breeder trial plot;
  - iii. An identification number for each breeder trial plot; and
  - iv. The name, address, telephone number, and e-mail address for the breeder or researcher;
- c. Monitors the lettuce for pest symptoms, and notifies the Department, by telephone, by the end of the first business day following the detection of pest symptoms;
- d. Removes and destroys all plants exhibiting pest symptoms from the breeder trial plot and places them in a sealed container for disposal in a landfill;
- e. Labels bills of lading or invoices accompanying breeder seed into Arizona with the statement "LETTUCE SEED FOR BREEDER TRIALS ONLY"; and
- f. Destroys lettuce plants remaining in a breeder trial plot within 10 days after the completion of breeding trials unless prevented by documented weather conditions or circumstances beyond the control of the researcher or breeder.

**F. A breeder or researcher may conduct multiple breeder trials in Arizona under the provisions of subsection (E)(3) and (4).**

**G. Permits.**

1. A person may apply for a permit to import unindexed lettuce seed for temporary storage in Arizona if the person:
  - a. Maintains the identity of the seed while in Arizona;
  - b. Does not sell or distribute the seed for use in the state;
  - c. Does not transfer the seed to any other facility in the state; and
  - d. Reships the seed from the state within seven days or the period of time specified on the permit, whichever is longer.
2. A person may apply for a permit to transport unindexed lettuce seed into Arizona to be mosaic-indexed.

**H. Disposition of Violation.**

1. Any infected shipment of lettuce seed or transplants arriving in or found within the state, in violation of this Section, shall be immediately destroyed. The owner or the owner's agent shall bear the cost of the destruction.
2. Any shipment of unindexed lettuce seed or transplants arriving in or found within the state in violation of this Section shall be immediately sent out-of-state or destroyed at the option of the owner or the owner's agent. The owner or the owner's agent shall bear the cost of the destruction or of sending the lettuce seed or transplants out-of-state.
3. Any Arizona lettuce fields in violation of this Section shall be abated as established in A.R.S. §§ 3-204 and 3-205. The owner or person in charge may be assessed a civil penalty established in A.R.S. § 3-215.01.

4. Violation of any provision of a permit issued under subsection (G) may result in suspension or revocation of the permit.

#### Historical Note

Former Rule, Quarantine Regulation 17. Amended effective July 1, 1975 (Supp. 75-1). Section R3-1-65 renumbered to R3-4-233 (Supp. 91-4). Section repealed; new Section adopted effective December 2, 1998 (Supp. 98-4). Amended effective December 2, 1998 (Supp. 98-4). Amended by final rulemaking at 14 A.A.R. 4091, effective December 6, 2008 (Supp. 08-4).

#### R3-4-234. Nematode Pests

##### A. Definition.

“Pest” means the reniform nematode, *Rotylenchulus reniformis*, and the burrowing nematode, *Radopholus similis* (Cobb).

##### B. Areas under quarantine.

###### 1. Reniform nematode.

- a. The entire states of Florida and Hawaii.
- b. The Commonwealth of Puerto Rico.
- c. In the state of Alabama, the counties of, Autauga, Baldwin, Barbour, Bibb, Blount, Bullock, Butler, Chambers, Cherokee, Chilton, Choctaw, Clarke, Clay, Cleburne, Coffee, Colbert, Conecuh, Coosa, Dale, Dallas, DeKalb, Elmore, Escambia, Etowah, Fayette, Franklin, Geneva, Houston, Jackson, Jefferson, Lamar, Lauderdale, Lawrence, Lee, Limestone, Lowndes, Macon, Madison, Marengo, Marion, Marshall, Montgomery, Morgan, Perry, Pickens, Pike, Randolph, Saint Clair, Shelby, Sumter, Talladega, Tallapoosa, Tuscaloosa, Walker, Washington, Wilcox, and Winston.
- d. In the state of Arkansas, the counties of Ashley, Jefferson, Lonoke, and Monroe.
- e. In the state of Georgia, the counties of, Baker, Banks, Barrow, Bartow, Ben Hill, Berrien, Bleckley, Brooks, Bulloch, Burke, Calhoun, Candler, Catoosa, Charlton, Clarke, Clay, Coffee, Colquitt, Cook, Crisp, Decatur, Dodge, Dooly, Dougherty, Early, Echols, Elbert, Emanuel, Franklin, Gordon, Grady, Hall, Hart, Houston, Jeff Davis, Jefferson, Jenkins, Johnson, Laurens, Lee, Macon, Marion, Miller, Mitchell, Montgomery, Morgan, Newton, Oconee, Peach, Pierce, Pulaski, Randolph, Richmond, Schley, Screven, Seminole, Stewart, Sumter, Tattnall, Taylor, Terrell, Thomas, Tift, Tombs, Turner, Twiggs, Walker, Walton, Warren, Washington, Wayne, Webster, Wheeler, Wilcox, and Worth.
- f. In the state of Louisiana, the parishes of, Acadia, Ascension, Assumption, Avoyelles, Beauregard, Bossier, Caddo, Calcasieu, Caldwell, Catahoula, Concordia, East Baton Rouge, East Carroll, East Feliciana, Evangeline, Franklin, Grant, Iberia, Iberville, Jefferson, Lafayette, Lafourche, Madison, Morehouse, Natchitoches, Orleans, Ouachita, Plaquemines, Pointe Coupee, Rapides, Red River, Richland, Sabine, Saint Bernard, Saint Charles, Saint Helena, Saint John the Baptist, Saint Landry, Saint Tammany, Tangipahoa, Tensas, Terrebonne, West Baton Rouge, West Carroll, and Winn.
- g. In the state of Mississippi, the counties of, Adams, Alcorn, Attala, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Coahoma, Copiah, Covington, DeSoto, Forrest, George, Greene, Grenada, Hancock, Harrison, Hinds, Holmes, Humphreys, Issaquena,

Itawamba, Jackson, Jones, Lafayette, Lee, Leflore, Lowndes, Madison, Marion, Marshall, Monroe, Noxubee, Oktibbeha, Panola, Perry, Pontotoc, Prentiss, Quitman, Rankin, Scott, Sharkey, Sunflower, Tallahatchie, Tippah, Tunica, Union, Warren, Washington, Yalobusha, and Yazoo.

- h. In the state of North Carolina, the counties of, Cumberland, Harnett, Hoke, Johnston, Richmond, Robeson, Sampson, and Scotland.
  - i. In the state of South Carolina, the counties of, Calhoun, Clarendon, Darlington, Dillon, Florence, Kershaw, Lee, Marlboro, Orangeburg, Sumter, and Williamsburg.
  - j. In the state of Texas, the counties of, Brazos, Burleson, Cameron, Fort Bend, Hidalgo, Lynn, Robertson, Starr, Terry, Wharton, and Willacy.
2. Burrowing nematode.
    - a. The entire states of Florida and Hawaii.
    - b. In the state of Texas, the counties of, Cameron and Hildago.
    - c. The Commonwealth of Puerto Rico.

##### C. Regulated Commodities.

1. Soil;
  2. All plants with roots, including bulbs, corms, tubers, rhizomes, and stolons; and
  3. All plant cuttings for propagation.
- ##### D. Exceptions to regulated commodities.
1. Industrial sand and clay;
  2. Orchids and plants produced epiphytically, if growing exclusively in or on soil-free material such as osmunda fiber, tree fern trunk, or bark;
  3. Aquatic plants, including species normally growing in, on, or under water;
  4. Dormant bulbs, corms, tubers, rhizomes, and stolons for propagation, if free from roots and soil; and
  5. All fleshy roots, corms, tubers, and rhizomes for edible or medicinal purposes, if free of soil.

##### E. Quarantine Restrictions.

1. The Associate Director shall deny entry of a regulated commodity from an area under quarantine, whether moved directly from the area or by diversion or reconsignment, unless the regulated commodity is accompanied by an original certificate from the state of origin. The certificate shall state that the regulated commodity contained in the shipment is pest-free by one of the following methods:
  - a. The origin state determined through an annual survey conducted within the 12-month period immediately before shipment, that the pests do not exist on the property or in the facility used to grow the regulated commodity.
  - b. The regulated commodity in the shipment was sampled two weeks before shipment, and found pest-free.
  - c. The regulated commodity was protected from infestation of the pests by implementing all of the following steps:
    - i. Propagated from clean seed or from cuttings taken 12 inches or higher above ground level,
    - ii. Planted in sterilized soil or other material prepared or treated to ensure freedom from the pests,
    - iii. Retained in a sterilized container or bed,
    - iv. Placed on a sterilized bench or sterilized support 18 inches or higher from the ground or floor level, and

- v. Found pest-free using a sampling method approved by the Associate Director.
- 2. All regulated commodities entering Arizona shall be unloaded at destination into a quarantine holding area and held undisturbed for at least five calendar days until the Department confirms the regulated commodities are pest-free.
- 3. An Arizona receiver of a regulated commodity shall establish a quarantine holding area approved by the Department that satisfies the following conditions:
  - a. The floor of the holding area shall be composed of a permeable surface, such as sand or soil, and shall be free from debris, grass, and weeds;
  - b. An outdoor quarantine holding area shall be at least 15 ft. from all masonry walls, property boundaries, and non-quarantined plants;
  - c. The quarantine holding area shall be isolated from public access, and surrounded by a fence or other barrier; and
  - d. The integrity and security of the holding area shall be maintained at all times.
- 4. A cutting or bareroot regulated commodity may be placed in a container during the quarantine holding period. If the Associate Director determines that the regulated commodity is infested with a pest, the regulated commodity, container, and soil shall be transported out-of-state or destroyed by a method approved by the Associate Director.
- 5. Pesticides and other chemicals shall not be applied to a regulated commodity in a quarantine holding area except under the direction and supervision of a Department inspector.
- F. Disposition of violations.  
If laboratory testing indicates a regulated commodity is infested with a pest, the regulated commodity shall be destroyed or transported out-of-state.

**Historical Note**

Former Rule, Quarantine Regulation 18. Amended effective April 26, 1976 (Supp. 76-2). Repealed effective December 19, 1980 (Supp. 80-6). Adopted effective August 1, 1985 (Supp. 85-2). Section R3-1-66 renumbered to R3-4-234 (Supp. 91-4). Section repealed; new Section made by final rulemaking at 7 A.A.R. 4434, effective September 24, 2001 (Supp. 01-3).

**R3-4-235. Repealed****Historical Note**

Adopted effective August 1, 1985 (Supp. 85-2). Section R3-1-66.01 renumbered to R3-4-235 (Supp. 91-4). Section repealed by final rulemaking at 7 A.A.R. 4434, effective September 24, 2001 (Supp. 01-3).

**R3-4-236. Repealed****Historical Note**

Adopted effective August 1, 1985 (Supp. 85-2). Section R3-1-66.02 renumbered to R3-4-236 (Supp. 91-4). Section repealed by final rulemaking at 7 A.A.R. 4434, effective September 24, 2001 (Supp. 01-3).

**R3-4-237. Repealed****Historical Note**

Adopted effective August 1, 1985 (Supp. 85-2). Section R3-1-66.03 renumbered to R3-4-237 (Supp. 91-4). Section repealed by final rulemaking at 7 A.A.R. 4434, effective September 24, 2001 (Supp. 01-3).

**R3-4-238. Whitefly Pests****A. Definition.**

“Pest” means:

1. Citrus whitefly, *Dialeurodes citri* (Ashm.);
2. Cloudy-winged whitefly, *Dialeurodes citrifolii* (Morgan);
3. Woolly whitefly, *Aleurothrixus floccosus* (Maskell).

**B. Area under quarantine.** Alabama, Arkansas, California, Florida, Georgia, Hawaii, Louisiana, Mississippi, North Carolina, South Carolina, Texas, and Virginia.**C. Commodities covered.** Plants and all plant parts, except fruit and seed, of the following genera and species:

*Ailanthus*,  
*Amplopsis*,  
*Bignonia capreolata*,  
*Choisya ternata*,  
*Citrus*,  
*Diospyros*,  
*Eremocitrus*,  
*Feijoa*,  
*Ficus macrophyll*,  
*Fortunella*,  
*Gardenia*,  
*Ilex*,  
*Jasminum*,  
*Lagerstroemia*,  
*Ligustrum*,  
*Maclura pomifera*,  
*Melia*,  
*Microcitrus*,  
*Musa*,  
*Osmanthus*,  
*Plumaria*,  
*Poncirus*,  
*Prunus caroliniana*,  
*Psidium*,  
*Punica granatum*,  
*Pyrus communis*,  
*Sapindus mukorossi*,  
*Smilax*,  
*Syringa vulgaris*, and  
*Viburnum*

**D. Restrictions.** A person may ship a regulated commodity to Arizona from an area under quarantine if the shipment is accompanied by a certificate issued by a plant regulatory official of the origin state attesting that within five days before shipment:

1. A regulated commodity of the genera *Citrus*, *Eremocitrus*, *Fortunella*, *Microcitrus*, and *Poncirus* was treated with a chemical to kill the pests listed in subsection (A), and was visually inspected and found free of all live life stages of the pests listed in subsection (A).
2. A regulated commodity not listed in subsection (D)(1):
  - a. Was treated with a chemical to kill the pests listed in subsection (A) and was visually inspected and found free of all live life stages of the pests listed in subsection (A), or
  - b. Originated from a nursery with a pest management program recognized and monitored by the origin state and to control the pests listed in subsection (A), and was visually inspected and found free of all live life stages of the pests listed in subsection (A), or
  - c. The regulated commodity is completely devoid of foliage and is exempt from treatment for the pests listed in subsection (A).

**E. Disposition of regulated commodity not in compliance.** A regulated commodity shipped into Arizona in violation of this

Section shall be destroyed, treated, or transported out-of-state as prescribed at A.R.S. Title 3, Chapter 2, Article 1.

#### Historical Note

Former Rule, Quarantine Regulation 19. Amended effective April 26, 1976 (Supp. 76-2). Amended effective August 15, 1989 (Supp. 89-3). Section R3-1-67 renumbered to R3-4-238 (Supp. 91-4). Amended by final rulemaking at 5 A.A.R. 2521, effective July 15, 1999 (Supp. 99-3). Amended by final rulemaking at 12 A.A.R. 4065, effective December 4, 2006 (Supp. 06-4).

#### R3-4-239. Imported Fire Ants

- A. Definitions.  
“Pest” means any species of imported fire ants, including *Solenopsis invicta* and *Solenopsis richteri*.
- B. Area under quarantine. A state or portion of a state listed in 7 CFR 301.81-3, 68 FR 5794, February 5, 2003, and any area a state declares infested. This material is incorporated by reference, on file with the Department and the Office of the Secretary State, and does not include any later amendments or editions.
- C. Regulated commodities.
  1. Soil, except potting soil shipped in an original container in which the potting soil is packaged after commercial preparation; and
  2. All plants associated with soil, except:
    - a. Plants that are maintained indoors year-round, and are not for sale; and
    - b. Plants shipped bare-root and free of soil.
- D. Restrictions.
  1. A shipper of a regulated commodity shall unload a regulated commodity at destination into an approved quarantine holding area as prescribed in subsection (D)(2). The Department shall inspect and quarantine the regulated commodity as follows:
    - a. Soil and plants associated with soil from an area under quarantine in subsection (B) shall be held at least three consecutive days, and
    - b. Soil and plants associated with soil from an area under quarantine for nematodes under R3-4-234(B) shall be held at least five consecutive days.
  2. An Arizona receiver of a regulated commodity shall establish a Department-approved quarantine holding area that meets the following specifications:
    - a. The floor is of a permeable surface, such as sand or soil, and free from debris, grass, or weeds;
    - b. The area is isolated from public access, surrounded by a fence or other barrier;
    - c. The integrity and security of the area is maintained at all times; and
    - d. If outdoors, the area is at least 15 feet from any masonry wall, property boundary, or non-quarantine plant.
  3. A receiver shall apply a pesticide or other chemical to a regulated commodity located in a quarantine holding area only when directed and supervised by a Department inspector.
- E. Disposition of commodity not in compliance. A regulated commodity shipped into Arizona in violation of this Section shall be destroyed or transported out-of-state by the owner and at the owner’s expense.

#### Historical Note

Former Rule, Quarantine Regulation 20. Amended effective July 1, 1975 (Supp. 75-1). Amended effective April 26, 1976 (Supp. 76-2). Correction amendment effective April 26, 1976 included deletion of Arkansas (see subsection (C)) (Supp. 77-1). Amended effective June 16, 1977 (Supp. 77-3). Repealed effective June 19, 1978 (Supp. 78-3). New Section adopted effective December 22, 1989 (Supp. 89-4). Section R3-1-68 renumbered to R3-4-239 (Supp. 91-4). Amended by final rulemaking at 5 A.A.R. 2521, effective July 15, 1999 (Supp. 99-3). Amended by final rulemaking at 9 A.A.R. 2095, effective August 2, 2003 (Supp. 03-2).

#### R3-4-240. Apple Maggot and Plum Curculio

- A. Definitions. The following term applies to this Section:  
“Pest” means:
  1. Apple maggot, *Rhagoletis pomonella* (Walsh); or
  2. Plum curculio, *Conotrachelus nenuphar*.
- B. Area under quarantine. All states, territories, and districts of the United States.
- C. Regulated commodities. The fresh fruit of the following plants:
  - Chaenomeles* spp. (Quince),
  - Crataegus* spp. (Hawthorne),
  - Malus* spp. (Apple),
  - Prunus* spp. (Apricot, Cherry, Nectarine, Peach, Plum, and Prune), and
  - Pyrus communis* spp. (Pear).
- D. Restrictions.
  1. A person shall not ship into Arizona a regulated commodity that is produced in or shipped from an area under quarantine unless each lot or shipment is accompanied by a certificate issued by an official of the state of origin, attesting that the regulated commodity was:
    - a. Held in an approved controlled atmosphere storage facility for a minimum of 90 continuous days at a maximum temperature of 38° F, or
    - b. Held in an approved cold storage facility for a minimum of 40 continuous days at a maximum temperature of 32° F.
  2. The Director may issue a permit to allow a regulated commodity from an area under quarantine to enter Arizona without treatment as prescribed in subsection (D)(1) if the commodity originates from an area:
    - a. That is certified to be pest-free, or
    - b. That is infested, but where an on-going pest eradication program exists that is acceptable to the Director of the Arizona Department of Agriculture.
- E. Disposition of commodity not in compliance. A regulated commodity shipped into Arizona in violation of this Section shall be destroyed or transported out-of-state by the owner and at the owner’s expense.

#### Historical Note

Former Rule, Quarantine Regulation 21. Amended effective December 5, 1974 (Supp. 75-1). Amended effective June 16, 1977 (Supp. 77-3). Section repealed, new Section adopted effective June 14, 1990 (Supp. 90-2). Section R3-1-69 renumbered to R3-4-240 (Supp. 91-4). Amended by final rulemaking at 9 A.A.R. 1046, effective May 5, 2003 (Supp. 03-1).

#### R3-4-241. Lethal Yellowing of Palms

- A. Definitions. The following term applies to this Section:  
“Pest” means:
  1. A pathogen, a non-cultivable mollicute, causing lethal yellowing of palms; or
  2. *Myndus crudus*, a planthopper that vectors the pathogen.
- B. Area under quarantine.
  1. In the state of Florida, the following counties: Broward, Collier, Hendry, Lee, Martin, Miami-Dade, Monroe, and Palm Beach.

2. In the state of Texas, the following counties: Cameron, Hidalgo, and Willacy.
- C. Regulated commodities. All propagative parts of the following plants, except seed:
- Aiphanes lindeniana*,
  - Allagoptera arendria*,
  - Andropogon virginicus* (Broomsedge),
  - Arenga engleri*,
  - Borassus flabellifer* (Palmyra Palm),
  - Caryota mitis* (Cluster Fishtail Palm),
  - Caryota rumphiana* (Giant Fishtail Palm),
  - Chelyocarpus chuco*,
  - Chrysalidocarpus cabadae*, syn. *Dypsis cabadae* (Cabada Palm),
  - Cocos nucifera* (Coconut Palm),
  - Corypha elata* (Buri Palm),
  - Cynodon dactylon* (Bermuda Grass),
  - Cyperus* spp. (Sedges),
  - Dictyosperma album* (Princess Palm),
  - Eremochloa ophiuroides* (Centipede Grass),
  - Gaussia attenuata* (Puerto Rican Palm),
  - Howea belmoreana* (Belmore Sentry Palm),
  - Latania* spp. (Latan Palm),
  - Livistona chinensis* (Chinese Fan Palm),
  - Livistona rotundifolia* (Javanese Fan Palm),
  - Mascarena verschaffeltii* (Spindle Palm),
  - Nannorrhops ritchiana* (Mazari Palm),
  - Neodypsis decaryi*, syn. *Dypsis decaryi* (Triangle Palm),
  - Pandanus utilis* (Screw Pine),
  - Panicum purpurascens* (Para Grass),
  - Panicum bartowense*,
  - Paspalum notatum* (Bahia Grass),
  - Phoenix canariensis* (Canary Island Date Palm),
  - Phoenix dactylifera* (Date Palm),
  - Phoenix reclinata* (Sengal Date Palm),
  - Phoenix rupicola* (Cliff Date Palm),
  - Phoenix sylvestris* (Wild Date Palm),
  - Phoenix zeylanica* (Ceylon Date Palm),
  - Polyandrococos caudescens*,
  - Pritchardia* spp.,
  - Ravenea hildebrandtii*,
  - Stenotaphrum secundatum* (St. Augustine Grass),
  - Syagrus schizophylla*
  - Trachycarpus fortunei* (Windmill Palm),
  - Veitchia* spp., and
  - Zoysia* spp. (Zoysia Grass).
- D. Restrictions. A person shall not ship into Arizona a regulated commodity that is produced in or shipped from an area under quarantine.
- E. Disposition of commodity not in compliance. A regulated commodity shipped into Arizona in violation of this Section shall be destroyed or transported out-of-state by the owner and at the owner's expense.

**Historical Note**

Former Rule, Quarantine Regulation 22. Repealed effective April 25, 1977 (Supp. 77-2). New Section adopted effective December 22, 1989 (Supp. 89-4). Section R3-1-70 renumbered to R3-4-241 (Supp. 91-4). Amended by final rulemaking at 9 A.A.R. 1046, effective May 5, 2003 (Supp. 03-1).

**R3-4-242. Brown Citrus Aphid**

- A. Area Under Quarantine: Hawaii and any county in Florida that, by notification from the Florida Department of Agriculture and Consumer Services, is infested with the brown citrus aphid.

- B. Commodities covered: All plants, except seed and fruit.
- C. Restrictions.
1. The species, subspecies, varieties, ornamental forms, and any hybrid having at least one ancestor of the following genera are prohibited from entering the state:
    - a. *Citrus*,
    - b. *Fortunella*, and
    - c. *Poncirus*,
  2. All other covered commodities, whether moved directly from the area under quarantine or by diversion or reconsignment from any other point, are prohibited from entering Arizona unless the following requirements are met:
    - a. Aquatic plants are accompanied by an original certificate affirming that the commodity was inspected and found free of the pest within five days before shipment.
    - b. Terrestrial plants are accompanied by an original certificate affirming that the commodity was treated, as prescribed in subsection (E), within five days before shipment.
    - c. The certificate shall indicate:
      - i. The common chemical name of the product's active ingredient,
      - ii. The rate at which the product was applied, and
      - iii. The treatment date.
- D. The Director may issue a permit admitting a covered commodity subject to specific limitations, conditions, and provisions that eliminate the risk of the pest.
- E. Treatment.
1. An application of a pesticide labeled for the treatment of aphids applied according to label instructions, or
  2. Any other treatment approved by the Director.

**Historical Note**

Former Rule, Quarantine Regulation 23. Amended effective July 1, 1975 (Supp. 75-1). Correction (Supp. 76-5). Repealed effective April 25, 1977 (Supp. 77-2). Section R3-1-71 renumbered to R3-4-242 (Supp. 91-4). New Section adopted by final rulemaking at 5 A.A.R. 2521, effective July 15, 1999 (Supp. 99-3).

**R3-4-243. Repealed****Historical Note**

Former Rule, Quarantine Regulation 24. Repealed effective April 25, 1977 (Supp. 77-2). Section R3-1-72 renumbered to R3-4-243 (Supp. 91-4).

**R3-4-244. Regulated and Restricted Noxious Weeds**

- A. Definitions. In addition to the definitions provided in A.R.S. § 3-201, the following terms apply to this Section:
1. "Habitat" means any terrestrial or aquatic area within Arizona that is capable of sustaining plant growth.
  2. "Infested area" means each individual container in which a pest is found or the specific area that harbors a pest.
  3. "Regulated pest" means any of the following plant species, including viable plant parts (stolons, rhizomes, cuttings and seed, except agricultural, vegetable and ornamental seed for planting purposes), found within the state may be controlled to prevent further infestation or contamination:
    - Cenchrus echinatus* L. -- Southern sandbur,
    - Cenchrus incertus* M.A. Curtis -- Field sandbur,
    - Convolvulus arvensis* L. -- Field bindweed,
    - Eichhornia crassipes* (Mart.) Solms -- Floating water hyacinth,
    - Medicago polymorpha* L. -- Burclover,
    - Pennisetum ciliare* (L.) Link -- Buffelgrass,

*Portulaca oleracea* L. -- Common purslane,  
*Tribulus terrestris* L. -- Puncturevine.

4. “Restricted pest” means any of the following plant species, including viable plant parts (stolons, rhizomes, cuttings and seed, except agricultural, vegetable and ornamental seed for planting purposes), found within the state shall be quarantined to prevent further infestation or contamination:

*Acroptilon repens* (L.) DC. -- Russian knapweed,  
*Aegilops cylindrica* Host. -- Jointed goatgrass,  
*Alhagi pseudalhagi* (Bieb.) Desv. -- Camelthorn,  
*Cardaria draba* (L.) Desv. -- Globed-podded hoary cress (Whitetop),  
*Centaurea diffusa* L. -- Diffuse knapweed,  
*Centaurea maculosa* L. -- Spotted knapweed,  
*Centaurea solstitialis* L. -- Yellow starthistle (St. Barnaby’s thistle),  
*Cuscuta* spp. -- Dodder,  
*Eichhornia crassipes* (Mart.) Solms -- Floating water hyacinth,  
*Elytrigia repens* (L.) Nevski -- Quackgrass,  
*Euryops sunbarnosus* subsp. *vulgaris* -- Sweet resinbush,  
*Halogeton glomeratus* (M. Bieb.) C.A. Mey -- Halogeton,  
*Helianthus ciliaris* DC. -- Texas blueweed,  
*Ipomoea triloba* L. -- Three-lobed morning glory,  
*Linaria genistifolia* var. *dalmatica* -- Dalmation toadflax,  
*Onopordum acanthium* L. -- Scotch thistle.

B. Area under quarantine: All infested areas within the state.

C. The following commodities are hosts or carriers of the regulated or restricted pest:

1. All plants other than those categorized as a regulated or restricted pest;
2. Forage, straw, and feed grains;
3. Live and dead flower arrangements;
4. Ornamental displays;
5. Aquariums; and
6. Any appliance, construction or dredging equipment, boat, boat trailer or related equipment, or any other vehicle with soil attached or carrying plant debris.

D. The Department may quarantine any commodity, habitat, or area infested or contaminated with a regulated pest and notify the owner or carrier of the restrictions and treatments listed in subsections (F) and (G). If the regulated pest is not quarantined, the Department shall provide the grower with technical information on effective weed control activities through integrated pest management.

E. The Department shall quarantine any commodity, habitat, or area infested or contaminated with a restricted pest and shall notify the owner or carrier of the restrictions and treatments of the pest listed in subsections (F) and (G).

F. Restrictions.

1. No regulated or restricted pest or commodity infested or contaminated with a regulated or restricted pest shall be moved to a non-infested area unless the Director issues a permit for the transporting or propagating of the pest.
2. An owner or the owner’s representative shall notify the Department at least two working days in advance of moving contaminated equipment from an infested area.
3. The Department may inspect all equipment within two working days after a request to inspect the equipment is made if the equipment:
  - a. Has been moved into or through a non-infested area;
  - b. Has not been treated; or

- c. Has been used to harvest an infested crop within the past 12 months.

G. Treatments.

1. An owner or the owner’s representative shall treat all soil and debris from equipment used in a quarantined area until it is free of the regulated or restricted pest before the equipment is moved. Removal or destruction of the restricted or regulated pest shall be accomplished through one of the following methods:
  - a. Autoclaving.
    - i. Dry heat. The commodity shall be heated for 15 minutes at 212° F.
    - ii. Steam heat. The commodity shall be heated for 15 minutes at 212° F;
  - b. Fumigating with ethylene oxide, chamber only: The commodity shall be fumigated with 1,500 mg/L for four hours in a chamber pre-heated to 115-125° F;
  - c. High-pressure water spray;
  - d. Crushing;
  - e. Incinerating; or
  - f. Burying in a sanitary landfill to a depth of six feet.
2. An owner or the owner’s representative shall treat an infested area or habitat, including the area within the crop, rangeland, roadside, or private property, with treatments based on an integrated pest management program appropriate to the commodity. The treatments shall take place under the direction of an inspector and shall include:
  - a. Reshipment from the state;
  - b. Manual removal;
  - c. Application of a herbicide;
  - d. Biological control including insects, fungi, nematodes, or microbes; or
  - e. Any other treatment approved by the Director.

#### Historical Note

Former Rule, Quarantine Regulation 25. Repealed effective June 19, 1978 (Supp. 78-3). Section R3-1-73 renumbered to R3-4-244 (Supp. 91-4). New Section adopted effective July 10, 1995 (Supp. 95-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 2521, effective July 15, 1999 (Supp. 99-3). Amended by final rulemaking at 6 A.A.R. 2082, effective May 15, 2000 (Supp. 00-2). Amended by final rulemaking at 11 A.A.R. 5315, effective February 4, 2006 (Supp. 05-4).

#### R3-4-245. Prohibited Noxious Weeds

A. Definition. In addition to the definitions provided in A.R.S. § 3-201, the following apply to this Section:

1. “Habitat” means any terrestrial or aquatic area within Arizona that is capable of sustaining plant growth.
2. “Infested area” means each individual container in which a pest is found, the specific area that harbors the pest, or any shipment that has not been released to the receiver and is infested with a pest.
3. “Pest” means any of the following plant species, including viable plant parts (stolons, rhizomes, cuttings and seed, except agricultural, vegetable and ornamental seed for planting purposes), that are prohibited from entering the state:

*Acroptilon repens* (L.) DC. -- Russian knapweed,  
*Aegilops cylindrica* Host. -- Jointed goatgrass,  
*Alhagi pseudalhagi* (Bieb.) Desv. -- Camelthorn,  
*Alternanthera philoxeroides* (Mart.) Griseb. -- Alligator weed,

*Cardaria pubescens* (C.A. Mey) Jarmolenko -- Hairy whitetop,  
*Cardaria chalapensis* (L.) Hand-Muzz -- Lens podded hoary cress,  
*Cardaria draba* (L.) Desv. -- Globed-podded hoary cress (Whitetop),  
*Carduus acanthoides* L. -- Plumeless thistle,  
*Cenchrus echinatus* L. -- Southern sandbur,  
*Cenchrus incertus* M.A. Curtis -- Field sandbur,  
*Centaurea calcitrapa* L. -- Purple starthistle,  
*Centaurea iberica* Trev. ex Spreng. -- Iberian starthistle,  
*Centaurea squarrosa* Willd. -- Squarrose knapweed,  
*Centaurea sulphurea* L. -- Sicilian starthistle,  
*Centaurea solstitialis* L. -- Yellow starthistle (St. Barnaby's thistle),  
*Centaurea diffusa* L. -- Diffuse knapweed,  
*Centaurea maculosa* L. -- Spotted knapweed,  
*Chondrilla juncea* L. -- Rush skeletonweed,  
*Cirsium arvense* L. Scop. -- Canada thistle,  
*Convolvulus arvensis* L. -- Field bindweed,  
*Coronopus squamatus* (Forsk.) Ascherson -- Creeping wartcress (Coronopus),  
*Cucumis melo* L. var. Dudaim Naudin -- Dudaim melon (Queen Anne's melon),  
*Cuscuta* spp. -- Dodder,  
*Drymaria arenarioides* H.B.K. -- Alfombrilla (Lightningweed),  
*Eichhornia azurea* (SW) Kunth. -- Anchored water hyacinth,  
*Eichhornia crassipes* (Mart.) Solms -- Floating water hyacinth,  
*Elytrigia repens* (L.) Nevski -- Quackgrass,  
*Euphorbia esula* L. -- Leafy spurge,  
*Halogeton glomeratus* (M. Bieb.) C.A. Mey -- Halogeton,  
*Helianthus ciliaris* DC. -- Texas blueweed,  
*Hydrilla verticillata* Royale -- Hydrilla (Florida-elo-dea),  
*Ipomoea* spp. -- Morning glory. All species except *Ipomoea carnea*, Mexican bush morning glory; *Ipomoea triloba*, three-lobed morning glory (which is considered a restricted pest); and *Ipomoea aborescens*, morning glory tree,  
*Ipomoea triloba* L. -- Three-lobed morning glory,  
*Isatis tinctoria* L. -- Dyers woad,  
*Linaria genistifolia* var. *dalmatica* -- Dalmation toadflax,  
*Lythrum salicaria* L. -- Purple loosestrife,  
*Medicago polymorpha* L. -- Burclover,  
*Nassella trichotoma* (Nees.) Hack. -- Serrated tussock,  
*Onopordum acanthium* L. -- Scotch thistle,  
*Orobancha ramosa* L. -- Branched broomrape,  
*Panicum repens* L. -- Torpedo grass,  
*Peganum harmala* L. -- African rue (Syrian rue),  
*Pennisetum ciliare* (L.) Link -- Buffelgrass,  
*Portulaca oleracea* L. -- Common purslane,  
*Rorippa austriaca* (Crantz.) Bess. -- Austrian field-cress,  
*Salvinia molesta* -- Giant Salvinia,  
*Senecio jacobaea* L. -- Tansy ragwort,  
*Solanum carolinense* L. -- Carolina horsenettle,  
*Sonchus arvensis* L. -- Perennial sowthistle,  
*Solanum viarum* Dunal -- Tropical Soda Apple,  
*Stipa brachychaeta* Godr. -- Puna grass,

*Striga* spp. -- Witchweed,  
*Trapa natans* L. -- Water-chestnut,  
*Tribulus terrestris* L. -- Puncturevine.

- B. Area under quarantine: All states, districts, and territories of the United States except Arizona.
- C. The following commodities are hosts or carriers of the pest:
  1. All plants and plant parts other than those categorized as a pest;
  2. Forage, straw, and feed grains;
  3. Live or dead flower arrangements;
  4. Ornamental displays;
  5. Aquariums; and
  6. Any appliance, construction or dredging equipment, boat, boat trailer or related equipment, or any other vehicle with soil attached or carrying plant debris.
- D. The Department shall quarantine any commodity, habitat, or area infested or contaminated with a pest and shall notify the owner or carrier of the methods of removing or destroying the pest from the commodity, habitat, or area. The Department shall reject any shipment not released to the receiver and reship to the shipper.
- E. Restrictions:
  1. No pest or commodity infested or contaminated with a pest shall be admitted into the state unless the Director issues a permit for the transporting or propagating of the pest.
  2. The Department shall regulate the movement of the commodity out of a quarantined area within the state until the pest is eradicated. Any shipment or lot of a commodity infested or contaminated with a pest arriving in the state in violation of this quarantine shall, according to A.R.S. § 3-205(A), be immediately reshipped from the state, or treated or destroyed using one of the following methods:
    - a. The commodity shall be fumigated with 1,500 mg/L of ethylene oxide for four hours in a chamber preheated to 115-125° F;
    - b. Incinerating;
    - c. Burying in a sanitary landfill to a depth of six feet;
    - d. Application of a herbicide; or
    - e. Any other treatment approved by the Director.

#### Historical Note

Former Rule, Quarantine Regulation 26. Amended effective June 19, 1978 (Supp. 78-3). Amended subsection (B) effective May 2, 1986 (Supp. 86-3). Section R3-1-74 renumbered to R3-4-245 (Supp. 91-4). Section repealed, new Section adopted effective July 10, 1995 (Supp. 95-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 6 A.A.R. 2082, effective May 15, 2000 (Supp. 00-2). Amended by final rulemaking at 11 A.A.R. 5315, effective February 4, 2006 (Supp. 05-4).

#### R3-4-246. Caribbean Fruit Fly

- A. Definitions. The following term applies to this Section: "Pest" means all life stages of the Caribbean fruit fly, *Anastrepha suspensa*.
- B. Area under quarantine.
  1. In the state of Florida, the following counties: Alachua, Brevard, Broward, Charlotte, Citrus, Collier, DeSoto, Duval, Glades, Hardee, Hendry, Hernando, Highlands, Hillsborough, Indian River, Lake, Lee, Manatee, Martin, Miami-Dade, Monroe, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Putnam, St. Johns, St. Lucie, Sarasota, Seminole, Sumter, and Volusia.
  2. The Commonwealth of Puerto Rico.
- C. Regulated commodities.

## 1. The fresh fruit of the following plants:

*Actinidia chinensis* (Kiwi),  
*Annona glabra* (Pond Apple),  
*Annona* hybrid,  
*Annona squamosa* (Sugar Apple),  
*Atalantia citrioides*,  
*Averrhoa carambola* (Carambola),  
*Blighia sapida* (Akee),  
*Canella winteriana* (Wild Cinnamon),  
*Capsicum frutescens* (Bell Pepper),  
*Carica papaya* (Papaya),  
*Carissa grandiflora* (Natal Plum),  
*Casimiroa edulis* (White Sapote),  
*Chrysobalanus icaco* (Cocoplum),  
*Citrus aurantiifolia* (Lime),  
*Citrus aurantium* (Sour Orange),  
*Citrus limonia* (Rangpur Lime),  
*Citrus nobilis* 'unshu' x *Fortunella* sp. (Jack Orangequat),  
*Citrus paradisi* (Grapefruit),  
*Citrus paradisi* x *C. reticulata* (Tangelo),  
*Citrus reticulata* (Tangerine),  
*Citrus sinensis* (Sweet Orange),  
*Citrus sinensis* x *C. reticulata* (Temple Orange),  
*Clausena lansium* (Wampi),  
*Dimocarpus longan* (Longan),  
*Diospyros blancoi* (Velvet Apple or Velvet Persimmon),  
*Diospyros khaki* (Japanese Persimmon),  
*Dovyalis caffra* (Kei Apple),  
*Dovyalis hebecarpa* (Ceylon Gooseberry),  
*Drypetes lateriflora* (Guiana Plum),  
*Eriobotrya japonica* (Loquat),  
*Eugenia aggregata* (Cherry of the Rio Grande),  
*Eugenia brasiliensis* (Grumichama),  
*Eugenia coronata*,  
*Eugenia ligustrina*,  
*Eugenia luschnathiana* (Pitomba),  
*Eugenia uniflora* (Surinam Cherry),  
*Ficus altissima*,  
*Ficus carica* (Fig),  
*Flacourtia indica* (Governor's Plum),  
*Fortunella* spp. (Kumquat),  
*Garcinia livingstonei* (Imbe),  
*Garcinia xanthochymus*,  
*Litchi chinensis* (Lychee),  
*Lycopersicon esculentum* (Tomato),  
*Malpighia glabra* (Barbados Cherry),  
*Malus sylvestris* (Apple),  
*Mangifera indica* (Mango),  
*Manilkara jaimiqui* spp. *Emarginata* (Wild Dilly),  
*Manilkara roxburghiana*,  
*Manilkara zapota* (Sapodilla),  
*Momordica charantia* (Wild Balsam Apple),  
*Muntingia calabura* (Calbur),  
*Murraya paniculata* (Orange Jasmine),  
*Myciaria cauliflora* (Jaboticaba),  
*Myrcianthes fragrans*,  
*Myricaria glomerata*,  
*Persea americana* (Avocado),  
*Pimenta dioica* (Allspice),  
*Pouteria campechiana* (Egg Fruit),  
*Prunus persica* (Nectarine),  
*Prunus persica* (Peach),  
*Pseudanamosis umbellulifera*,  
*Psidium* spp. (Guava),  
*Punica granatum* (Pomegranate),  
*Pyrus communis* (Pear),

*Pyrus pyrifolia* (Japanese Pear),  
*Pyrus pyrifolia* x *Pyrus communis* (Kieffer Pear),  
*Rheedia aristata*,  
*Rubus hybrid* (Blackberry),  
*Severinia buxifolia* (Box Orange),  
*Spondias cytherea* (Otaheite Apple),  
*Synsepalum dulcificum* (Miracle Fruit),  
*Syzygium cumini* (Jambolan Plum),  
*Syzygium jambos* (Rose Apple),  
*Syzygium samarangense* (Java Apple),  
*Terminalia catappa* (Tropical Almond),  
*Terminalia muelleri*,  
*Trevisia palmata*,  
*Triphasia trifolia* (Limeberry),  
*X Citrofortunella floridana* (Limequat), and  
*X Citrofortunella mitis* (Calamondin).

## 2. Soil or planting media within the drip area of plants producing, or that have produced, a regulated commodity.

## D. Restrictions. A regulated commodity produced in or shipped from an area under quarantine is prohibited entry into Arizona unless each lot or shipment is accompanied by a certificate issued by an official of the state of origin, affirming compliance with one of the following:

1. Citrus fruit (*Citrus* spp. and *Fortunella* spp.) has been fumigated with methyl bromide ("Q" label only) for a minimum of two hours under the following conditions:

Pulp Temperature	Rate per 1000 cu. ft.
No less than 60° F to 79° F	3 pounds
80° F or above	2 1/2 pounds

## 2. Non-citrus fruit has been treated in compliance with a treatment plan approved by the Director.

## E. Disposition of commodity not in compliance. A regulated commodity shipped into Arizona in violation of this Section shall be destroyed or transported out-of-state by the owner and at the owner's expense.

**Historical Note**

Adopted effective July 1, 1975 (Supp. 75-1). Correction (Supp. 76-1). Amended effective May 10, 1988 (Supp. 88-2). Section R3-1-75 renumbered to R3-4-246 (Supp. 91-4). Amended by final rulemaking at 9 A.A.R. 2098, effective August 2, 2003 (Supp. 03-2).

**R3-4-247. Repealed****Historical Note**

Amended effective April 26, 1976 (Supp. 76-2). Amended effective June 16, 1977 (Supp. 77-3). Repealed effective June 19, 1978 (Supp. 78-3). Section R3-1-76 renumbered to R3-4-247 (Supp. 91-4).

**R3-4-248. Japanese beetle**

## A. Definitions.

- "Host commodities" means the commodities listed in the JBHP, Appendix 5.
- "JBHP" means the U.S. Domestic Japanese Beetle Harmonization Plan, adopted by the National Plant Board on August 19, 1998, and revised September 5, 2000.
- "Pest" means the Japanese beetle, *Popillia japonica* (Newman).

## B. Area under quarantine: All areas listed in the JBHP, which is incorporated by reference, does not include any later amendments or editions, and is on file with the Department, the Office of the Secretary of State, and the National Plant Board



at [www.aphis.usda.gov/npb](http://www.aphis.usda.gov/npb). The incorporated material includes the following changes:

1. Appendix 1, delete the words “(except sod).”
  2. Appendix 5, definition of host commodities, delete the words “grass sod.”
- C. Host commodities covered. All commodities, except grass sod, listed in the JBHP.
- D. An out-of-state grower who imports a host commodity into Arizona shall comply with the JBHP, except as provided under subsection (E).
- E. Restrictions on importation.
1. An out-of-state grower shall not import into Arizona a host commodity under subsection (C) from an area under quarantine unless the commodity is accompanied by an original certificate issued by an official of the origin state ensuring compliance with the requirements of the JBHP, Appendix 1.
  2. The Associate Director may admit grass sod from an out-of-state grower for shipment to Arizona if:
    - a. The out-of-state grower requests an exception agreement from the Department;
    - b. The out-of-state grower, the state plant regulatory official of the origin state, and the Associate Director sign an agreement that includes the following terms:
      - i. The out-of-state grower shall ship sod grown only in a Japanese beetle-free county;
      - ii. The origin state’s plant regulatory official shall place and monitor Japanese beetle traps on the grass sod farm during the agreement period. At least one trap shall be placed on each 10 acres of land. A buffer zone of a one-mile radius shall be established around the grass sod farm, and two traps per square mile shall be placed in the buffer zone. The Department shall revoke the agreement if the origin state documents that one or more Japanese beetles are detected in any trap;
      - iii. The origin state’s plant regulatory official or designee shall inspect sod before shipment to ensure it is free of the pest; and
      - iv. The out-of-state grower shall ship sod to Arizona only through the ports of entry on I-10 or I-40.
    - c. Both the out-of-state grower and the origin state’s plant regulatory official shall perform any other requirement established by the Associate Director to ensure the grass sod is free from all life stages of Japanese beetle.
  3. Exemptions from importation ban:
    - a. Privately-owned houseplants grown indoors; and
    - b. Commodities that are treated by the grower for Japanese beetle may be imported into Arizona if the Associate Director approves the treatment method before shipment.

#### Historical Note

Adopted effective June 16, 1977 (Supp. 77-3). Section R3-1-77 renumbered to R3-4-248 (Supp. 91-4). Amended by final rulemaking at 7 A.A.R. 5345, effective November 8, 2001 (Supp. 01-4).

### ARTICLE 3. NURSERY CERTIFICATION PROGRAM

#### R3-4-301. Nursery Certification

- A. Definitions. The following terms apply to this Section.

“Associate Director” means the Associate Director of the Arizona Department of Agriculture’s Plant Services Division.

“Certificate” means a document issued by the Director, Associate Director or by a Department inspector stating that the nursery stock has been inspected and complies with the criteria set forth by an agricultural agency of any state, county, or commonwealth.

“Certificate holder” means a person who holds a certificate issued in accordance with this Section.

“Collected nursery stock” means nursery stock that has been dug or gathered from any site other than a nursery location.

“Commercially clean” means nursery stock offered for sale is in a healthy condition and, though common pests may be present, they exist at levels that pose little or no risk.

“Common pest” means a pest, weed, or disease that is not under a state or federal quarantine or eradication program and is of general distribution within the state.

“Director” means the Director of the Arizona Department of Agriculture.

“General nursery stock inspection certification” means an inspection carried out at the request of a person for the purpose of meeting the general nursery inspection requirements of another state.

“Nursery location” means real property with one physical address, upon which nursery stock is propagated, grown, sold, distributed, or offered for sale.

“Quarantine pest” means an economically important pest that does not occur in the state or that occurs in the state but is not widely distributed or is being officially eradicated.

“Single shipment nursery stock inspection certification” means a visit to a single location by a Department inspector to certify one or more shipments of nursery stock for compliance with the quarantine requirements of the receiving state, county, or commonwealth.

- B. General nursery stock inspection certification. A person may apply for general nursery stock inspection certification by submitting to the Department the application described in subsection (E) for each nursery location. The applicant shall submit a \$50 inspection fee to the Department at the time of inspection for each nursery location. Each nursery location shall be inspected and certified separately. An application for initial certification may be submitted at any time. A certificate will be valid for one year, and may be renewed. A renewal application shall be submitted each year by February 15.
1. The Department shall issue a general nursery stock inspection certificate to the applicant if, following a Department inspection, the nursery stock is found free of quarantine pests, and commercially clean of common pests that are adversely affecting the nursery stock.
    - a. The Department shall only certify nursery stock that is found free of quarantine pests. The applicant shall not remove from the nursery any nursery stock that is found infested with a quarantine pest until a Department inspector determines that the pest has been eliminated.
    - b. The Department shall restrict the movement of any nursery stock found infested with a common pest that a Department inspector determines is adversely affecting the nursery stock. The applicant shall

- establish a treatment program to control the pest and shall not remove the infested nursery stock from the nursery until a Department inspector determines that the pest has been controlled.
2. A certificate holder shall ensure that a nursery with a general nursery stock inspection certificate remains free of quarantine pests and commercially clean of common pests that are adversely affecting the nursery stock throughout the period that the certificate is valid.
  3. A certificate holder shall not distribute, transport, or sell nursery stock interstate if it is infested with a quarantine pest or a common pest that is adversely affecting the nursery stock.
  4. A certificate holder may reproduce a general nursery stock inspection certificate without the Department's permission for nursery use.
  5. A certificate holder shall ensure that the nursery's general nursery stock inspection certificate accompanies each shipment of nursery stock that is moved out of the state.
  6. A certificate holder shall maintain all invoices or other shipping documents for shipments received by and shipped from the nursery for up to one year. The certificate holder shall make the documents available to the Department upon request, as authorized by A.R.S. § 3-201.01(A)(6).
  7. The Department shall inspect a nursery with a general nursery stock inspection certificate at any time during the certificate period to verify compliance with this Section.
  8. A general nursery stock inspection certificate expires on December 31 of each year unless renewed, suspended, or revoked as provided in this Section.
  9. A person with a general nursery stock inspection certificate may also need to obtain a special nursery stock inspection certificate to meet a specific quarantine entry requirement of another state, as prescribed in subsection (C).
- C.** Special nursery stock inspection certification. A person may apply for special nursery stock inspection certification to meet specific quarantine entry requirements of another state that are not addressed by the general nursery stock inspection certificate described in subsection (B). The applicant shall submit to the Department the application described in subsection (E) and a \$50 inspection fee for each nursery location.
1. An applicant shall ensure that the applicant's nursery stock is free of quarantine pests as required by the receiving state and commercially clean of common pests that are adversely affecting the nursery stock. The Department shall not certify nursery stock that is infested with a quarantine pest until a Department inspector determines that the pest has been eliminated. The Department shall not certify nursery stock that is infested with a common pest that a Department inspector determines is adversely affecting the nursery stock.
  2. A certificate holder shall not reproduce or duplicate a special nursery stock inspection certificate without written permission from the Department.
  3. A special nursery stock inspection certificate is valid for one year from the issue date unless the receiving state requires a shorter certification period.
- D.** Single shipment nursery stock inspection certification. A person may apply for a single shipment nursery stock inspection certification to meet the entry requirements of another state by submitting to the Department the application described in subsection (E) with a \$50 inspection fee.
1. An applicant for a single shipment nursery stock inspection certificate shall ensure that the nursery stock in each shipment is free from quarantine pests, as required by the receiving state, and commercially clean of common pests that are adversely affecting the nursery stock. The Department shall not certify nursery stock that is infested with a common pest that a Department inspector determines is adversely affecting the nursery stock until the pest has been controlled.
  2. A single shipment nursery stock inspection certificate is valid for seven calendar days following the inspection date. A certificate holder may apply for a new certificate if the original certificate expires before the shipment leaves Arizona.
  3. A certificate holder shall not reproduce or duplicate a single shipment nursery stock inspection certificate.
  4. A person who has obtained a single shipment nursery stock inspection certificate for collected nursery stock shall retain a record, for at least one year from the shipment date, of the street address from which each plant in a shipment was collected. The person shall provide the collected nursery stock record to the Department upon request.
- E.** Application. A person applying for a certificate under this Section shall provide the following information on a form obtained from the Department:
1. Applicant's name, nursery name, mailing address, telephone and fax numbers, and e-mail address, as applicable;
  2. Location at which inspection is to be made, by legal description or physical address;
  3. Number of acres, structures, or vehicles to be inspected, as applicable;
  4. For shipping, the state, county, or commonwealth of planned destination, the category of inspection, and the nursery stock to be certified;
  5. Applicant's Social Security number or tax identification number; and
  6. Applicant's signature and date of signature.
- F.** Based upon the circumstances of each case, the Associate Director may:
1. Refuse to issue a certificate if, after inspection, the Associate Director determines that an applicant has not met a requirement for certification.
  2. Revoke a certificate for a violation of a condition of the certificate.
  3. Suspend, for a period of up to 90 days, a certificate for misuse or misrepresentation related to the certificate.
  4. Refuse to issue or suspend a certificate issued under this Section if the applicant or certificate holder refuses to provide the Department with documents that demonstrate the ownership, origin, or destination of nursery stock presented for certification.
- G.** Notwithstanding subsections (B) through (D), during fiscal year 2015, an applicant for nursery stock inspection certification shall pay the following fee:
1. For general certification, \$250.
  2. For single shipment certification, \$50 for the first lot plus \$10 for each additional lot per Department site trip.

#### Historical Note

Adopted effective January 17, 1989 (Supp. 89-1). Section R3-4-301 renumbered from R3-1-301 (Supp. 91-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 1378, effective June 4, 2006 (Supp. 06-2). Amended by exempt rulemaking at 16 A.A.R. 1336,

effective June 29, 2010 (Supp. 10-2). Amended by exempt rulemaking at 17 A.A.R. 1761, effective July 20, 2011 (Supp. 11-3). Amended by exempt rulemaking at 18 A.A.R. 2063, effective August 2, 2012 (Supp. 12-3). Amended by exempt rulemaking at 19 A.A.R. 3143, effective September 14, 2013 (Supp. 13-3). Amended by exempt rulemaking at 20 A.A.R. 2454, effective July 24, 2014 (Supp. 14-3).

**R3-4-302. Repealed****Historical Note**

Adopted effective January 17, 1989 (Supp. 89-1). Section R3-4-302 renumbered from R3-1-301 (Supp. 91-4). Section repealed by final rulemaking at 12 A.A.R. 1378, effective June 4, 2006 (Supp. 06-2).

**R3-4-303. Repealed****Historical Note**

Adopted effective January 17, 1989 (Supp. 89-1). Section R3-4-303 renumbered from R3-1-303 (Supp. 91-4). Section repealed by final rulemaking at 12 A.A.R. 1378, effective June 4, 2006 (Supp. 06-2).

**R3-4-304. Repealed****Historical Note**

Adopted effective January 17, 1989 (Supp. 89-1). Section R3-4-304 renumbered from R3-1-304 (Supp. 91-4). Section repealed by final rulemaking at 12 A.A.R. 1378, effective June 4, 2006 (Supp. 06-2).

**R3-4-305. Repealed****Historical Note**

Adopted effective January 17, 1989 (Supp. 89-1). Section R3-4-305 renumbered from R3-1-305 (Supp. 91-4). Section repealed by final rulemaking at 12 A.A.R. 1378, effective June 4, 2006 (Supp. 06-2).

**R3-4-306. Repealed****Historical Note**

Adopted effective January 17, 1989 (Supp. 89-1). Section R3-4-306 renumbered from R3-1-306 (Supp. 91-4). Section repealed by final rulemaking at 12 A.A.R. 1378, effective June 4, 2006 (Supp. 06-2).

**R3-4-307. Repealed****Historical Note**

Adopted effective January 17, 1989 (Supp. 89-1). Section R3-4-307 renumbered from R3-1-307 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2).

**ARTICLE 4. SEEDS****R3-4-401. Definitions**

In addition to the definitions provided in A.R.S. § 3-231, the following shall apply to this Article:

1. “Blend” means seed consisting of more than one variety of a kind, with each variety in excess of five percent by weight of the whole.
2. “Brand” means a word, name, symbol, number, or design used to identify seed of one person to distinguish it from seed of another person.
3. “Certifying agency” means:
  - a. An agency authorized under the laws of this state to officially certify seed and that has standards and procedures approved by the U.S. Secretary of Agriculture to assure the varietal purity and identity of the seed certified, or

- b. An agency of a foreign country determined by the U.S. Secretary of Agriculture to adhere to procedures and standards for seed certification comparable to the procedures and standards adhered to generally by seed-certifying agencies under subsection (a) of this definition.
4. “Coated seed” means seed that has been covered with a substance that changes the size, shape, or weight of the original seed. Seed coated with ingredients such as rhizobia, dyes, and pesticides is not coated seed.
5. “Conditioning” or “conditioned” means drying, cleaning, scarifying, and other operations that could change the purity or germination of the seed and require the seed lot to be retested to determine the label information.
6. “Dormant” means viable seed, excluding hard seed, that fails to germinate when provided the specified germination conditions for that kind of seed.
7. “Federal Seed Act” means the federal law at 7 U.S.C. 1551-1611 and regulations promulgated under the Act: 20 CFR part 201.
8. “Flower seeds” means seeds of herbaceous plants grown for their blooms, ornamental foliage, or other ornamental parts, and commonly known and sold under the name of flower or wildflower seeds in this state.
9. “Germination” means the emergence and development from the seed embryo of those essential structures that, for the kind of seed in question, are indicative of the ability to produce a normal plant under favorable conditions.
10. “Hard seeds” means seeds that remain hard at the end of the prescribed germination test period because they have not absorbed water due to an impermeable seed coat.
11. “Inert matter” means all matter that is not seed, including broken seeds, sterile florets, chaff, fungus bodies, and stones.
12. “Mixture”, “mix”, or “mixed” means seed consisting of more than one kind, each in excess of five percent by weight of the whole.
13. “Mulch” means a protective covering of any suitable substance placed with seed that acts to retain sufficient moisture to support seed germination, sustain early seedling growth and aid in preventing soil moisture evaporation, control of weeds, and erosion prevention.
14. “Origin” means the state where the seed was grown, or if not grown in the United States, the country where the seed was grown.
15. “Other crop seed” means seeds of plants grown as crops other than the kind or variety included in the pure seed, as determined by methods defined in this Article.
16. “Pure live seed” means the product of the percent of germination plus hard or dormant seed multiplied by the percent of pure seed divided by 100. The result is expressed as a whole number.
17. “Pure seed” means a kind of seed excluding inert matter and all other seed not of the kind being considered.
18. “Replacement date sticker” means a sticker on a label that displays a new test date.
19. “Retail” means sales that are not intended for agricultural use and are prepared for use by a consumer in home gardens or household plantings only.
20. “Seed count” means the number of seeds per unit weight in a container.
21. “Seizure” means taking possession of seed pursuant to a court order.
22. “Wholesale” means sales of seeds that are intended for agricultural use normally in quantities for resale, as by an

agricultural retail merchant and are not prepared for use in home gardening or household plantings.

23. “Working sample” means the number of seeds required under §§ 402 and 403 of the Federal Seed Act.

#### Historical Note

Former Rule, Arizona Seed Regulation 1. Amended effective August 31, 1981 (Supp. 81-4). Former Section R3-4-110 renumbered without change as Section R3-4-401 (Supp. 89-1). Section R3-4-401 renumbered from R3-1-401 (Supp. 91-4). Section repealed, new Section adopted effective July 10, 1995 (Supp. 95-3). Amended by final rulemaking at 13 A.A.R. 1464, effective June 2, 2007 (Supp. 07-2).

#### R3-4-402. Labeling

##### A. General requirements:

1. Blank spaces or the words “free or none” mean “0” and “0.00%” for the purpose of applying the tolerances prescribed in this Article.
2. Labeling for purity and germination shall not show higher results than actually found by test.
3. The terms “foundation seed,” “registered seed,” and “certified seed” are authorized for use on seed certified by a seed certifying agency under the laws of Arizona as delineated in R3-4-405.
4. Relabeling. Any person relabeling seed in its original container shall include the following information on a label or a replacement date sticker:
  - a. The calendar month and year the germination test was completed to determine the germination percentage and the sell-by date as required by subsection (C)(3)(i)(iv) or (C)(5)(c)(i),
  - b. The same lot designation as on the original labels, and
  - c. The identity of the person relabeling the seed if different from the original labeler.
5. Labeling of seed distributed to wholesalers. After seed has been conditioned, a labeler shall ensure the seed is labeled as follows:
  - a. When supplied to a retailer or consumer, each bag or bulk lot must be completely labeled.
  - b. When supplied to a wholesaler, if each bag or other container is clearly identified by a lot number permanently displayed on the container or if the seed is in bulk, the labeling of seed may be by invoice.
  - c. When supplied to a wholesaler, if each bag or container is not identified by a lot number, it must carry complete labeling.
6. Seeds for sprouting. All labels of seeds sold for sprouting for salad or culinary purposes shall indicate the following information:
  - a. Commonly accepted name of kind or kinds;
  - b. Lot number;
  - c. Percentage by weight of each pure seed component in excess of 5 percent of the whole, other crop seeds, inert matter, and weed seeds, if occurring;
  - d. Percentage of germination of each pure seed component;
  - e. Percentage of hard seed, if present; and
  - f. The calendar month and year the germination test was completed to determine the percentages in subsections (c), (d) and (e).

##### B. Kind, variety, or type.

1. All agricultural seeds sold in this state, except as stated in subsection (B)(2), shall be labeled to include the recognized variety name or type or the words “Variety not

stated.” A brand is not a kind and variety designation and shall not be used instead of a variety name.

2. All cotton planting seed sold, offered for sale, exposed for sale, or transported for planting purposes in this state, shall have a label that includes both kind and variety.
- C. Agricultural, vegetable, or flower seeds that is sold, offered for sale, or exposed for sale within this state shall bear on each container a plainly written or printed label or tag in English. No modifications or disclaimers shall be made to the required label information in the labeling or on another label attached to the container. No misleading information shall appear on the label. The label shall include the following information:
1. For agricultural, vegetable, and flower seeds that have been treated, the following is required and may appear on a separate label:
    - a. Language indicating that the seed has been treated;
    - b. The commonly-accepted chemical name of the applied substance or a description of the process used;
    - c. If a substance that is harmful to human or animals is present with the seed, a caution statement such as “Do not use for food, feed, or oil purposes.” The caution for highly toxic substances shall be a poison statement and symbol; and
    - d. If the seed is treated with an inoculant, the date of expiration, which is the date beyond which the inoculant is not to be considered effective.
  2. For agricultural seeds, except for lawn and turf grass seed and mixtures of lawn and turf grass seed as provided in subsection (C)(3); for seed sold on a pure live seed basis as provided in subsection (C)(7); and for hybrids that contain less than 95 percent hybrid seed as provided in subsection (C)(8):
    - a. The name of the kind and variety for each agricultural seed component in excess of five percent of the whole and the percentage by weight of each. If the variety of the kinds generally labeled as a variety designated in this Article is not stated, the label shall show the name of the kind and the words, “variety not stated.” Hybrid seed shall be labeled as hybrid;
    - b. Lot number or other lot identification;
    - c. Origin of alfalfa, red clover, and field corn (except hybrid corn) or if the origin is unknown, a statement that the origin is unknown;
    - d. Percentage by weight of all weed seeds;
    - e. The name and rate of occurrence per pound of each kind of restricted noxious weed seed present;
    - f. Percentage by weight of agricultural seeds other than those required to be named on the label. Agricultural seeds may be designated as “crop seeds;”
    - g. Percentage by weight of inert matter;
    - h. The sum total of weight identified in subsections (a), (d), (f), and (g) shall equal 100 percent;
    - i. For each named agricultural seed:
      - i. Percentage germination, excluding hard seed;
      - ii. Percentage of hard seeds, if present; and
      - iii. The calendar month and year the test was completed to determine the percentages. The statement “total germination and hard seed” may be included following the percentages required under subsections (i) and (ii).
    - j. Net weight of seed in the container or seed count per unit weight; and
    - k. Name and address of the labeler, or the person who sells, offers, or exposes the seed for sale within this state.

3. For lawn and turf grass seed and lawn and turf grass seed mixtures:
  - a. For single kinds, the name of the kind or kind and variety and the percentage by weight.
  - b. For mixtures, the word “mix,” “mixed,” or “mixture” or “blend” shall be stated with the name of the mixture, along with the commonly accepted name of each kind or kind and variety of each agricultural seed component in excess of five percent of the whole and the percentages by weight.
  - c. The percentage by weight of each kind of pure seed shall be listed in order of its predominance and in columnar form. The heading “pure seed” and “germination” or “germ” shall be placed consistent with generally accepted industry practices.
  - d. Percentage by weight of agricultural seed other than those required to be named on the label which shall be designated as “crop seed.”
  - e. The percentage by weight of inert matter for lawn and turf grass shall not exceed ten percent, except that 15 percent inert matter is permitted in Kentucky bluegrass labeled without a variety name. Foreign material that is not common to grass seed shall not be added, other than material used for coating, as in subsection (C)(4), or combination products, as in subsection (C)(9).
  - f. Percentage by weight of all weed seeds. Weed seed content shall not exceed one-half of one percent by weight.
  - g. The sum total for subsections (a), (b), (c), (d), (e) and (f) shall equal 100 percent.
  - h. Noxious weeds that are required by this Article to be labeled shall be listed under the heading “noxious weed seeds.”
  - i. For each lawn and turf seed named under subsection (a) or (b):
    - i. Percentage of germination, excluding hard seed;
    - ii. Percentage of hard seed, if present;
    - iii. Calendar month and year the germination test was completed to determine percentages in subsections (i) and (ii); and
    - iv. For seed sold for retail non-farm usage the statement “sell by (month/year)” which shall be no more than 15 months from the date of the germination test excluding the month of the test.
  - j. Name and address of the labeler, or the person who sells, offers or exposes the seed for sale within this state.
4. For coated agricultural, vegetable, flower, or lawn and turf seeds that are sold by weight:
  - a. Percentage by weight of pure seeds with coating material removed;
  - b. Percentage by weight of coating material;
  - c. Percentage by weight of inert material not including coating material;
  - d. Percentage of germination determined on 400 pellets with or without seeds;
  - e. All other applicable requirements in subsections (C)(1), (2), and (3).
5. For vegetable seeds in packets as prepared for use in home gardens or household plantings or vegetable seeds in pre-planted containers, mats, tapes, or other planting devices:
  - a. Name of kind and variety of seed;
  - b. Lot identification, such as by lot number or other means;
  - c. One of the following:
    - i. The calendar month and year the germination test was completed and the statement “Sell by (month/year).” The date indicated shall be no more than 12 months from the date of the test, excluding the month of the test;
    - ii. The calendar year for which the seed was packaged for sale as “packed for (year)” and the statement “sell by (year)”;
    - iii. The percentage germination and the calendar month and year the test was completed to determine the percentage if the germination test was completed within 12 months, excluding the month of the test;
  - d. Name and address of the labeler, or the person who sells, offers, or exposes the seed for sale within this state;
  - e. For seeds that germinate less than the standard established under R3-4-404(A), (B) and (C)(i): percentage of germination, excluding hard seed; percentage of hard seed, if present; and the words “Below Standard” in not less than 8-point type;
  - f. For seeds placed in a germination medium, mat, tape, or other device in such a way as to make it difficult to determine the quantity of seed without removing the seeds from the medium, mat, tape or device, a statement to indicate the minimum number of seeds in the container.
6. For vegetable seeds in containers other than packets prepared for use in home gardens, household plantings, pre-planted containers, mats, tapes, or other planting devices:
  - a. The name of each kind and variety present in excess of five percent and the percentage by weight of each in order of its predominance;
  - b. Lot number or other lot identification;
  - c. For each named vegetable seed:
    - i. Percentage germination, excluding hard seed;
    - ii. Percentage of hard seed, if present; and
    - iii. The calendar month and year the test was completed to determine the percentages; The statement “Total germination and hard seed” may be included following the percentages required under subsections (C)(6)(c)(i) and (C)(6)(c)(ii);
  - d. Name and address of the labeler, or the person who sells, offers or exposes the seed for sale within this state; and
  - e. The labeling requirements for vegetable seeds in containers of more than one pound are met if the seed is weighed from a properly labeled container in the presence of the purchaser.
7. For agricultural seeds sold on a pure live seed basis, each container shall bear a label containing the information required by subsection (C)(2), except:
  - a. The label need not show:
    - i. The percentage by weight of each agricultural seed component as required by subsection (C)(2)(a); or
    - ii. The percentage by weight of inert matter as required by subsection (C)(2)(g); and
  - b. For each named agricultural seed, the label must show instead of the information required by subsection (C)(2)(h):
    - i. The percentage of pure live seed; and

- ii. The calendar month and year in which the test determining the percentage of live seed was completed.
  - 8. For agricultural and vegetable hybrid seeds that contain less than 95 percent hybrid seed:
    - a. Kind or variety shall be labeled as “hybrid,”
    - b. The percentage that is hybrid shall be labeled parenthetically in direct association following the named variety; for example – comet (85% hybrid), and
    - c. Varieties in which the pure seed contains less than 75 percent hybrid seed shall not be labeled hybrids.
  - 9. For combination mulch, seed, and fertilizer products:
    - a. The word “combination” followed by the words “mulch – seed – fertilizer”, as appropriate, shall appear on the upper 30 percent of the principal display panel. The word “combination” shall be the largest and most conspicuous type on the container, equal to or larger than the product name. The words “mulch – seed – fertilizer”, as appropriate, shall be no smaller than one-half the size of the word “combination” and in close proximity to the word “combination.”
    - b. The products shall not contain less than 70 percent mulch.
    - c. Agricultural, flower, vegetable, lawn, and turf seeds placed in a germination medium, mat, tape, or other device or mixed with mulch shall be labeled as follows:
      - i. Product name;
      - ii. Lot number;
      - iii. Percentage by weight of pure seed of each kind and variety named. The kind and variety named may be less than 5 percent of the whole;
      - iv. Percentage by weight of other crop seeds;
      - v. Percentage by weight of inert matter, which shall not be less than 70 percent;
      - vi. Percentage by weight of weed seeds;
      - vii. The total of subsections (iii), (iv), (v), and (vi) shall equal 100 percent;
      - viii. Name and number of noxious weed seeds per pound, if present;
      - ix. Hard seed percentage, if present, and percentage of germination of each kind or kind and variety named and the month and year the test was completed; and
      - x. Name and address of the labeler or the person who sells, offers or exposes the product for sale within this state.
- D. Labeling requirements: flowers.
  - 1. For flower seeds in packets prepared for use in home gardens or household plantings or flower seeds in pre-planted containers, mats, tapes, or other planting devices:
    - a. For all kinds of flower seeds:
      - i. The name of the kind and variety or a statement of type and performance characteristics as prescribed in subsection (D)(3); and
      - ii. Name and address of the labeler, or the person who sells, offers, or exposes the seed for sale within this state, and one of the following subsections (D)(1)(a)(iii) through (v);
      - iii. The calendar month and year the germination test was completed and the statement “Sell by (month/year).” The date indicated shall be no more than 12 months from the date of the test excluding the month of the test; or
      - iv. The calendar year for which the seed was packaged for sale as “packed for (year)” and the statement “sell by (year)”; or
      - v. The percentage germination and the calendar month and year the test was completed to determine the percentage if the germination test was completed within 12 months, excluding the month of the test.
    - b. For kinds of flower seeds for which standard testing procedures are prescribed by the Association of Official Seed Analysts and that germinate less than the germination standards prescribed under the provisions of R3-4-404(B):
      - i. Percentage of germination, excluding hard seeds;
      - ii. Percentage hard seed, if present; and
      - iii. The words “Below Standard” in not less than eight-point type.
    - c. For flower seeds placed in a germination medium, mat, tape, or other device in such a way as to make it difficult to determine the quantity of seed without removing the seeds from the medium, mat, tape, or device, a statement to indicate the minimum number of seeds in the container.
  - 2. For flower seeds in containers other than packets and other than pre-planted containers, mats, tapes, or other planting devices and not prepared for use in home flower gardens or household plantings:
    - a. The name of the kind and variety or a statement of type and performance characteristics as prescribed in subsection (D)(3), and for wildflowers, the genus and species and subspecies, if appropriate;
    - b. The lot number or other lot identification;
    - c. For wildflower seed with a pure seed percentage of less than 90 percent:
      - i. The percentage, by weight, of each component listed in order of the component’s predominance;
      - ii. The percentage by weight of weed seed, if present; and
      - iii. The percentage by weight of inert matter;
    - d. For kinds of seed for which standard testing procedures are prescribed by the Association of Official Seed Analysts:
      - i. Percentage of germination, excluding hard or dormant seed;
      - ii. Percentage of hard or dormant seed, if present; and
      - iii. The calendar month and year that the test was completed to determine the percentages in subsections (D)(2)(d)(i) and (ii);
    - e. For those kinds of flower seed for which standard testing procedures are not prescribed by the Association of Official Seed Analysts, the year of production or collection; and
    - f. Name and address of the labeler, or the person who sells, offers, or exposes the flower seed for sale within this state.
  - 3. Requirements to label flower seeds with kind and variety, or type and performance characteristics as prescribed in subsection (D)(1)(a)(i) and (D)(2)(a) shall be met as follows:
    - a. For seeds of plants grown primarily for their blooms:

- i. If the seeds are of a single named variety, the kind and variety shall be stated, for example, "Marigold, Butterball";
  - ii. If the seeds are of a single type and color for which there is no specific variety name, the type of plant, if significant, and the type and color of bloom shall be indicated, for example, "Scabiosa, Tall, Large Flowered, Double, Pink";
  - iii. If the seeds consist of an assortment or mixture of colors or varieties of a single kind, the kind name, the type of plant, if significant, and the type or types of bloom shall be indicated. It shall be clearly indicated that the seed is mixed or assorted. An example of labeling such a mixture or assortment is "Marigold, Dwarf Double French, Mixed Colors";
  - iv. If the seeds consist of an assortment or mixture of kinds or kinds and varieties, it shall clearly indicate that the seed is assorted or mixed and the specific use of the assortment or mixture shall be indicated, for example, "Cut Flower Mixture", or "Rock Garden Mixture". Statements such as "General Purpose Mixture", "Wonder Mixture", or any other statement that fails to indicate the specific use of the seed shall not be considered as meeting the requirements of this subsection unless the specific use of the mixture is also stated. Containers with over three grams of seed shall list the kind or kind and variety names of each component present in excess of five percent of the whole in the order of their predominance, giving the percentage by weight of each. Components equal to or less than five percent shall be listed, but need not be listed in order of predominance. A single percentage by weight shall be given for these components that are less than five percent of the whole. If no component of a mixture exceeds five percent of the whole, the statement, "No component in excess of 5%" may be used. Containers with three grams of seed or less shall list the components without giving percentage by weight and need not be in order of predominance.
  - b. For seeds of plants grown for ornamental purposes other than their blooms, the kind and variety shall be stated, or the kind shall be stated together with a descriptive statement concerning the ornamental part of the plant, for example, "Ornamental Gourds, Small Fruited, Mixed."
- E.** Label requirement for tree and shrub seeds. Tree or shrub seeds that is sold, offered for sale, or exposed for sale within this state shall bear on each container a plainly written or printed label or tag in English. No modifications or disclaimers shall be made to the required label information in the labeling or on another label attached to the container. Labeling of seed supplied under a contractual agreement meets this requirement if the shipment is accompanied by an invoice or by an analysis tag attached to the invoice if each bag or other container is clearly identified by a lot number permanently displayed on the container or if the seed is in bulk. Each bag or container not clearly identified by a lot number must carry complete labeling. The label shall include the following information:
1. For tree and shrub seeds that have been treated, the following may appear on a separate label:
    - a. Language indicating that the seed has been treated;
    - b. The commonly accepted chemical name of the applied substance or description of the process used;
    - c. If the substance is harmful to human or animals, a caution statement such as "do not use for food or feed or oil purposes". The caution for highly toxic substances shall be a poison statement and symbol; and
    - d. If the seed has been treated with an inoculant, the date of expiration, which is the date the inoculant is no longer considered effective;
  2. For all tree and shrub seeds subject to this Article:
    - a. Common name of the species of seed and if appropriate, the subspecies;
    - b. The scientific name of the genus and species and if appropriate, the subspecies;
    - c. Lot number or other lot identification;
    - d. Origin.
      - i. For seed collected from a predominantly indigenous stand, the area of collection given by latitude and longitude, a geographic description, or identification of a political subdivision, such as a state or county; or
      - ii. For seed collected from other than a predominantly indigenous stand, identification of the area of collection and the origin of the stand, or the statement "origin not indigenous";
    - e. The elevation or the upper and lower limits of elevations within which the seed was collected;
    - f. Purity as a percentage of pure seed by weight;
    - g. For those species listed under R3-4-404(C), the following apply except as provided in subsection (E)(2)(h):
      - i. Percentage germination excluding hard seed;
      - ii. Percentage of hard seed, if present;
      - iii. The calendar month and year the test was completed to determine the percentages in subsection (a) and (b);
    - h. Instead of complying with subsections (E)(2)(g)(i), (ii), and (iii), the seed may be labeled, "Test is in process, results will be supplied upon request";
    - i. For those species for which standard germination testing procedures have not been prescribed, the calendar year in which the seed was collected; and
    - j. Name and address of the labeler, or the person who sells, offers, or exposes the seed for sale within this state.
- F.** Hermetically sealed seed shall meet the following requirements
1. The seed shall have been packaged within nine months of harvest;
  2. The container used shall not allow water vapor penetration through any wall, including the seals, greater than 0.05 grams of water per 24 hours per 100 square inches of surface at 100°F with a relative humidity on one side of 90 percent and on the other side 0 percent. Water vapor penetration (WVP) is measured in accordance with the U.S. Bureau of Standards as: gm H<sub>2</sub>O/24 hr/100 sq in/100°F/90% RHV 0% RH;
  3. The seed in the container shall not exceed the percentage of moisture, on a wet weight basis, as listed below:
    - a. Agricultural Seeds,
      - i. Beet, Field: 7.5;
      - ii. Beet, Sugar: 7.5;

- iii. Bluegrass, Kentucky: 6.0;
- iv. Clover, Crimson: 8.0;
- v. Fescue, Red: 8.0;
- vi. Ryegrass, Annual: 8.0;
- vii. Ryegrass, Perennial: 8.0;
- viii. All Others: 6.0; and
- ix. Mixture of Above: 8.0;
- b. Vegetable Seeds,
  - i. Bean, Garden: 7.0;
  - ii. Bean, Lima: 7.0;
  - iii. Beet: 7.5;
  - iv. Broccoli: 5.0;
  - v. Brussels Sprouts: 5.0;
  - vi. Cabbage: 5.0;
  - vii. Carrot: 7.0;
  - viii. Cauliflower: 5.0;
  - ix. Celeriac: 7.0;
  - x. Celery: 7.0;
  - xi. Chard, Swiss: 7.5;
  - xii. Chinese Cabbage: 5.0;
  - xiii. Chives: 6.5;
  - xiv. Collards: 5.0;
  - xv. Corn, Sweet: 8.0;
  - xvi. Cucumber: 6.0;
  - xvii. Eggplant: 6.0;
  - xviii. Kale: 5.0;
  - xix. Kohlrabi: 5.0;
  - xx. Leek: 6.5;
  - xxi. Lettuce: 5.5;
  - xxii. Muskmelon: 6.0;
  - xxiii. Mustard, India: 5.0;
  - xxiv. Onion: 6.5;
  - xxv. Onion, Welsh: 6.5;
  - xxvi. Parsley: 6.5;
  - xxvii. Parsnip: 6.0;
  - xxviii. Pea: 7.0;
  - xxix. Pepper: 4.5;
  - xxx. Pumpkin: 6.0;
  - xxxi. Radish: 5.0;
  - xxxii. Rutabaga: 5.0;
  - xxxiii. Spinach: 8.0;
  - xxxiv. Squash: 6.0;
  - xxxv. Tomato: 5.5;
  - xxxvi. Turnip: 5.0;
  - xxxvii. Watermelon: 6.5; and
  - xxxviii. All others: 6.0.
- 4. The container shall be conspicuously labeled in not less than 8-point type to indicate:
  - a. That the container is hermetically sealed,
  - b. That the seed has been preconditioned as to moisture content, and
  - c. The calendar month and year in which the germination test was completed; and
- 5. The germination percentage of the seed at the time of packaging shall have been equal to or higher than the standards specified elsewhere in subsection R3-4-404.

#### Historical Note

Adopted effective December 21, 1981 (Supp. 81-6). Former Section R3-4-111 renumbered without change as Section R3-4-402 (Supp. 89-1). Section R3-4-402 renumbered from R3-1-402 (Supp. 91-4). Amended effective July 10, 1995 (Supp. 95-3). Amended by final rulemaking at 13 A.A.R. 1464, effective June 2, 2007 (Supp. 07-2).

#### R3-4-403. Noxious Weed Seeds

- A. A person shall not allow the following prohibited noxious weed seeds in seed regulated under this Article:
1. *Acroptilon repens* (L.) DC. – Russian knapweed;
  2. *Aegilops cylindrica* Host. – Jointed goatgrass;
  3. *Alhagi maurorum* – Camelthorn;
  4. *Alternanthera philoxeroides* (Mart.) Griseb. – Alligator weed;
  5. *Cardaria pubescens* (C.A. Mey) Jarmolenko – Hairy whitetop;
  6. *Cardaria chalepensis* (L.) Hand-Maz – Lens podded hoary cress;
  7. *Cardaria draba* (L.) Desv. – Globed-podded hoary cress (Whitetop);
  8. *Carduus acanthoides* L. – Plumeless thistle;
  9. *Cenchrus echinatus* L. – Southern sandbur;
  10. *Cenchrus incertus* M.A. Curtis – Field sandbur;
  11. *Centaurea calcitrapa* L. – Purple starthistle;
  12. *Centaurea iberica* Trev. ex Spreng. – Iberian starthistle;
  13. *Centaurea squarrosa* Willd. – Squarrose knapweed;
  14. *Centaurea sulphurea* L. – Sicilian starthistle;
  15. *Centaurea solstitialis* L. – Yellow starthistle (St. Barnaby's thistle);
  16. *Centaurea diffusa* L. – Diffuse knapweed;
  17. *Centaurea maculosa* L. – Spotted knapweed;
  18. *Chondrilla juncea* L. – Rush skeletonweed;
  19. *Cirsium arvense* L. Scop. – Canada thistle;
  20. *Convolvulus arvensis* L. – Field bindweed;
  21. *Coronopus squamatus* (Forsk.) Ascherson – Creeping wartcress (Coronopus);
  22. *Cucumis melo* L. var. *Dudaim* Naudin – Dudaim melon (Queen Anne's melon);
  23. *Cuscuta* spp. – Dodder;
  24. *Cyperus rotundus* – Purple Nutgrass or Nutsedge;
  25. *Cyperus esculentus* – Yellow Nutgrass or Nutsedge;
  26. *Drymaria arenarioides* H.B.K. – Alfombrilla (Lightningweed);
  27. *Eichhornia azurea* (SW) Kunth. – Anchored Waterhyacinth;
  28. *Elymus repens* – Quackgrass;
  29. *Euphorbia esula* L. – Leafy spurge;
  30. *Halogeton glomeratus* (M. Bieb.) C.A. Mey – Halogeton;
  31. *Helianthus ciliaris* DC. – Texas Blueweed;
  32. *Hydrilla verticillata* (L.f.) Royle – Hydrilla (Florida-elo-dea);
  33. *Ipomoea* spp. – Morning glory. All species except *Ipomoea carnea*, Mexican bush morning glory; *Ipomoea triloba*, three-lobed morning glory (which is considered a restricted pest); *Ipomoea aborescens*, morning glory tree; *Ipomoea batatas* – sweetpotato; *Ipomoea quamoclit*, Cypress Vine; *Ipomoea noctiflora*, Moonflower – Morning Glories, Cardinal Climber, Hearts and Honey Vine;
  34. *Isatis tinctoria* L. – Dyers woad;
  35. *Linaria genistifolia* var. *dalmatica* – Dalmation toadflax;
  36. *Lythrum salicaria* L. – Purple loosestrife;
  37. *Medicago polymorpha* L. – Burclover;
  38. *Nassella trichotoma* (Nees.) Hack. – Serrated tussock;
  39. *Onopordum acanthium* L. – Scotch thistle;
  40. *Orobancha ramosa* L. – Branched broomrape;
  41. *Panicum repens* L. – Torpedo grass;
  42. *Peganum harmala* L. – African rue (Syrian rue);
  43. *Portulaca oleracea* L. – Common purslane;
  44. *Rorippa austriaca* (Crantz.) Bess. – Austrian fieldcress;
  45. *Salvinia molesta* – Giant Salvinia;
  46. *Senecio jacobaea* L. – Tansy ragwort;
  47. *Solanum carolinense* – Carolina horsenettle;



48. *Solanum elaeagnifolium* – Silverleaf Nightshade;
49. *Sonchus arvensis* L. – Perennial sowthistle;
50. *Solanum viarum* Dunal – Tropical Soda Apple;
51. *Sorghum* species, perennial (*Sorghum halepense*, *Johnsongrass*, *Sorghum alnum*, and perennial sweet sudan-grass);
52. *Stipa brachychaeta* Godr. – Puna grass;
53. *Striga* spp. – Witchweed;
54. *Trapa natans* L. – Water-chestnut;
55. *Tribulus terrestris* L. – Puncturevine.

**B.** A person shall not allow more than the number shown of the following restricted noxious weed seeds in a working sample of seed regulated by this Article; or, any more than 50 of any combination of the following restricted noxious weed seeds per working sample.

1. *Avena fatua* – Wild oat: 5;
2. *Brassica campestris* – Bird rape: 30;
3. *Brassica juncea* – Indian mustard: 30;
4. *Brassica niger* – Black mustard: 30;
5. *Brassica rapa* – Field mustard: 30;
6. *Cenchrus pauciflorus* – Sandbur: 10;
7. *Eichhornia crassipes* (Mart.) Solms – Floating waterhyacinth: 10;
8. *Euryops sunbarnosus* subsp. *vulgaris* – Sweet resin-bush: 10;
9. *Ipomoea triloba* L. – Three-lobed morning glory: 10;
10. *Rumex crispus* – Curly dock: 30;
11. *Salsola kali* var. *tenuifolia* – Russian thistle: 30;
12. *Sinapis arvensis* – Charlock or Wild mustard: 30; and
13. *Sida hederacea* – Alkali mallow: 30.

**Historical Note**

Adopted effective December 21, 1981 (Supp. 81-6). Former Section R3-4-112 renumbered without change as Section R3-4-403 (Supp. 89-1). Section R3-4-403 renumbered from R3-1-403 (Supp. 91-4). Section R3-4-403 repealed, new Section R3-4-403 renumbered from R3-4-405 and amended effective July 10, 1995 (Supp. 95-3). Amended by final rulemaking at 13 A.A.R. 1464, effective June 2, 2007 (Supp. 07-2).

**R3-4-404. Germination Standards**

**A.** Vegetable seed shall have the following minimum percent germination or the minimum percent germination as found in the Federal Seed Act, 20 CFR 201.31 (as amended January 1, 2002), which is incorporated by reference, not including future editions or amendments. The material is on file with the Department and available for purchase from the U. S. Government Bookstore (<http://bookstore.gpo.gov/>) or at the U.S. Government Printing Office, 732 N. Capitol St., NW, Washington, DC 20401 or it can be found online at <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=42bcf6d966081e2f2cf9d03315fb999f&r=gn=d1v8&view=text&node=7:3.1.1.7.28.0.317.38&idno=7>.

1. Artichoke: 60;
2. Asparagus: 70;
3. Asparagusbean: 75;
4. Bean, garden: 70;
5. Bean, Lima: 70;
6. Bean, runner: 75;
7. Beet: 65;
8. Broadbean: 75;
9. Broccoli: 75;
10. Brussels sprouts: 70;
11. Burdock, great: 60;
12. Cabbage: 75;
13. Cabbage, troncuda: 70;

14. Cardoon: 60;
15. Carrot: 55;
16. Cauliflower: 75;
17. Celeriac: 55;
18. Celery: 55;
19. Chard, Swiss: 65;
20. Chicory: 65;
21. Chinese cabbage: 75;
22. Chives: 50;
23. Citron: 65;
24. Collards: 80;
25. Corn, sweet: 75;
26. Cornsalad: 70;
27. Cowpea: 75;
28. Cress, garden: 75;
29. Cress, upland: 60;
30. Cress, water: 40;
31. Cucumber: 80;
32. Dandelion: 60;
33. Dill: 60;
34. Eggplant: 60;
35. Endive: 70;
36. Kale: 75;
37. Kale, Chinese: 75;
38. Kale, Siberian: 75;
39. Kohlrabi: 75;
40. Leek: 60;
41. Lettuce: 80;
42. Melon: 75;
43. Mustard, India: 75;
44. Mustard, spinach: 75;
45. Okra: 50;
46. Onion: 70;
47. Onion, Welsh: 70;
48. Pak-choi: 75;
49. Parsley: 60;
50. Parsnip: 60;
51. Pea: 80;
52. Pepper: 55;
53. Pumpkin: 75;
54. Radish: 75;
55. Rhubarb: 60;
56. Rutabaga: 75;
57. Sage: 60;
58. Salsify: 75;
59. Savory, summer: 55;
60. Sorrel: 65;
61. Soybean: 75;
62. Spinach: 60;
63. Spinach, New Zealand: 40;
64. Squash: 75;
65. Tomato: 75;
66. Tomato, husk: 50;
67. Turnip: 80;
68. Watermelon: 70; and
69. All Others: The germination standard for all other vegetable and herb seed for which a standard has not been established shall be 50 percent.

**B.** Flower seed shall meet the following minimum percent germination standards. For the kinds marked with an asterisk, the percentage listed is the sum total of the percentage germination and percentage of hard seed. A mixture of kinds does not meet the germination standard if the germination of any kind or combination of kinds constituting 25 percent or more of the mixture by number of seed is below the germination standard for the kind or kinds involved.

1. Archillea (The Pearl) – *Achillea ptarmica*: 50;
2. African Daisy – *Dimorphotheca aurantiaca*: 55;
3. African Violet – *Saintpaulia* spp: 30;
4. Ageratum – *Ageratum mexicanum*: 60;
5. Agrostemma (rose campion) – *Agrostemma coronaria*: 65;
6. Alyssum – *Alyssum compactum*, *A. maritimum*, *A. procumbens*, *A. saxatile*: 60;
7. Amaranthus – *Amaranthus* spp: 65;
8. Anagalis (primpernel) – *Anagalis arvensis*, *Anagalis coerulea*, *Anagalis grandiflora*: 60;
9. Anemone – *Anemone coronaria*, *A. pulsatilla*: 55;
10. Angel's Trumpet – *Datura arborea*: 60;
11. Arabis – *Arabis alpine*: 60;
12. Arctotis (African lilac daisy) – *Arctotis grandis*: 45;
13. Armeria – *Armeria formosa*: 55;
14. Asparagus, fern – *Asparagus plumosus*: 50;
15. Asparagus, sprenger, *Asparagus sprenger*: 55;
16. Aster, China – *Callistephus chinensis*; except Pompon, Powderpuff, and Princess types: 55;
17. Aster, China – *Callistephus chinensis*; Pompon, Powderpuff, and Princess types: 50;
18. Aubretia – *Aubretia deltoids*: 45;
19. Baby Smilax – *Aparagus asparagoides*: 25;
20. Balsam – *Impatiens balsamina*: 70;
21. Begonia – (*Begonia fibrous rooted*): 60;
22. Begonia – (*Begonia tuberous rooted*): 50;
23. Bells of Ireland – *Molucella laevis*: 60;
24. Brachycome (swan river daisy) – *Brachycome iberidifolia*: 60;
25. Browallia – *Browallia elata* and *B. speciosa*: 65;
26. Bupthalam (sunwheel) – *Bupthalam salicifolium*: 60;
27. Calceolaria – *Calceolaria* spp: 60;
28. Calendula – *Calendula officinalis*: 65;
29. California Poppy – *Eschscholtzia californica*: 60;
30. Calliopsis – *Coreopsis bicolor*, *C. drummondi*, *C. elegans*: 65;
31. Campanula:
  - a. Canterbury Bells – *Campanula medium*: 60;
  - b. Cup and Saucer Bellflower – *Campanula medium calycanthema*: 60;
  - c. Carpathian Bellflower – *Campanula carpatica*: 50;
  - d. Peach Bellflower – *Campanula persicifolia*: 50;
32. Candytuft, Annual – *Iberis amara*, *I. umbellate*: 65;
33. Candytuft, Perennial – *Iberis gibraltarica*, *I. sempervirens*: 55;
34. Castor Bean – *Ricinus communis*: 60;
35. Cathedral Bells – *Cobaea scandens*: 65;
36. *Celosia argentea*: 65;
37. Centaurea: Basket Flower – *Centaurea americana*, Cornflower – *C. cyanus*, Dusty Miller – *C. candidissima*, Royal Centaurea – *C. imperialis*, Sweet Sultan – *C. moschata*, Velvet Centaurea – *C. gymnocarpa*: 60;
38. Snow-in-Summer *Cerastium biebersteini* and *C. tomentosum*: 65;
39. Chinese Forget-me-not – *Cynoglossum amabile*: 55;
40. Chrysanthemum, Annual – *Chrysanthemum carinatum*, *C. coronarium*, *C. Cineraria* – *Senecio cruentus*: 60;
41. Clarkia – *Clarkia elegans*: 65;
42. Cleome – *Cleome gigantea*: 65;
43. Coleus – *Coleus blumei*: 65;
44. Columbine – *Aquilegia* spp.: 50;
45. Coral Bells – *Heuchera sanguinea*: 55;
46. Coreopsis, Perennial – *Coreopsis lanceolata*: 40;
47. Corn, ornamental – *Zea mays*: 75;
48. Cosmos: Sensation, Mammoth and Crested types – *Cosmos bipinnatus*; Klondyke type – *C. sulphureau*: 65;
49. Crossandra – (*Crossandra infundibuliformis*): 50;
50. Dahlia – *Dahlia* spp: 55;
51. Daylily – *Hemerocallis* spp: 45;
52. Delphinium, Perennial – *Belladonna* and *Bellamosum* types; Cardinal Larkspur – *Delphinium cardinale*; *Chinensis* types; Pacific Giant, Gold Medal and other hybrids of *D. elatum*: 55;
53. Dianthus:
  - a. Carnation – *Dianthus caryophyllus*: 60;
  - b. China Pinks – *Dianthus chinensis*, *heddewigi*, *heddensis*: 70;
  - c. Grass Pinks – *Dianthus plumarius*: 60;
  - d. Maiden Pinks – *Dianthus deltoids*: 60;
  - e. Sweet William – *Dianthus barbatus*: 70;
  - f. Sweet Wivelsfield – *Dianthus allwoodi*: 60;
54. Didiscus – (blue lace flower) – *Didiscus coerulea*: 65;
55. Doronicum (leopard's bane) – *Doronicum caucasicum*: 60;
56. Dracaena – *Dracaena indivisa*: 55;
57. Dragon Tree – *Dracaena draco*: 40;
58. English Daisy – *Bellis perennis*: 55;
59. Flax – Golden flax (*Linum flavum*); Flowering flax L. *randiflorum*; Perennial flax, L. *perenne*: 60;
60. Flowering Maple – *Abutilon* spp: 35;
61. Foxglove – *Digitalis* spp: 60;
62. Gaillardia, Annual – *Gaillardia pulchella*; *G. picta*; Perennial – *G. grandiflora*: 45;
63. Gerbera (transvaal daisy) – *Gerbera jamesoni*: 60;
64. Geum – *Geum* spp: 55;
65. Gilia – *Gilia* spp: 65;
66. Glosiosa daisy (*rudbeckia*) – *Echinacea purpurea* and *Rudbeckia Hirta*: 60;
67. Gloxinia – (*Sinningia speciosa*): 40;
68. Godetia – *Godetia amoena*, *G. grandiflora*: 65;
69. Gourds: Yellow Flowered – *Cucurbita pepo*; White Flowered – *Lagenaria sisceraria*; Dishcloth – *Luffa cylindrica*: 70;
70. Gypsophila: Annual Baby's Breath – *Gypsophila elegans*; Perennial Baby's Breath – *G. paniculata*, *G. pacifica* *G. repens*: 70;
71. Helenium – *Helenium autumnale*: 40;
72. Helichrysum – *Helichrysum monstrosum*: 60;
73. Heliopsis – *Heliopsis scabra*: 55;
74. Heliotrope – *Heliotropium* spp: 35;
75. Helipterum (Acroclinium) – *Helipterum roseum*: 60;
76. Hesperis (sweet rocket) – *Hesperis matronalis*: 65;
77. \*Hollyhock – *Althea rosea*: 65;
78. Hunnemanian (mexican tulip poppy) – *Hunnemanian fumariaefolia*: 60;
79. Hyacinth bean – *Dolichos lablab*: 70;
80. Impatiens – *Impatiens hostii*, *I. sultani*: 55;
81. \*Ipomoea – Cypress Vine – *Ipomoea quamoclit*; Moonflower – *I. noctiflora*; Morning Glories, Cardinal Climber, Hearts and Honey Vine – *Ipomoea* spp: 75;
82. Jerusalem cross (maltese cross) – *Lychnis chalcadonica*: 70;
83. Job's Tears – *Coix lacrymajobi*: 70;
84. Kochia – *Kochia childsii*: 55;
85. Larkspur, Annual – *Delphinium ajacis*: 60;
86. Lantana – *Lantana camara*, *L. hybrida*: 35;
87. Lilium (regal lily) – *Lilium regale*: 50;
88. Linaria – *Linaria* spp: 65, exception: *Linaria genistifolia* var. *dalmatica* – Dalmation toadflax which is a prohibited noxious weed;

89. Lobelia, Annual – *Lobelia erinus*: 65;
  90. Lunaria, Annual – *Lunaria annua*: 65;
  91. \*Lupine – *Lupinus* spp: 65;
  92. Marigold – *Tagetes* spp: 65;
  93. Marvel of Peru – *Mirabilis jalapa*: 60;
  94. Matricaria (feverfew) – *Matricaria* spp: 60;
  95. Mignonette – *Reseda odorata*: 55;
  96. Myosotis – *Myosotis alpestris*, *M. oblongata*, *M. palustris*: 50;
  97. Nasturtium – *Tropaeolum* spp: 60;
  98. Nemesis – *Nemesis* spp: 65;
  99. Nemophila – *Nemophila insignis*: 70;
  100. Nemophila, spotted – *Nemophila maculata*: 60;
  101. Nicotiana – *Nicotiana affinis*, *N. sanderana*, *N. sylvestris*: 65;
  102. Nierembergia – *Nierembergia* spp: 55;
  103. Nigella – *Nigella damascena*: 55;
  104. Pansy – *Viola tricolor*: 60;
  105. Penstemon – *Penstemon barbatus*, *P. grandiflorus*, *P. laevigatus*, *P. pubescens*: 60;
  106. Petunia – *Petunia* spp: 45;
  107. Phacelia – *Phacelia campanularia*, *P. minor*, *P. tanacetifolia*: 65;
  108. Phlox, Annual – *Phlox drummondii* all types and varieties: 55;
  109. Physalis – *Physalis* spp: 60;
  110. Platycodon (balloon flower) – *Platycodon grandiflorus*: 60;
  111. Plumbago, cape – *Plumbago capensis*: 50;
  112. Ponytail – *Beaucarnea recurvata*: 40;
  113. Poppy: Shirley Poppy – *Papaver rhoeas*; Iceland Poppy – *P. nudicaule*; Oriental Poppy – *P. orientale*; Tulip Poppy – *P. glaucum*: 60;
  114. Portulaca – *Portulaca grandiflora*: 55;
  115. Primula (primrose) – *Primula* spp: 50;
  116. Pyrethrum (painted daisy) – *Pyrethrum coccineum*: 60;
  117. Salpiglossis – *Salpiglossis gloxiniflora*, *S. sinuata*: 60;
  118. Salvia – Scarlet Sage – *Salvia splendens*; Mealycup Sage (Blue bedder) – *Salvia farinacea*: 50;
  119. Saponaria – *Saponaria ocymoides*, *S. vaccaria*: 60;
  120. Scabiosa, Annual – *Scabiosa atropurpurea*: 50;
  121. Scabiosa, Perennial – *Scabiosa caucasica*: 40;
  122. Schizanthus – *Schizanthus* spp: 60;
  123. \*Sensitive plant (mimosa) – *Mimosa pudica*: 65;
  124. Shasta Daisy – *Chrysanthemum maximum* C. *leucanthemum*: 65;
  125. Silk Oak – *Grevillea robusta*: 25;
  126. Snapdragon – *Antirrhinum* spp: 55;
  127. Solanum – *Solanum* spp: 60, exceptions; *Solanum carolinense* – Carolina horsenettle and *Solanum elaeagnifolium* – Silverleaf Nightshade which are prohibited noxious weeds;
  128. Statice – *Statice sinuata*, *S. suworonii* (flower heads): 50;
  129. Stocks: Common – *Mathiola incana*; Evening Scented – *Mathiola bicornis*: 65;
  130. Sunflower – *Helianthus* spp: 70, exception; *Helianthus ciliaris* DC. – Texas blueweed which is a prohibited noxious weed;
  131. Sunrose – *Helianthemum* spp: 30;
  132. \*Sweet Pea, Annual and Perennial other than dwarf bush – *Lathyrus odoratus*, *L. latifolius*: 75;
  133. \*Sweet Pea, Dwarf Bush – *Lathyrus odoratus*: 65;
  134. Tahoka Daisy – *Machaeanthera tanacetifolia*: 60;
  135. Thunbergia – *Thunbergia alata*: 60;
  136. Torenia Flower – *Tithonia speciosa*: 70;
  137. Torenia (Wishbone Flower) – *Torenia fournieri*: 70;
  138. *Tritoma kniphofia* Spp: 65;
  139. Verbena, Annual – *Verbena hybrida*: 35;
  140. Vinca – *Vinca rosea*: 60;
  141. Viola – *Viola cornuta*: 55;
  142. Virginian Stocks – *Malcolmia maritima*: 65;
  143. Wallflower – *Cheiranthus allioni*: 65;
  144. Yucca (Adam's Needle) – *Yucca filamentosa*: 50;
  145. Zinnia (Except Linearis and Creeping) – *Zinnia angustifolia*, *Z. elegans*, *Z. grandiflora*, *Z. gracillima*, *Z. haegeana*, *Z. multiflora*, *Z. pumila*: 65;
  146. Zinnia, Linearis and Creeping – *Zinnia linearis*, *Sanvitalia procumbens*: 50;
  147. All Other Kinds: 50.
- C. The germination labeling provisions of R3-4-402(E) apply to the following tree and shrub species:
1. *Abies amabilis* (Dougl.) Forbes – Pacific Silver Fir;
  2. *Abies balsamea* (L.) Mill. – Balsam Fir;
  3. *Abies concolor* (Gord. Glend.) Lindl. – White Fir;
  4. *Abies fraseri* (Pursh.) Poir – Fraser Fir;
  5. *Abies grandis* (Dougl.) Lindl. – Grand Fir;
  6. *Abies homolepis* Sieb Zucc. – Nikko Fir;
  7. *Abies lasiocarpa* (Hook) Nutt. – Subalpine Fir;
  8. *Abies magnifica* A. Murr. – California Red Fir;
  9. *Abies magnifica* var. *shastensis* Lemm. – Shasta Red Fir;
  10. *Abies procera* Rehd. – Nobel Fir;
  11. *Abies veitchii* (Lindl.) – Veitch Fir;
  12. *Acer ginnala* Maxim. – Amur Maple;
  13. *Acer macrophyllum* Pursh. – Bigleaf Maple;
  14. *Acer negundo* L. – Boxelder;
  15. *Acer pensylvanicum* L. – Striped Maple;
  16. *Acer platanoides* L. – Norway Maple;
  17. *Acer pseudoplatanus* L. – Sycamore Maple;
  18. *Acer rubrum* L. – Red Maple;
  19. *Acer saccharinum* L. – Silver Maple;
  20. *Acer saccharum* Marsh. – Sugar Maple;
  21. *Acer spicatum* Lam. – Mountain Maple;
  22. *Aesculus pavia* L. – Red Buckeye;
  23. *Ailanthus altissima* (Mill.) Swingle – Tree of Heaven, Ailanthus;
  24. *Berberis thunbergii* DC. – Japanese Barberry;
  25. *Berberis vulgaris* L. European Barberry;
  26. *Betula lenta* L. – Sweet Birch;
  27. *Betula alleghaniensis* Britton – Yellow Birch;
  28. *Betula nigra* L. – River Birch;
  29. *Betula papyrifera* Marsh. – Paper Birch;
  30. *Betula pendula* Roth. – European White Birch;
  31. *Betula populifolia* Marsh. – Gray Birch;
  32. *Carya illinoensis* (Wang.) K. Koch – Pecan;
  33. *Carya ovata* (Mill) K. Koch – Shagbark Hickory;
  34. *Casuarina* spp. – Beefwood;
  35. *Catalpa bignonioides* Walt. – Southern Catalpa;
  36. *Catalpa speciosa* Warder. – Northern Catalpa;
  37. *Cedrus atlantica* Manetti – Atlas Cedar;
  38. *Cedrus deodara* (Roxb.) Loud. – Deodar Cedar;
  39. *Cedrus libani* (Loud.) – Cedar of Lebanon;
  40. *Celastrus scandens* L. – American Bittersweet;
  41. *Celastrus orbiculata* Thunb. – Oriental Bittersweet;
  42. *Chamaecyparis lawsoniana* (A. Murr.) Parl – Port Oxford Cedar;
  43. *Chamaecyparis nootkatensis* (D. Don.) Spach. – Alaska Cedar;
  44. *Cornus florida* L. – Flowering Dogwood;
  45. *Cornus stolonifera* Michx. – Red-osier Dogwood;
  46. *Crataegus mollis* – Downy Hawthorn;
  47. *Cupressus arizonica* Greene – Arizona Cypress;
  48. *Eucalyptus deglupta*;

49. *Eucalyptus gradis*;
  50. *Fraxinus americana* L. – White Ash;
  51. *Fraxinus excelsior* L. – European Ash;
  52. *Fraxinus latifolia* Benth. – Oregon Ash;
  53. *Fraxinus nigra* Marsh. – Black Ash;
  54. *Fraxinus pennsylvanica* Marsh. – Green Ash;
  55. *Fraxinus pennsylvanica* var. *lanceolata* (Borkh.) Sarg. – Green Ash;
  56. *Gleditsia triacanthos* L. – Honey Locust;
  57. *Grevillea robusta* – Silk-oak;
  58. *Larix decidua* Mill. – European Larch;
  59. *Larix eurolepis* Henry – Dunkfeld Larch;
  60. *Larix leptolepis* (Sieb. Zucc.) Gord. – Japanese Larch;
  61. *Larix occidentalis* Nutt. – Western Larch;
  62. *Larix sibirica* Ledeb. – Siberian Larch;
  63. *Libocedrus decurrens* – Incense-Cedar;
  64. *Liquidambar styraciflua* L. – Sweetgum;
  65. *Liriodendron tulipifera* L. – Yellow-Poplar;
  66. *Magnolia grandiflora* – Southern Magnolia;
  67. *Malus* spp. – Apple;
  68. *Malus* spp. – Crabapple;
  69. *Nyssa aquatica* L. – Water Tupelo;
  70. *Nyssa sylvatica* var. *sylvatica* – Black Tupelo;
  71. *Picea abies* (L.) Karst. – Norway Spruce;
  72. *Picea engelmanni* Parry – Engelmann Spruce;
  73. *Picea glauca* (Moench.) Voss – White Spruce;
  74. *Picea glauca* var. *albertiana* (S. Brown) Sarg. – Western White Spruce, Alberta White Spruce;
  75. *Picea glehnii* (Fr. Schmidt) Mast. – Sakhalin Spruce;
  76. *Picea jezoensis* (Sieb. Zucc.) Carr – Yeddo Spruce;
  77. *Picea koyamai* Shiras. – Koyama Spruce;
  78. *Picea mariana* (Mill.) B.S.P. – Black Spruce;
  79. *Picea omorika* (Pancic.) Purkyne – Serbian Spruce;
  80. *Picea orientalis* (L.) Link. – Oriental Spruce;
  81. *Picea polita* (Sieb. Zucc.) Carr – Tigertail Spruce;
  82. *Picea pungens* Engelm. – Blue Spruce, Colorado Spruce;
  83. *Picea pungens* var. *glauca* Reg. – Colorado Blue Spruce;
  84. *Picea rubens* Sarg. – Red Spruce;
  85. *Picea sitchensis* (Bong.) Carr – Sitka Spruce;
  86. *Pinus albicaulis* Engelm. – Whitebark Pine;
  87. *Pinus aristata* Engelm. – Bristlecone Pine;
  88. *Pinus banksiana* Lamb. – Jack Pine;
  89. *Pinus canariensis* C. Smith – Canary Pine;
  90. *Pinus caribaea* – Caribbean Pine;
  91. *Pinus cembroides* Zucc. – Mexican Pinyon Pine;
  92. *Pinus clausa* – Sand Pine;
  93. *Pinus conorta* Dougl. – Lodgepole Pine;
  94. *Pinus contorta* var. *latifolia* Engelm. – Lodgepole Pine;
  95. *Pinus coulteri* D. Don. – Coulter Pine, Bigcone Pine;
  96. *Pinus densiflora* Sieb. Zucc. – Japanese Red Pine;
  97. *Pinus echinata* Mill. – Shortleaf Pine;
  98. *Pinus elliottii* Engelm. – Slash Pine;
  99. *Pinus flexilis* James – Limber Pine;
  100. *Pinus glabra* Walt. – Spruce Pine;
  101. *Pinus griffithi* McClelland – Himalayan Pine;
  102. *Pinus halepensis* Mill. – Aleppo Pine;
  103. *Pinus jeffreyi* Grev. Balf. – Jeffrey Pine;
  104. *Pinus khasya* Royle – Khasia Pine;
  105. *Pinus lambertiana* Dougl. – Sugar Pine;
  106. *Pinus heldreichii* var. *leucodermis* (Ant.) Markgraf ex Fitschen – Balkan Pine, Bosnian Pine;
  107. *Pinus markusii* DeVries – Markus Pine;
  108. *Pinus monticola* Dougl. – Western White Pine;
  109. *Pinus mugo* Turra. – Mountain Pine;
  110. *Pinus mugo* var. *mughus* (Scop.) Zenari – Mugo Swiss Mountain Pine;
  111. *Pinus muricata* D. Don. – Bishop pine;
  112. *Pinus nigra* Arnold – Austrian Pine;
  113. *Pinus nigra poiretiana* (Ant.) Aschers Graebn. – Corsican Pine;
  114. *Pinus palustris* Mill. – Longleaf Pine;
  115. *Pinus parviflora* Sieb. Zucc. – Japanese White Pine;
  116. *Pinus patula* Schl. Cham. – Jelecote Pine;
  117. *Pinus pinaster* Sol. – Cluster Pine;
  118. *Pinus pinea* L. – Italian Stone Pine;
  119. *Pinus ponderosa* Laws. – Ponderosa Pine, Western Yellow Pine;
  120. *Pinus radiata* D. Don. – Monterey Pine;
  121. *Pinus resinosa* Ait. – Red Pine, Norway Pine;
  122. *Pinus rigida* Mill. – Pitch Pine;
  123. *Pinus serotina* Michx. – Pond Pine;
  124. *Pinus strobus* L. – Eastern White Pine;
  125. *Pinus sylvestris* L. – Scots Pine;
  126. *Pinus taeda* L. – Loblolly Pine;
  127. *Pinus taiwanensis* Hayata – Formosa Pine;
  128. *Pinus thunbergii* Parl. – Japanese Black Pine;
  129. *Pinus virginiana* Mill. – Virginia Pine, Scrub Pine;
  130. *Platanus occidentalis* L. – American Sycamore;
  131. *Populus* spp. – Poplars;
  132. *Prunus armeriaca* L. – Apricot;
  133. *Prunus avium* L. – Cherry;
  134. *Prunus domestica* L. – Plum, Prune;
  135. *Prunus persica* Batsch. – Peach;
  136. *Pseudotsuga menziesii* var. *glauca* (Beissn.) Franco – Blue Douglas Fir;
  137. *Pseudotsuga menziesii* var. *caesia* (Beissn.) Franco – Gray Douglas Fir;
  138. *Pseudotsuga menziesii* var. *viridis* – Green Douglas Fir;
  139. *Pyrus communis* L. – Pear;
  140. *Quercus* spp. – (Red or Black Oak group);
  141. *Quercus alba* L. – White Oak;
  142. *Quercus muehlenbergii* Engelm. – Chinkapin Oak;
  143. *Quercus virginiana* Mill. – Live Oak;
  144. *Rhododendron* spp. – Rhododendron;
  145. *Robinia pseudoacacia* L. – Black Locust;
  146. *Rosa multiflora* Thunb. – Japanese Rose;
  147. *Sequoia gigantea* (Lindl.) Decne. – Giant Sequoia;
  148. *Sequoia sempervirens* (D. Don.) Engl. – Redwood;
  149. *Syringa vulgaris* L. – Common Lilac;
  150. *Thuja occidentalis* L. – Northern White Cedar, Eastern Arborvitae;
  151. *Thuja orientalis* L. – Oriental Arborvitae, Chinese Arborvitae;
  152. *Thuja plicata* Donn. – Western Red Cedar – Giant Arborvitae;
  153. *Tsuga canadensis* (L.) Carr. – Eastern Hemlock, Canada Hemlock;
  154. *Tsuga heterophylla* (Raf.) Sarg. – Western Hemlock, Pacific Hemlock;
  155. *Ulmus americana* L. – American Elm;
  156. *Ulmus parvifolia* Jacq. – Chinese Elm;
  157. *Ulmus pumila* L. – Siberian Elm; and
  158. *Vitis vulpina* L. – Riverbank Grape.
- D.** A person shall not indicate a quality of seed higher than the actual quality as found through germination test.
- E.** The labeler or the person who sells, offers, or exposes for sale within this state seeds in hermetically-sealed containers more than 36 months after the last day of the month in which the seeds were tested prior to packaging, shall retest the seeds within nine months, excluding of the calendar month in which the retest was completed, immediately prior to sale, exposure for sale, or offering for sale or transportation.

**Historical Note**

Adopted effective December 21, 1981 (Supp. 81-6). Former Section R3-4-113 renumbered without change as Section R3-4-404 (Supp. 89-1). Section R3-4-404 renumbered from R3-1-404 (Supp. 91-4). Section repealed, new Section R3-4-404 renumbered from R3-4-406 and amended effective July 10, 1995 (Supp. 95-3). Amended by final rulemaking at 13 A.A.R. 1464, effective June 2, 2007 (Supp. 07-2).

**R3-4-405. Seed-certifying Agencies**

- A. Any agency seeking to obtain designation as a seed-certifying agency in Arizona shall meet the following requirements.
1. The agency shall be qualified by USDA to certify agricultural or vegetable planting seed as to variety, strain, and genetic purity.
  2. The agency shall have a written seed certification protocol which includes standards, rules, and procedures for the certification of planting seed.
  3. The agency shall have procedures for accepting crops and varieties into a certification program.
  4. The agency shall be a member in good standing of a USDA-recognized association of official seed-certifying agencies such as the Association of Official Seed Certifying Agencies.
- B. The Director or the Director's designee shall meet each calendar year with the director of the seed-certifying agency to review the agency's standards, rules, and procedures.
- C. The Director may, after consulting with the Director of the Arizona Agricultural Experiment Station, revoke the agency's designation as the state seed-certifying agency after written 30 days' notice if the organization:
1. Fails to maintain qualifications, protocols, procedures, and membership as set forth in subsection (A); or
  2. Fails to follow federal and state standards, rules, and procedures.

**Historical Note**

Adopted effective December 21, 1981 (Supp. 81-6). Former Section R3-4-114 renumbered without change as Section R3-4-405 (Supp. 89-1). Section R3-4-405 renumbered from R3-1-405 (Supp. 91-4). Section R3-4-405 renumbered to R3-4-403, new Section R3-4-405 renumbered from R3-4-407 and amended effective July 10, 1995 (Supp. 95-3).

**R3-4-406. Sampling and Analyzing Seed**

- A. A person shall follow the methods of taking, handling, analyzing, and testing samples of seed and the tolerances and methods of determination as prescribed in the Federal Seed Act Regulations, 7 CFR 201.39 through 201.65, amended January 1, 2002, and in the Rules for Testing Seeds, 2006, published by the Association of Official Seed Analysts. This material is incorporated by reference and is on file with the Department. The materials incorporated by reference do not include any later amendments or editions. The Rules for Testing Seeds are also available through the web site: <http://www.aosaseed.com>. The CFR may be ordered from the Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA, 15250-7954 and the Rules for Testing Seeds may be ordered from the AOSA Management Office, Mail Boxes Etc. #285, 601 S. Washington, Stillwater, OK 74074-4539. If there is a conflict between the two documents, the requirements in CFR will prevail.
- B. A labeler offering a seed for sale shall pay the cost of original germination and purity tests on each lot of seed offered for sale, and a dealer or labeler shall pay the cost of any subsequent germination test required by A.R.S. § 3-237. The Department shall pay the cost of testing seed samples drawn

by a seed inspector from lots bearing valid labels. The dealer or labeler shall reimburse the Department for the cost of the test if the dealer or labeler chooses to use the Department's germination and purity results in subsequent re-labeling.

**Historical Note**

Adopted effective December 21, 1981 (Supp. 81-6). Former Section R3-4-115 renumbered without change as Section R3-4-406 (Supp. 89-1). Section R3-4-406 renumbered from R3-1-406 (Supp. 91-4). Section R3-4-406 renumbered to R3-4-404, new Section R3-4-406 renumbered from R3-4-408 and amended effective July 10, 1995 (Supp. 95-3). Amended by final rulemaking at 9 A.A.R. 1286, effective May 31, 2003 (Supp. 03-2). Amended by final rulemaking at 13 A.A.R. 1464, effective June 2, 2007 (Supp. 07-2).

**R3-4-407. Phytosanitary Field Inspection; Fee**

- A. Applicants seeking phytosanitary certification for interstate and international exportation of agriculture, vegetable, and ornamental planting seed shall submit a \$20.00 inspection fee and provide the following information on a form furnished by the Department:
1. The company name and address of the applicant;
  2. The kind, variety, and lot number of the seed;
  3. The number of acres on which the seed will be grown;
  4. The name of the grower;
  5. The county and field location;
  6. The date of the application;
  7. The countries of export;
  8. The seed treatment, if applicable;
  9. The amount of treatment, if applicable;
  10. The approximate planting date;
  11. The approximate harvest date; and
  12. The export requirements.
- B. The Department may contract with the state-certifying agency for field inspection at 20¢ per acre for any first or single required inspection and 10¢ per acre for each subsequent required inspection which shall be performed in conjunction with the seed certification program.
- C. Field inspections conducted by the Department shall be based upon the following fee schedule and shall not exceed the maximum fee prescribed by A.R.S. § 3-233(A)(7):
1. Cotton: 80¢ per acre;
  2. Small grain: 20¢ per acre for the first inspection and 80¢ for the second inspection;
  3. Vegetable and all other crops: 20¢ for the first inspection and 80¢ for the second inspection.
- D. If both the field inspection fee and the application fee exceeds the maximum fee per acre prescribed by A.R.S. § 3-233(A)(7), the application fee shall be voided and the maximum cost per acre shall be assessed.

**Historical Note**

Adopted effective December 21, 1981 (Supp. 81-6). Former Section R3-4-116 renumbered without change as Section R3-4-407 (Supp. 89-1). Section R3-4-407 renumbered from R3-1-407 (Supp. 91-4). Section R3-4-407 renumbered to R3-4-405, new Section adopted effective July 10, 1995 (Supp. 95-3).

**R3-4-408. Licenses: Seed Dealer and Seed Labeler; Fees**

- A. An applicant for a seed dealer or seed labeler license shall provide the following to the Department:
1. The year for which the applicant wishes to be licensed;
  2. The applicant's name, company name, telephone number, fax number and e-mail address, as applicable;

3. Verification of previous seed dealer or labeler license, if applicable;
  4. The mailing and physical address of each business location being licensed;
  5. Company Tax ID number or if not a legally-recognized business entity, the applicant's Social Security number;
  6. The date of the application; and
  7. The signature of the applicant.
- B.** Seed dealer and seed labeler licenses are not transferable, expire on June 30, and are valid for no more than one year, or period thereof, unless otherwise revoked, suspended, denied or otherwise acted upon by the Department as provided in A.R.S. § 3-233(A)(6).
- C.** An applicant shall submit a completed application to the Department accompanied by the following fee, which is non-refundable unless A.R.S. § 41-1077 applies.
1. Seed dealers, \$50.00 per location; and
  2. Seed labelers, \$100.00.
- D.** During fiscal year 2011 and fiscal year 2012, notwithstanding subsection (C), there is no fee to obtain a seed dealer or seed labeler license.

#### Historical Note

Adopted effective December 21, 1981 (Supp. 81-6). Former Section R3-4-117 renumbered without change as Section R3-4-408 (Supp. 89-1). Section R3-4-408 renumbered from R3-1-408 (Supp. 91-4). Section R3-4-408 renumbered to R3-4-406, new Section adopted effective July 10, 1995 (Supp. 95-3). Amended by final rulemaking at 13 A.A.R. 1464, effective June 2, 2007 (Supp. 07-2). Amended by exempt rulemaking at 16 A.A.R. 2029, effective September 21, 2010 (Supp. 10-3). Amended by exempt rulemaking at 17 A.A.R. 1763, effective July 20, 2011 (Supp. 11-3).

#### R3-4-409. Violations and Penalties

- A.** The Department may assess the following penalties against a dealer or labeler for each customer affected by a violation listed below: \$50 for the first offense, \$150 for the second offense, and \$300 for each subsequent offense within a three-year period:
1. Failure to complete the germination requirements on agricultural, vegetable, or flower seed intended for wholesale or commercial use within nine months prior to sale, exposing for sale, or offering for sale within the state, excluding the month in which the test was completed. This penalty does not apply to a violation under subsections (A)(2), or (3);
  2. Failure to complete the germination requirements for agricultural, ornamental, or vegetable seed intended for retail purchase within the 15 months prior to the sale, exposing for sale, or offering for sale within the state, excluding the month in which the test was completed; and
  3. Failure to obtain any license required by this Article;
- B.** The Department may assess the following penalties against any person committing the following acts: up to \$500 for the first offense, up to \$1250 for the second offense, and up to \$2500 for each subsequent offense within a three-year period.
1. To label, advertise, or represent seed subject to this Article to be certified seed or any class of certified seed unless:
    - a. It has been determined by a certifying agency that the seed conforms to standards of purity and identification as to kind, species and subspecies, if appropriate, or variety; and

- b. The seed bears an official label issued for the seed by a certifying agency certifying that the seed is of a specified class and a specified kind, species and subspecies, if appropriate, and variety;
2. To disseminate in any manner or by any means, any false or misleading advertisements concerning seeds subject to this Article;
  3. To hinder or obstruct in any way, any authorized agent of the Department in the performance of the person's duties under this Article;
  4. To fail to comply with a cease and desist order or to move or otherwise handle or dispose of any lot of seed held under a cease and desist order or tags attached to the order, except with express permission of the enforcing officer, and for a purpose specified by the officer;
  5. To label or sell seed that has been treated without proper labeling;
  6. To provide false information to any authorized person in the performance of the person's duties under this Article; or
  7. To label or sell seed that has false or misleading labeling, including:
    - a. Labeling or selling seed with a label containing the word "trace" or the phrase "contains 01%" as a substitute for any statement that is required by this Article;
    - b. Altering or falsifying any seed label, seed test, laboratory report, record, or other document to create a misleading impression as to kind, variety, history, quality or origin of seed;
    - c. Labeling as hermetically sealed containers of agricultural or vegetable seeds that have not had completed the germination requirements with 36 months prior to sale, excluding the month in which the test was completed;
    - d. Failure to label in accordance with the provisions of this Article;
    - e. If applicable, failing to label as containing prohibited noxious weed seeds, subject to recognized tolerances;
    - f. If applicable, failing to label as containing restricted noxious weed seeds in excess of the number prescribed in R3-4-403 on the label attached to the container of the seed or associated with seed;
    - g. If applicable, failing to label as containing more than two and one-half percent by weight of all weed seeds;
    - h. Detaching, altering, defacing, or destroying any label provided for in this Article, or altering or substituting seed in a manner that may defeat the purpose of this Article;
    - i. Using relabeling stickers without having both the calendar month and year the germination test was completed, the sell by date if appropriate, and the lot number that matches the existing, original lot number; and
    - j. Selling, exposing for sale, or offering for sale within the state vegetable seed intended for retail purchase that has labeling containing germination information that has not been completed within the 12 months prior to selling, exposing for sale, or offering for sale.

#### Historical Note

New Section made by final rulemaking at 13 A.A.R. 1464, effective June 2, 2007 (Supp. 07-2).

**ARTICLE 5. COLORED COTTON****R3-4-501. Colored Cotton Production and Processing**

**A. Definitions.** In addition to the definitions provided in A.R.S. § 3-101 and R3-4-102, the following terms apply to this Section:

1. “Certified” means having been inspected with a written certificate of inspection issued by an inspector of the Department.
2. “Colored cotton” means any variety of cotton plants of the Genus *Gossypium* that produces fiber that is naturally any color other than white.
3. “Cottonseed” means processed seed cotton used for propagation, animal feed, crushed or composted fertilizer, or oil.
4. “Composting” means a process that creates conditions that facilitate the controlled decomposition of organic matter into a more stable and easily handled soil amendment or fertilizer, usually by piling, aerating and moistening; or the product of such a process.
5. “Delinting” means the process of using acid, flame, or mechanical means to remove fiber that remains on cottonseed after ginning.
6. “Planting seed” means seed of a known variety produced for planting subsequent generations.
7. “Seed cotton” means raw cotton containing seed and lint that has been harvested from a field, but has not been ginned.
8. “White cotton” means any variety of the Genus *Gossypium* that produces white fiber as established in 28 U.S.C. 401 through 451, the Official Cotton Standards of the United States for the Color Grade of American Upland Cotton, revised July 1, 1993; and Cotton Classification Results, revised July 1994. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Office of the Secretary of State.

**B. Production requirements.**

1. A producer who intends to grow colored cotton shall register in writing with the Department. The registration form shall be received at least 30 days before the cotton planting date for the applicable cultural cotton zone established in R3-4-204. Any colored cotton not registered with the Department shall be abated as established in A.R.S. §§ 3-204 and 3-205, and the producer may be assessed a civil penalty as established in A.R.S. § 205.02. The registration shall include:
  - a. The name, address, telephone number, and signature of the producer;
  - b. The name, address, telephone number, and signature of the property owner;
  - c. The name, address, and telephone number of the organization or company contracting for the production of colored cotton or to whom the colored cotton will be sold, if known;
  - d. The total number of acres to be planted;
  - e. The geographical location of the proposed fields by county, section, township and range; and
  - f. The name of the property owners, if known, adjacent to the field where colored cotton will be grown.
2. Separation of white and colored cotton.
  - a. A colored cotton producer shall ensure that all colored cotton is planted no less than 500 feet from any white cotton field.
  - b. All producers of white cotton saved for planting seed shall comply with the Field Standards in the Arizona Crop Improvement Association’s Cotton Seed Certification Standards, revised July 1995.

This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Office of the Secretary of State.

3. A producer shall not plant white cotton on land on which colored cotton has been grown until one or more irrigated non-cotton crops have been produced on that land. If the non-cotton crop is not grown during a traditional cotton growing season, as established by R3-4-204(E), the field shall be irrigated before planting a white cotton crop.
4. The Department shall notify all cotton producers of the colored cotton plant-back restrictions and of the availability of location and acreage records of colored cotton crops.
5. The Department shall notify the Arizona Crop Improvement Association of the colored cotton geographical locations at least 25 days before the cotton planting date for each cultural cotton zone established in R3-4-204.

**C. Cotton appliances.**

1. No cotton producer, contractor, or ginner shall use a cotton appliance or gin to produce, transport, or handle white cotton after the gin or appliance has been used in the production, transportation, or handling of colored cotton until the Department inspects the cotton appliance or gin and finds it free of colored cottonseed, seed cotton, fiber, and gin trash. A cotton producer, contractor, or ginner shall notify the Department at least 48 hours, excluding Sundays and legal holidays, before an inspection is needed.
2. Colored seed cotton, cottonseed, fiber, and gin trash cleaned from cotton equipment, shall be composted or disposed of by the producer or ginner:
  - a. On land where gin trash has previously been disposed and the land is managed as specified in subsection (B)(3); or
  - b. In a landfill approved by the Department.
3. The Department shall legibly mark cotton appliances designated for exclusive use on colored cotton crops.

**D. Transportation.** Except in gin yards, colored cottonseed or colored seed cotton transported over public roads shall be totally enclosed or covered.**E. Gin requirements.**

1. A gin owner or manager planning to process colored cotton shall notify the Department, in writing, no less than 30 days before processing the colored cotton.
2. The Department shall notify the Arizona Crop Improvement Association of a gin owner’s or manager’s intention to process colored cotton within 10 days from the receipt of the notification from the gin.
3. A gin owner or manager processing colored cotton shall not process white cotton until the gin has been cleaned, and inspected by the Department. The gin shall be free of cottonseed, seed cotton, and loose lint as established in subsection (C)(1).
4. If a gin processes colored seed cotton and white seed cotton during the same season, and the white cottonseed is not retained by the plant breeder for research purposes, the producer shall market the white cottonseed as:
  - a. Animal feed,
  - b. Crushed or composted fertilizer, or
  - c. Oil.
5. The ginner shall legibly mark colored seed cotton kept in the gin yard or gin buildings and shall:
  - a. Isolate the seed cotton at least 500 feet from white seed cotton, or

- b. Enclose it with two foot high chicken wire or chain link fencing.
  6. Gin trash not disposed as established in subsection (C)(2) shall be shipped out-of-state, subject to the requirements of the receiving state and 7 CFR 301.52 et seq., amended August 30, 1994. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Office of the Secretary of State.
  7. The ginner shall bale or bag colored cotton fiber and mark the bale or bag as colored cotton.
- F. Seed Requirements.**
1. A producer or contracting organization, set forth in subsection (B)(1), saving colored cottonseed for propagative purposes shall legibly label the colored planting seed container and notify the Department of:
    - a. The quantity,
    - b. The variety or color,
    - c. The location where the colored planting seed is held or stored, and
    - d. Whether any seed will be shipped out-of-state.
  2. If the cotton seed is being delinted in Arizona, the delinting facility shall follow the requirements in Harvesting, Handling and Tagging that are included in the Cotton Seed Certification Standards and have been incorporated by reference in subsection (B)(2)(b).
  3. The producer shall render non-viable non-delinted (fuzzy) colored cottonseed not used for propagative purposes by crushing or composting. Whole or cracked colored cottonseed shall not be used as animal feed in Arizona but may be shipped out-of-state, subject to the requirements of the receiving state and 7 CFR 301.52 et seq.
  4. Cotton producers shall not transport unbagged white cotton planting seed using vehicles or other equipment previously used to transport whole or cracked colored cottonseed until the Department has certified that these vehicles and equipment are free of colored cottonseed.
- G. Advisory committee.** The Director shall appoint an advisory committee, under A.R.S. § 3-106, to review colored cotton statutes and rules, inspection procedures, and certification methods. The committee shall be appointed for two-year staggered terms and a member may be reappointed for one additional term. The committee shall consist of one representative from each of the following categories:
1. The Cotton Research and Protection Council,
  2. The Arizona Crop Improvement Association,
  3. The Arizona Department of Agriculture,
  4. The Arizona Cotton Growers Association,
  5. A colored cotton producer,
  6. A ginner ginning colored cotton, and
  7. A contractor for the production of colored cotton.

**Historical Note**

Former Rule, Apiary Regulation 1. Amended effective June 19, 1978 (Supp. 78-3). Former Section R3-4-120 renumbered without change as Section R3-4-501 (Supp. 89-1). Former Section repealed, new Section adopted effective December 22, 1989 (Supp. 89-4). Section R3-4-501 renumbered from R3-1-501 (Supp. 91-4). Former Section R3-4-501 repealed, new Section R3-4-501 adopted effective October 15, 1993 (Supp. 93-4). R3-4-501 repealed by summary action with an interim effective date of February 10, 1995; filed in the Office of the Secretary of State January 20, 1995. Adopted summary rules filed in the Office of the Secretary of State May 17, 1995; interim effective date of February 10, 1995 now the per-

manent effective date (Supp. 96-3). New Section R3-4-501 renumbered from R3-4-205 and amended April 9, 1998 (Supp. 98-2).

**R3-4-502. Repealed****Historical Note**

Adopted effective December 22, 1989 (Supp. 89-4) Section R3-4-502 renumbered from R3-1-502 (Supp. 91-4). Former Section R3-4-502 repealed, new Section R3-4-502 adopted effective October 15, 1993 (Supp. 93-4). R3-4-502 repealed by summary action with an interim effective date of February 10, 1995; filed in the Office of the Secretary of State January 20, 1995. Adopted summary rules filed in the Office of the Secretary of State May 17, 1995; interim effective date of February 10, 1995, now the permanent effective date (Supp. 96-3).

**R3-4-503. Repealed****Historical Note**

Adopted as an emergency effective December 31, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Adopted as a permanent rule effective April 4, 1985 (Supp. 85-2). Former Sections R3-4-121.01, R3-4-121.02, R3-4-121.03, and R3-4-121.04 added to Section R3-4-121 and amended effective October 8, 1987 (Supp. 87-4). Former Section R3-4-121 renumbered without change as Section R3-4-502 (Supp. 89-1). Former Section R3-4-502 renumbered without change as Section R3-4-503 (Supp. 89-4). Repealed effective August 16, 1990 (Supp. 90-3). Section R3-4-503 renumbered from R3-1-503 (Supp. 91-4). New Section R3-4-503 adopted effective October 15, 1993 (Supp. 93-4). R3-4-503 repealed by summary action with an interim effective date of February 10, 1995; filed in the Office of the Secretary of State January 20, 1995. Adopted summary rules filed in the Office of the Secretary of State May 17, 1995; interim effective date of February 10, 1995, now the permanent effective date (Supp. 96-3).

**R3-4-504. Repealed****Historical Note**

Adopted as an emergency effective September 27, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-5). Emergency expired. Former Sections R3-4-122.01 through R3-4-122.03, emergency expired. New Section R3-4-122 adopted effective March 6, 1987 (Supp. 87-1). Former Section R3-4-122 renumbered without change as Section R3-4-503 (Supp. 89-1). Former Section R3-4-503 renumbered without change as Section R3-4-504 (Supp. 89-4). Section R3-4-504 renumbered from R3-1-504 (Supp. 91-4). Former Section R3-4-504 repealed, new Section R3-4-504 adopted effective October 15, 1993 (Supp. 93-4). R3-4-504 repealed by summary action with an interim effective date of February 10, 1995; filed in the Office of the Secretary of State January 20, 1995. Adopted summary rules filed in the Office of the Secretary of State May 17, 1995; interim effective date of February 10, 1995, now the permanent effective date (Supp. 96-3).

**R3-4-505. Repealed****Historical Note**

Adopted effective October 15, 1993 (Supp. 93-4). R3-4-505 repealed by summary action with an interim effective date of February 10, 1995; filed in the Office of the Secretary of State January 20, 1995. Adopted summary rules



filed in the Office of the Secretary of State May 17, 1995; interim effective date of February 10, 1995, now the permanent effective date (Supp. 96-3).

**R3-4-506. Repealed**

**Historical Note**

Adopted effective October 15, 1993 (Supp. 93-4). R3-4-501 repealed by summary action with an interim effective date of February 10, 1995; filed in the Office of the Secretary of State January 20, 1995. Adopted summary rules filed in the Office of the Secretary of State May 17, 1995; interim effective date of February 10, 1995, now the permanent effective date (Supp. 96-3).

**ARTICLE 6. RECODIFIED**

*Article 6, consisting of Sections R3-4-601 through R3-4-611 and Appendix A, recodified to 3 A.A.C. 3, Article 11 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1).*

**R3-4-601. Recodified**

**Historical Note**

Former Rule, Native Plant Regulation 1. Amended effective June 19, 1978 (Supp. 78-3). Amended by adding subsection (E) effective January 21, 1981 (Supp. 81-1). Former Section R3-4-130 amended and renumbered as R3-4-130 through R3-4-140 effective April 30, 1982 (Supp. 82-2). Former Section R3-4-130 renumbered without change as Section R3-4-601 (Supp. 89-1). Amended effective December 28, 1990 (Supp. 90-4). Section R3-4-601 renumbered from R3-1-601 (Supp. 91-4). Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). Amended by final rulemaking at 5 A.A.R. 2521, effective July 15, 1999 (Supp. 99-3). Section recodified to R3-3-1101 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1).

**R3-4-602. Recodified**

**Historical Note**

Former Section R3-4-130 amended and renumbered as R3-4-130 through R3-4-140 effective April 30, 1982 (Supp. 82-2). Former Section R3-4-131 renumbered without change as Section R3-4-602 (Supp. 89-1). Amended effective December 28, 1990 (Supp. 90-4). Section R3-4-602 renumbered from R3-1-602 (Supp. 91-4). Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 2521, effective July 15, 1999 (Supp. 99-3). Section recodified to R3-3-1102 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1).

**R3-4-603. Recodified**

**Historical Note**

Former Section R3-4-130 amended and renumbered as R3-4-130 through R3-4-140 effective April 30, 1982 (Supp. 82-2). Amended effective May 15, 1984 (Supp. 84-3). Correction, amendment effective May 15, 1984 deleted samples of forms (Supp. 86-1). Former Section R3-4-132 renumbered without change as Section R3-4-603 (Supp. 89-1). Amended effective December 28, 1990 (Supp. 90-4). Section R3-4-603 renumbered from R3-1-603 (Supp. 91-4). Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). Section repealed; new Section R3-4-603 renumbered from R3-4-605 and amended by final rulemaking at 5 A.A.R. 2521, effective

July 15, 1999 (Supp. 99-3). Section recodified to R3-3-1103 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1).

**R3-4-604. Recodified**

**Historical Note**

Former Section R3-4-130 amended and renumbered as R3-4-130 through R3-4-140 effective April 30, 1982 (Supp. 82-2). Amended effective May 15, 1984 (Supp. 84-3). Former Section R3-4-133 renumbered without change as Section R3-4-604 (Supp. 89-1). Amended effective December 28, 1990 (Supp. 90-4). Section R3-4-604 renumbered from R3-1-604 (Supp. 91-4). Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 2521, effective July 15, 1999 (Supp. 99-3). Section recodified to R3-3-1104 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1).

**R3-4-605. Recodified**

**Historical Note**

Former Section R3-4-130 amended and renumbered as R3-4-130 through R3-4-140 effective April 30, 1982 (Supp. 82-2). Former Section R3-4-134 renumbered without change as Section R3-4-605 (Supp. 89-1). Amended effective December 28, 1990 (Supp. 90-4). Section R3-4-605 renumbered from R3-1-605 (Supp. 91-4). Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). Former Section R3-4-605 renumbered to R3-4-603; new Section R3-4-605 adopted by final rulemaking at 5 A.A.R. 2521, effective July 15, 1999 (Supp. 99-3). Section recodified to R3-3-1105 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1).

**R3-4-606. Recodified**

**Historical Note**

Former Section R3-4-130 amended and renumbered as R3-4-130 through R3-4-140 effective April 30, 1982 (Supp. 82-2). Former Section R3-4-135 renumbered without change as Section R3-4-606 (Supp. 89-1). Repealed effective December 28, 1990 (Supp. 90-4). Section R3-4-606 renumbered from R3-1-606 (Supp. 91-4). New Section adopted effective July 6, 1993 (Supp. 93-3). Amended effective December 20, 1994 (Supp. 94-4). Amended by final rulemaking at 5 A.A.R. 2521, effective July 15, 1999 (Supp. 99-3). Section recodified to R3-3-1106 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1).

**R3-4-607. Recodified**

**Historical Note**

Former Section R3-4-130 amended and renumbered as R3-4-130 through R3-4-140 effective April 30, 1982 (Supp. 82-2). Former Section R3-4-137 renumbered without change as Section R3-4-608 (Supp. 89-1). Former Section R3-4-607 repealed, new Section R3-4-607 renumbered from R3-4-608 and amended effective December 28, 1990 (Supp. 90-4). Section R3-4-607 renumbered from R3-1-607 (Supp. 91-4). Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). Former Section R3-4-607 repealed; new Section R3-4-607 renumbered from R3-4-616 and amended at 5 A.A.R. 2521, effective July 15, 1999 (Supp. 99-3). Section recodified to R3-3-1107 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1).

**R3-4-608. Recodified****Historical Note**

Former Section R3-4-130 amended and renumbered as R3-4-130 through R3-4-140 effective April 30, 1982 (Supp. 82-2). Former Section R3-4-138 renumbered without change as Section R3-4-609 (Supp. 89-1). Former Section R3-4-608 renumbered to R3-4-607, new Section R3-4-608 adopted effective December 28, 1990 (Supp. 90-4). Section R3-4-608 renumbered from R3-1-608 (Supp. 91-4). Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). Section repealed; new Section adopted at 5 A.A.R. 2521, effective July 15, 1999 (Supp. 99-3). Section recodified to R3-3-1108 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1).

**R3-4-609. Recodified****Historical Note**

Former Section R3-4-130 amended and renumbered as R3-4-130 through R3-4-140 effective April 30, 1982 (Supp. 82-2). Former Section R3-4-139 renumbered without change as Section R3-4-610 (Supp. 89-1). Former Section R3-4-609 repealed, new Section R3-4-609 renumbered from R3-4-610 and amended effective December 28, 1990 (Supp. 90-4). Section R3-4-609 renumbered from R3-1-609 (Supp. 91-4). Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 2521, effective July 15, 1999 (Supp. 99-3). Section recodified to R3-3-1109 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1).

**R3-4-610. Recodified****Historical Note**

Former Section R3-4-130 amended and renumbered as R3-4-130 through R3-4-140 effective April 30, 1982 (Supp. 82-2). Former Section R3-4-140 renumbered without change as Section R3-4-611 (Supp. 89-1). Former Section R3-4-610 renumbered to R3-4-609, new Section R3-4-610 renumbered from R3-4-611 and amended effective December 28, 1990 (Supp. 90-4). Section R3-4-610 renumbered from R3-1-610 (Supp. 91-4). Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). Amended effective December 20, 1994 (Supp. 94-4). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 2521, effective July 15, 1999 (Supp. 99-3). Section recodified to R3-3-1110 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1).

**R3-4-611. Recodified****Historical Note**

Renumbered to R3-4-610 effective December 28, 1990 (Supp. 90-4). Section R3-4-611 renumbered from R3-1-611 (Supp. 91-4). New Section adopted effective July 6, 1993 (Supp. 93-3). Former Section R3-4-611 repealed; new Section R3-4-611 renumbered from R3-4-618 and amended by final rulemaking at 5 A.A.R. 2521, effective July 15, 1999 (Supp. 99-3). Section recodified to R3-3-1111 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1).

**R3-4-612. Repealed****Historical Note**

Adopted effective April 30, 1982 (Supp. 82-2). Former Section R3-4-141 renumbered without change as Section

R3-4-612 (Supp. 89-1). Repealed effective December 28, 1990 (Supp. 90-4). Section R3-4-612 renumbered from R3-1-612 (Supp. 91-4). New Section adopted effective July 6, 1993 (Supp. 93-3). Section repealed by final rulemaking at 5 A.A.R. 2521, effective July 15, 1999 (Supp. 99-3).

**R3-4-613. Repealed****Historical Note**

Adopted effective February 5, 1986 (Supp. 86-1). Former Section R3-4-144 repealed, new Section R3-4-615 adopted effective January 17, 1989 (see also R3-4-616) (Supp. 89-1). Repealed effective December 28, 1990 (Supp. 90-4). Section R3-4-615 renumbered from R3-1-615 (Supp. 91-4). New Section adopted effective July 6, 1993 (Supp. 93-3). Amended effective September 11, 1997 (Supp. 97-3). Section repealed by final rulemaking at 5 A.A.R. 2521, effective July 15, 1999 (Supp. 99-3).

**R3-4-614. Repealed****Historical Note**

Adopted effective February 5, 1986 (Supp. 86-1). Former Section R3-4-144 repealed, new Section R3-4-615 adopted effective January 17, 1989 (see also R3-4-616) (Supp. 89-1). Repealed effective December 28, 1990 (Supp. 90-4). Section R3-4-615 renumbered from R3-1-615 (Supp. 91-4). New Section adopted effective July 6, 1993 (Supp. 93-3). Amended effective September 11, 1997 (Supp. 97-3). Section repealed by final rulemaking at 5 A.A.R. 2521, effective July 15, 1999 (Supp. 99-3).

**R3-4-615. Repealed****Historical Note**

Adopted effective February 5, 1986 (Supp. 86-1). Former Section R3-4-144 repealed, new Section R3-4-615 adopted effective January 17, 1989 (see also R3-4-616) (Supp. 89-1). Repealed effective December 28, 1990 (Supp. 90-4). Section R3-4-615 renumbered from R3-1-615 (Supp. 91-4). New Section adopted effective July 6, 1993 (Supp. 93-3). Amended effective December 20, 1994 (Supp. 94-4). Section repealed by final rulemaking at 5 A.A.R. 2521, effective July 15, 1999 (Supp. 99-3).

**R3-4-616. Renumbered****Historical Note**

Adopted effective February 5, 1986 (Supp. 86-1). Former Section R3-4-144 repealed, new Section R3-4-616 adopted effective January 17, 1989 (see also R3-4-615) (Supp. 89-1). Repealed effective December 28, 1990 (Supp. 90-4). Section R3-4-616 renumbered from R3-1-616 (Supp. 91-4). New Section adopted effective July 6, 1993 (Supp. 93-3). Amended effective December 20, 1994 (Supp. 94-4). Amended effective September 11, 1997 (Supp. 97-3). Section R3-4-616 renumbered to R3-4-607 by final rulemaking at 5 A.A.R. 2521, effective July 15, 1999 (Supp. 99-3).

**R3-4-617. Repealed****Historical Note**

Adopted effective December 28, 1990 (Supp. 90-4). Section R3-4-617 renumbered from R3-1-617 (Supp. 91-4). Section R3-4-617 renumbered from R3-1-617 (Supp. 91-4). Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). Section repealed by final rulemaking at 5 A.A.R. 2521, effective July 15, 1999 (Supp. 99-3).

**R3-4-618. Renumbered****Historical Note**

Adopted effective December 28, 1990 (Supp. 90-4). Section R3-4-618 renumbered from R3-1-618 (Supp. 91-4). Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). Section R3-4-618 renumbered to R3-4-611 by final rulemaking at 5 A.A.R. 2521, effective July 15, 1999 (Supp. 99-3).

**R3-4-619. Repealed****Historical Note**

Adopted effective December 28, 1990 (Supp. 90-4). Section R3-4-619 renumbered from R3-1-619 (Supp. 91-4). Section repealed effective July 6, 1993 (Supp. 93-3).

**R3-4-620. Repealed****Historical Note**

Adopted effective December 28, 1990 (Supp. 90-4). Section R3-4-620 renumbered from R3-1-620 (Supp. 91-4). Section repealed effective July 6, 1993 (Supp. 93-3).

**R3-4-621. Repealed****Historical Note**

Adopted effective December 28, 1990 (Supp. 90-4). Section R3-4-621 renumbered from R3-1-621 (Supp. 91-4). Section repealed effective July 6, 1993 (Supp. 93-3).

**R3-4-622. Repealed****Historical Note**

Adopted effective December 28, 1990 (Supp. 90-4). Section R3-4-622 renumbered from R3-1-622 (Supp. 91-4). Section repealed effective July 6, 1993 (Supp. 93-3).

**R3-4-623. Repealed****Historical Note**

Adopted effective December 28, 1990 (Supp. 90-4). Section R3-4-623 renumbered from R3-1-623 (Supp. 91-4). Section repealed effective July 6, 1993 (Supp. 93-3).

**R3-4-624. Repealed****Historical Note**

Adopted effective December 28, 1990 (Supp. 90-4). Section R3-4-624 renumbered from R3-1-624 (Supp. 91-4). Section repealed effective July 6, 1993 (Supp. 93-3).

**R3-4-625. Repealed****Historical Note**

Adopted effective December 28, 1990 (Supp. 90-4). Section R3-4-625 renumbered from R3-1-625 (Supp. 91-4). Section repealed effective July 6, 1993 (Supp. 93-3).

**R3-4-626. Repealed****Historical Note**

Adopted effective December 28, 1990 (Supp. 90-4). Section R3-4-626 renumbered from R3-1-626 (Supp. 91-4). Section repealed effective July 6, 1993 (Supp. 93-3).

**R3-4-627. Repealed****Historical Note**

Adopted effective December 28, 1990 (Supp. 90-4). Section R3-4-627 renumbered from R3-1-627 (Supp. 91-4). Section repealed effective July 6, 1993 (Supp. 93-3).

**R3-4-628. Repealed****Historical Note**

Adopted effective December 28, 1990 (Supp. 90-4). Section R3-4-628 renumbered from R3-1-628 (Supp. 91-4). Section repealed effective July 6, 1993 (Supp. 93-3).

**R3-4-629. Repealed****Historical Note**

Adopted effective December 28, 1990 (Supp. 90-4). Section R3-4-629 renumbered from R3-1-629 (Supp. 91-4). Section repealed effective July 6, 1993 (Supp. 93-3).

**R3-4-630. Repealed****Historical Note**

Adopted effective December 28, 1990 (Supp. 90-4). Section R3-4-630 renumbered from R3-1-630 (Supp. 91-4). Section repealed effective July 6, 1993 (Supp. 93-3).

**R3-4-631. Repealed****Historical Note**

Adopted effective December 28, 1990 (Supp. 90-4). Section R3-4-631 renumbered from R3-1-631 (Supp. 91-4). Section repealed effective July 6, 1993 (Supp. 93-3).

**R3-4-632. Repealed****Historical Note**

Adopted effective December 28, 1990 (Supp. 90-4). Section R3-4-632 renumbered from R3-1-632 (Supp. 91-4). Section repealed effective July 6, 1993 (Supp. 93-3).

**R3-4-633. Repealed****Historical Note**

Adopted effective December 28, 1990 (Supp. 90-4). Section R3-4-633 renumbered from R3-1-633 (Supp. 91-4). Section repealed effective July 6, 1993 (Supp. 93-3).

**Appendix A. Recodified****Historical Note**

Adopted effective December 28, 1990 (Supp. 90-4). Section R3-4-633, Appendix A renumbered from R3-1-633, Appendix A (Supp. 91-4). Appendix A repealed, New Appendix A adopted effective July 6, 1993 (Supp. 93-3). Amended effective December 20, 1994 (Supp. 94-4). Amended effective September 11, 1997 (Supp. 97-3). Appendix recodified to 3 A.A.C. 3, Article 11 at 10 A.A.R. 726, effective February 6, 2004 (Supp. 04-1).

**ARTICLE 7. FRUIT AND VEGETABLE  
STANDARDIZATION****R3-4-701. Apple Standards**

The standards for apples in Arizona are the standards prescribed for U.S. No. 1 apples in the United States Standards for Grades of Apples, 7 CFR 51.300 et seq, revised as of January 1, 2003. This material is incorporated by reference and on file with the Department. This incorporation by reference contains no future additions or amendments.

**Historical Note**

Section R3-4-701 renumbered from R3-7-101 (Supp. 91-4). Section repealed, new Section adopted effective January 6, 1994 (Supp. 94-1). Amended by final rulemaking at 9 A.A.R. 4628, effective December 6, 2003 (Supp. 03-4).

**R3-4-702. Apricot Standards****A. Definitions.**

1. “Mature” means having reached the stage of maturity which will ensure the proper completion of the ripening process.
  2. “Serious damage” includes any defect caused by limb rubs, growth cracks, dirt, scale, hail, disease, insects, mechanical injury, or any damage which causes breaking of the skin, or which affects the appearance or the edible or shipping quality of the apricot. Damage from well-healed growth cracks more than 1/2 inch in length shall be considered as serious damage.
- B.** Apricots shall be of one variety which are mature but not soft, overripe, or shriveled and which are free from decay, worm holes, and from serious damage.
- C.** Not more than 5%, by count, of the apricots in any container or lot shall be allowed for any one defect and not more than 10%, by count, shall fail to meet the total requirements prescribed in this Section.

**Historical Note**

Former Rule 100. Section R3-4-702 renumbered from R3-7-102 (Supp. 91-4). Section repealed, new Section adopted effective January 6, 1994 (Supp. 94-1).

**R3-4-703. Asparagus Standards**

- A.** Asparagus, when being packed or offered for sale, shall conform to the following standards:
1. Asparagus spears shall not be wilted or crushed;
  2. Asparagus spears shall not be seriously damaged by spreading or seeded tips;
  3. Asparagus spears shall not be seriously damaged by crooks unless the container clearly indicates it contains crooks;
  4. Asparagus spears shall not have more than 2 inches of white on the butt, except that when bunched, 25% of the spears in any bunch may have up to 2 1/2 inches of white;
  5. Asparagus spears shall be free from decay and serious damage;
  6. Asparagus spears, when bunched, shall be uniform in size.
- B.** Not more than 5%, by count, of the spears in any lot shall be allowed for any one cause and not more than 10%, by count, shall fail to meet the total requirements prescribed in this Section.

**Historical Note**

Former Rule 101. Section R3-4-703 renumbered from R3-7-103 (Supp. 91-4). Section repealed, new Section adopted effective January 6, 1994 (Supp. 94-1).

**R3-4-704. Beets and Turnip Standards**

- A.** Definition.  
“Serious damage” means damage caused by decay, disease, scab, nematode, growth cracks, mechanical injury, stringiness, woodiness, being misshapen, or any condition which would cause a loss of 20% or more of the root during preparation for use.
- B.** Beets and turnips, when being packed or offered for sale, shall be free from serious damage.
- C.** Not more than 10% of the beets or turnips in any one lot shall fail to meet the requirements prescribed in this Section.

**Historical Note**

Former Rule 102; Amended paragraph (7) effective June 11, 1986 (Supp. 86-3). Section R3-4-704 renumbered from R3-7-104 (Supp. 91-4). Section repealed, new Section adopted effective January 6, 1994 (Supp. 94-1).

**R3-4-705. Broccoli Standards**

- A.** Definitions.

1. “Bunch” means stalks bound together to form a unit. A single stalk may be considered a bunch if it is approximately as large as bunches in the lot.
  2. “Serious damage” means damage caused by means worm or insect injury, or any condition which would cause a loss of 20% or more, by volume, of any one stalk of broccoli.
  3. “Stalk” means an individual unit of broccoli which consists of the stem, head cluster, and any attached leaves.
- B.** Broccoli, when being packed or offered for sale, shall be free from mold, decay, and serious damage.
- C.** Not more than 5%, by count, of a bunch of broccoli in any lot of containers or bulk lot shall be allowed for mold and decay and not more than 15%, by count, in any lot of containers or bulk lot shall fail to meet the total requirements prescribed in this Section.

**Historical Note**

Former Rule 103. Section R3-4-705 renumbered from R3-7-105 (Supp. 91-4). Former Section R3-4-705 renumbered to R3-4-736, new Section R3-4-705 adopted effective January 6, 1994 (Supp. 94-1).

**R3-4-706. Brussels Sprouts Standards**

- A.** Definitions.
1. “Discoloration” means the appearance is materially affected by discolored leaves or parts of discolored leaves.
  2. “Fairly firm” means the Brussels sprouts are not soft or spongy.
  3. “Fairly well colored” means that the Brussels sprouts shall not be lighter than yellowish green color.
  4. “Insects” means that:
    - a. There is serious damage by aphid infestation within the compact portion of the head; or
    - b. The outer leaves are seriously damaged by infestation; or
    - c. Slug worms or worm frass are present; or
    - d. The appearance is materially affected by slug or worm damage.
  5. “Seedstems” means the seedstem is showing or the formation of the seedstalk has plainly begun.
  6. “Serious damage” includes damage caused by discoloration, dirt or other foreign materials, freezing, disease, insects, mechanical injury.
- B.** Brussels sprouts shall be fairly well colored, fairly firm, not withered or burst, and free from soft decay, seedstems, and serious damage.
- C.** To allow for variations incident to proper grading and handling, not more than 5%, by weight, of the Brussels sprouts in any lot shall be allowed for any one defect and not more than 10%, by weight, shall fail to meet the total requirements prescribed in this Section.

**Historical Note**

Former Rule 104. Section R3-4-706 renumbered from R3-7-106 (Supp. 91-4). Former Section R3-4-706 renumbered to R3-4-737, new Section R3-4-706 adopted effective January 6, 1994 (Supp. 94-1).

**R3-4-707. Cabbage Standards**

- A.** Definition.  
“Serious damage” means damage caused by seedstems, discoloration, freezing, disease, insects, mechanical injury, or any condition which would cause a loss of 20% or more, by weight, of the head leaves.

- B. Cabbage, when being packed or offered for sale, shall be firm, not withered, puffy, or burst, and shall be free from soft rot and decay and from serious damage.
- C. Not more than 5%, by count, of the heads in any lot of containers or bulk lot shall be allowed for soft rot or decay and not more than 15%, by count, shall fail to meet the total requirements prescribed in this Section.

#### Historical Note

Former Rule 105; Amended effective March 5, 1982 (Supp. 82-2). Section R3-4-707 renumbered from R3-7-107 (Supp. 91-4). Former Section R3-4-707 repealed, new Section R3-4-707 adopted effective January 6, 1994 (Supp. 94-1).

#### R3-4-708. Cantaloupe Standards; Maturity Sampling; Packing Arrangements

##### A. Definitions.

1. "Mature" means that a cantaloupe has reached the stage of development that ensures the completion of the normal ripening process, the arils that surround the seed during development of maturity are absorbed, and the juice of the edible portion contains not less than nine percent soluble solids as determined by the standard hand refractometer.
  2. "Serious damage" means damage caused by bruises, sunburn, growth cracks, cuts, sponginess, flabbiness, or wilting.
- B. Cantaloupes shall be:
1. Mature but not overripe;
  2. Fairly well-netted;
  3. Free from mold, decay, and insect damage that penetrates or damages the edible portion of the cantaloupe; and
  4. Free from serious damage.

- C. If a preliminary inspection of cantaloupes as prescribed at R3-4-738(A) indicates that further testing for maturity is required, the inspector shall randomly select melons for testing and average the results to determine the percent of soluble solids for each lot. The minimum number of cantaloupes selected from a lot for maturity sampling is as follows:

Melons Per Container	Min. Melons Per Container Tested
9 or less	7
12	8
15	11
18	13
22	15
23	16
24 or more	2/3 of the melons, not to exceed 30 melons

- D. The Department shall not permit more than five percent, by count, of the cantaloupes in any one lot for any one defect and not more than 10 percent, by count, to fail the total requirements prescribed in this Section.
- E. All cantaloupes in each container shall be of one variety or of similar varietal characteristics.
- F. Cantaloupes packed in containers shall be uniform in size and packed in a compact arrangement.

#### Historical Note

Former Section R3-4-708 renumbered to R3-4-740, new Section R3-4-708 adopted effective January 6, 1994 (Supp. 94-1). Amended by final rulemaking at 5 A.A.R. 569, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 8 A.A.R. 4454, effective October 2, 2002 (Supp. 02-4). Amended by final rulemaking at 10

A.A.R. 677, effective February 3, 2004 (Supp. 04-1).

#### R3-4-709. Carrot Standards

##### A. Definition.

"Serious damage" means damage caused by growth cracks, mechanical injury, being misshapen, or any condition which would cause a loss of 20% or more of the root during preparation for use.

- B. Carrots, when being packed or offered for sale, shall be free from decay and insect injury which has penetrated or damaged the flesh and shall be free from serious damage. Not more than 10% of any lot of carrots shall fail to meet these requirements.
- C. When bunched, carrots shall be uniform in size. When carrots range in diameter from 3/4 inch to 1 1/4 inches, a bunch shall contain 8 to 11 carrots, and if over 1 1/4 inches, five to seven carrots.
- D. Topped carrots when packed in lugs, boxes, crates, or sacks shall be uniform in size.

#### Historical Note

Adopted effective January 6, 1994 (Supp. 94-1).

#### R3-4-710. Cauliflower Standards

##### A. Definition.

"Serious damage" means damage caused by worm, insect injury, freezing, sunburn, or any other condition which would cause a loss of 20% or more of the edible portion of an individual head of cauliflower.

- B. Cauliflower, when being packed or offered for sale, shall be free from mold, decay, and serious damage.
- C. Cauliflower shall be trimmed to the number of leaves necessary to protect the head.
- D. Not more than 5%, by count, of heads of cauliflower in any lot of containers or bulk lot shall be allowed for mold and decay and not more than 15%, by count, shall fail to meet the total requirements prescribed in this Section.

#### Historical Note

Adopted effective January 6, 1994 (Supp. 94-1).

#### R3-4-711. Celery Standards

##### A. Definitions.

1. "Pithy branches" means the stalk has more than four branches which are pithy; provided that not more than 10%, by count, of the stalks in any one lot or container are pithy.
2. "Seedstems" means that the stalk has a seedstem the length of which is more than twice the diameter of the stalk measured at a point 2 inches above the point of attachment at the root.
3. "Serious damage" includes damage caused by freezing, growth cracks, dirt, insect damage, seedstems, pithy branches, decay, black-heart, mechanical injury.

- B. Celery, when being packed or offered for sale, shall be fairly well developed, free from serious damage.
- C. The number of stalks in each container shall be specified by numerical count, or in terms of dozens or half-dozens, in block numerals not less than 1/2 inch in height on the container. A three-stalk variation from the specified count shall be allowed.
- D. Not more than 5%, by count, of the celery in any container or lot shall be allowed for any one defect and not more than 10%, by count, shall fail to meet the total requirements prescribed in this Section.

#### Historical Note

Adopted effective January 6, 1994 (Supp. 94-1).

#### R3-4-712. Cherry Standards

##### A. Definitions.

1. "Clean" means that the cherries are practically free from dirt, dust, spray residue, or other foreign material.
  2. "Fairly well colored" means that the cherries show the characteristic color of mature cherries of the variety.
  3. "Mature" means that the cherries have reached a stage of growth which will ensure the proper completion of the ripening process.
  4. "Serious damage" includes damage caused by bruises, cracks, disease, hail, other insects, limb rub, pulled stems, russeting, scars, skin breaks, sunburn, sutures, mechanical injury.
  5. "Similar varietal characteristics" means that the cherries in any container are similar in color and shape.
  6. "Well-formed" means that the cherry has normal shape characteristic of the variety.
- B.** Cherries shall be of similar varietal characteristics which are mature but are not soft, overripe, or shriveled, and which are fairly well colored, well-formed, clean, and free from decay, worms or worm holes, undeveloped doubles, sun scald, and free from serious damage.
- C.** Not more than 5%, by count, of the cherries in any one lot shall be allowed for any one defect and not more than 10%, by count, shall fail to meet the total requirements prescribed in this Section.

**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1).

**R3-4-713. Corn Standards**

- A.** Definition.  
"Serious damage" means wilting, shriveling, worms, disease, decay, insects, or any condition which would cause a loss of 10% or more to an individual ear of corn.
- B.** Corn, when being packed or offered for sale, shall be mature but not over-mature, as indicated by a "doughy" condition of the kernels, and shall be free from serious damage.
- C.** Not more than 10%, by count, of the ears in any lot shall fail to meet the requirements prescribed in this Section.

**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1).

**R3-4-714. Endive, Escarole, or Chicory Standards**

- A.** Definitions.
1. "Fairly well blanched" means that the plant shall have a yellowish white to white heart formation with a spread averaging not less than four inches in diameter when the head is opened as far as possible without breaking the leaves or leaf stems.
  2. "Serious damage" includes damage caused by seedstems; broken, bruised, spotted or discolored leaves; wilting; dirt; disease; insects; mechanical injury.
  3. "Similar varietal characteristics" means that the plants shall be of the same type, such as curly-leaved endive or broad-leaved escarole.
  4. "Well trimmed" means that the root shall be neatly cut close to the point of attachment of the outer leaf stems.
- B.** Endive, escarole, or chicory shall consist of plants of similar varietal characteristics, which are fresh, well trimmed, fairly well blanched, free from decay and from serious damage.
- C.** In order to allow for variations incident to proper grading and handling, not more than 5%, by count, shall be allowed for decay; not more than 10%, by count, shall be allowed for any

other cause; and not more than 15%, by count, shall fail to meet the total requirements prescribed in this Section;

**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1).

**R3-4-715. Greens Standards (Collards, Rapini, Mustard, and Turnip)**

- A.** Definitions.
1. "Fairly clean" means that the appearance of the greens is not materially affected by the presence of mud, dirt, or other foreign materials.
  2. "Fairly tender" means that the greens are not old, tough, or excessively fibrous.
  3. "Fresh" means that the leaves are not more than slightly wilted.
  4. "Serious damage" includes damage caused by discoloration, freezing, foreign material, seedstems, disease, insects, mechanical injury.
- B.** Greens shall be of one variety, which are fresh, fairly tender, fairly clean, and which are free from decay and free from serious damage.
- C.** Not more than 5%, by weight, of the greens in any container or lot shall be allowed for any one defect and not more than 10%, by count, shall fail to meet the total requirements prescribed in this Section.

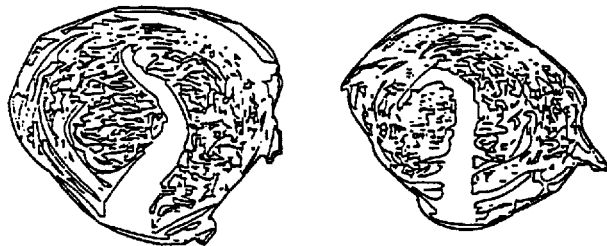
**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1).

**R3-4-716. Head Lettuce Standards**

- A.** Definition.  
"Serious damage" means damage caused by broken midribs, bursting, freezing, or tipburn:
1. "Broken midribs" is considered serious damage when the midribs of more than four of the outer head leaves are broken and severed all the way across the midrib.
  2. "Bursting" is considered serious damage when the head is cracked or split open and any part of the inner portion of the head is exposed.
  3. "Freezing" is considered serious damage when it affects any portion of the head inside the six outer head leaves, and the tissue of the inner head leaves is brittle, soft, pithy, or discolored due to freezing.
  4. "Tipburn" is considered serious damage when the affected portion on one or more leaves, inside the six outer head leaves, exceeds an aggregate area of 1 inch by 1/2 inch and the color of the tipburn is light buff or darker. Serious damage does not include areas showing tan or brown specks with normal lettuce color between the specks.
- B.** Head lettuce, when being packed or offered for sale, shall:
1. Be mature;
  2. Be free from serious damage.
  3. Not be leafy without head formation;
  4. Have no more than six wrapper leaves adhering to the head;
  5. Be free from insect injury, slime, or decay affecting the leaves within the head;
  6. Be free from a seedstem present upon internal examination that is less than 1/2 inch from the top of the head of lettuce or exceeds 4 inches in length.

# LETTUCE SEEDSTEM



- C. Not more than 5%, by count, of the heads of lettuce in any one lot of containers or bulk lot shall contain decay or slime and not more than 15%, by count, shall fail to meet all requirements prescribed in this Section.
- D. Individual containers in any lot shall not contain more than 1 1/2 times the tolerance of defects prescribed in this Section provided the average percentage of defects in the entire lot is within the tolerances specified in subsection (C), as determined by inspection of a representative sample under R3-4-738.

## Historical Note

Adopted effective January 6, 1994 (Supp. 94-1).  
Amended by final rulemaking at 6 A.A.R. 4582, effective November 13, 2000 (Supp. 00-4).

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

### A. Definitions.

1. "Mature" means that:
  - a. A melon has reached the stage of development that ensures proper completion of the normal ripening process and the arils that surround the seed during development of maturity are absorbed;
  - b. The juice of the edible portion of honeyball and honeydew melons contains not less than 10 percent soluble solids as determined by the standard hand refractometer; and
  - c. The flesh of a watermelon, except for yellow flesh watermelon, shall be colored to a degree not less than that indicated by Hue 4, Chrome H, in Plate 1, of A, Maerz and M. Rea Paul Dictionary of Color, first edition, published 1930. This material is incorporated by reference and is on file with the Department. This incorporation by reference contains no future editions or amendments.
2. "Serious damage" means damage to a melon caused by:
  - a. Growth cracks, cuts, bruises, or softness;
  - b. Beetle damage when it affects an area of more than 10 percent of the total surface of a watermelon;
  - c. Whiteheart if apparent on internal examination;
  - d. Sunburn when the sunburned area, regardless of size, is devoid of green coloration and is turning brown; or
  - e. Rindrot when the distinct brown color or decay in the edible flesh of at least one inch in aggregate occurs in the edible portion of a watermelon.

- B. All melons, except watermelons, when packed or offered for sale, shall be:
  1. Mature but not overripe;
  2. Free from mold, decay, and insect damage that penetrates or damages the edible portion of the melon; and

3. Free from serious damage.

### C. Watermelons, when packed or offered for sale, shall be:

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

### D. If a preliminary inspection of honeydew or honeyball melons as prescribed at R3-4-738(A) indicates that further testing for maturity is required, the inspector shall randomly select melons for testing and average the results to determine the percent of soluble solids for each lot:

1. When sampling honeydew or honeyball melons for maturity in lot containers that are not bulk containers, the minimum number of melons to be sampled is as follows:

Containers in Lot	Melons Sampled
Up to 400	7
401 to 600	9
Over 600	Add 3 melons for every additional 500 containers or fraction of 500 additional containers

2. When sampling honeydew or honeyball melons for maturity in bulk containers, seven honeydew or honeyball melons shall be selected at random from the top of the bulk container. The minimum number of bulk containers to be sampled is as follows:

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

- E. The Department shall not permit more than five percent, by count, of the melons in any one lot for any one defect and not more than 10 percent, by count, to fail the total requirements prescribed in this Section.

## Historical Note

Adopted effective January 6, 1994 (Supp. 94-1).  
Amended by final rulemaking at 5 A.A.R. 569, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 10 A.A.R. 677, effective February 3, 2004 (Supp. 04-1).

## R3-4-718. Nectarine Standards

### A. Definitions.

1. "Growth cracks" means cracks more than 5/8 inch in length, whether healed or not healed.
2. "Heat injury, sprayburn, or sunburn" means the skin is blistered, cracked, or decidedly flattened or badly discolored.
3. "Scab or bacterial spot" means the aggregate area exceeds that of a circle 3/4 inch in diameter.
4. "Serious damage" includes damage caused by bruises, growth cracks, hail, heat injury, sunburn, sprayburn, scab, bacterial spot, scale, split pit, scars, russetting, other diseases, insects, mechanical injury.
5. "Split pit." When causing an unhealed crack or when affecting the shape to the extent that the fruit is badly misshapen.

6. "Scars." When dark or rough scars in the aggregate area exceed that of a circle 3/4 inch in diameter.
7. "Russetting" means that 10% of the fruit surface is rough or slightly rough.

- B. Nectarines shall be of one variety, which are mature but not overripe; not badly misshapen; clean; free from decay, broken skins which are not healed, worms and worm holes; and free from serious damage.
- C. Not more than 5%, by count, of the nectarines in any container or lot shall be allowed for any one defect and not more than 10%, by count, shall fail to meet the total requirements prescribed in this Section.

**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1).

**R3-4-719. Okra Standards****A. Definition.**

"Serious damage" means damage caused by disease, decay, insects, woodiness, stringiness, or any condition which would cause a loss of 10% or more to an individual pod.

- B. Okra, when being packed or offered for sale, shall be free from serious damage.
- C. Not more than 10% of the pods in a lot shall fail to meet the requirements prescribed in this Section.

**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1).

**R3-4-720. Dry Onion Standards****A. Definitions.**

1. "Mature" means that the onion is fairly well cured and at least fairly firm.
2. "Serious damage" means damage caused by:
  - a. Insect injury that has penetrated or affected the appearance or the edible portion of the onion;
  - b. Mold and decay;
  - c. Wet or dry sunscald, when affecting 1/3 of the total surface area;
  - d. Seedstems, when more than 1/2 inch in diameter;
  - e. Sprouting, when any visible sprout is more than 1 inch in length;
  - f. Staining, dirt, or other foreign material, when the onions in any lot are affected in appearance of 25% or more of the total surface;
  - g. Mechanical injury, when cuts seriously damage the appearance or edible portion of the onion;
3. "Similar varietal characteristics" means that the onions in any container are similar in color, shape, and character of growth.

- B. Dry onions shall be of similar varietal characteristics, mature, and free from serious damage.
- C. Not more than 5%, by weight, of the onions in any lot shall be allowed decay or wet sunscald and not more than 20%, by weight, shall fail to meet the total requirements prescribed in this Section.

**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1).

**R3-4-721. Pea Standards****A. Definition.**

"Serious damage" includes damage caused by disease, mold, decay, freezing, dirt, insects, or from mechanical injury.

- B. Peas, when being packed fresh or sold shall be mature but not over-mature and shall be fairly well filled, fresh, firm, and free from serious damage.
- C. Not more than 10%, by weight, of any lot shall fail to meet the requirements prescribed in this Section.

**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1).

**R3-4-722. Peach Standards****A. Definitions.**

1. "Badly misshapen" means that the shape of the fruit deviates from the shape characteristics of the variety or is otherwise deformed to the extent that it affects its appearance.
2. "Mature" means that the peach has reached a stage of growth, which will ensure a proper completion of the ripening process.
3. "Serious damage" includes damage caused by cuts which are not healed, worms, worm holes, bruises, dirt, or other foreign material, bacterial spots, scab, scale, growth cracks, hail damage, leaf or limb rubs, split pits, other disease, insects, mechanical injury.

- B. Peaches shall be of one variety, which are mature but are not soft or overripe, not badly misshapen, and which are free from decay and free from serious damage.
- C. Not more than 5%, by count, of the peaches in any container or lot shall be allowed for any one defect and not more than 10%, by count, shall fail to meet the total requirements prescribed in this Section.

**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1).

**R3-4-723. Pear Standards****A. Definitions.**

1. "Serious damage" includes damage caused by internal breakdown, scald, freezing damage, worm holes, black end, hard end, broken skins, bruises, russetting limb rubs, hail, scars, drought spots, sunburn, sprayburn, stings or other insect damage, disease, mechanical injury.
2. "Seriously misshapen" means that the pear is excessively flattened or elongated for the variety.

- B. Pears shall be of one variety, which are mature but not over-ripe, clean, not seriously misshapen, free from decay, and free from serious damage.
- C. Not more than 5%, by count, of the pears in any container or lot shall be allowed for any one defect and not more than 10%, by count, shall fail to meet the total requirements prescribed in this Section.

**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1).

**R3-4-724. Sweet Pepper Standards****A. Definitions.**

1. "Firm" means that the pepper is not soft, shriveled, limp, or pliable, although it may yield to slight pressure.
2. "Mature green" means that the pepper has reached the stage of development that withstands normal handling and shipping.
3. "Not seriously misshapen" means that the pepper is not badly indented, crooked, constricted, or otherwise badly deformed.
4. "Serious damage" means damage caused by freezing injury, hail, scars, sunburn, disease, insects, mechanical injury, or any one of the following defects or combination of defects, the seriousness of which exceeds the maximum for any one defect:
  - a. Sunscald;
  - b. Any opening or puncture through the fleshy wall of the pepper;
  - c. Scars means evidence of scarring scattered over an aggregate surface area exceeding a circle 1 inch in diameter, or one scar 3/4 inch in diameter on a pep-



per 2 1/2 inches in length and 2 1/2 inches in diameter;

- d. Sunburn means discoloration which affects an aggregate area exceeding 25% of the surface of the pepper;
  - e. Bacterial spot means evidence of bacteria over an aggregate area exceeding a circle 1 inch in diameter on a pepper 2 1/2 inches in length and 2 1/2 inches in diameter.
5. "Similar varietal characteristics" means each pepper shall be of the same general type. Thin- and thick-walled types shall not be mixed.
- B.** Sweet peppers, when being packed or offered for sale, shall be of the same varietal characteristics which are mature green, firm, not seriously misshapen, free from sunscald and decay, and free from serious damage.
- C.** Any lot of peppers which meets all the requirements prescribed in this Section, except those relating to color, shall be designated as "Red" if at least 90% of the peppers show any amount of a shade or red color; or as "Mixed Color" if the peppers fail to meet the requirements of "Green" or "Red."
- D.** Not more than 5%, by count, of the peppers in any container or lot shall be allowed for sunscald; not more than 2%, by count, shall be allowed for decay; and not more than 10%, by count, shall fail to meet the total requirements in this Section.

#### Historical Note

Adopted effective January 6, 1994 (Supp. 94-1).

#### R3-4-725. Fresh Plum and Prune Standards

- A.** Definitions:
- 1. "Badly misshapen" means that shape of the fruit deviates from the shape characteristics of the variety or is otherwise so malformed or rough that it affects its appearance. Doubles shall be considered badly misshapen.
  - 2. "Serious damage" includes damage caused by broken skins, heat damage, growth cracks, sunburn split pits, hail marks, drought spots, gum spots, russeting scars, other disease, insects, mechanical injury.
- B.** Fresh plums or prunes shall be of one variety which are not badly misshapen, which are clean, mature but not overripe or soft or shriveled, which are free from decay or sunscald, and free from serious damage.
- C.** Not more than 5%, by count, of the fruit in any one container or lot shall be allowed for any one defect and not more than 10%, by count, shall fail to meet the total requirements prescribed in this Section.

#### Historical Note

Adopted effective January 6, 1994 (Supp. 94-1).

#### R3-4-726. Potato Standards

- A.** Definitions:
- 1. "Badly skinned" means that more than 50% of the skin of the individual potato is missing or feathered.
  - 2. "Serious damage" means damage caused by dirt or other foreign matter, sunburn, greening, second growth, growth cracks, air cracks, hollow heart, internal discoloration, shriveling, scab, dry rot, rhizoctonia, insect, larvae, worms, other diseases, mechanical injury, or any external defect which cannot be removed without a loss of more than 10% of the total weight of the potato.
  - 3. "Seriously misshapen" means that the potato is pointed, dumbbell-shaped, or otherwise deformed.
- B.** All potatoes when being packed or sold shall conform to the following standards:
- 1. Potatoes shall be of the same varietal characteristics and shall not be seriously misshapen or frozen;

- 2. Unless otherwise specified, the diameter of each potato shall be not less than 1 1/2 inches and not more than an average of 3% of the potatoes in any one container or lot. Not more than 6% of the potatoes in any one container or lot shall fail to meet such specified minimum size requirements, except that potatoes sold or offered for sale as U.S. No. 1 shall have a diameter of not less than 1 7/8 inches, unless otherwise specified on the container thereof;
  - 3. Potatoes shall be free from black heart, late blight, southern bacterial wilt, ringrot, softrot, or wet breakdown;
  - 4. Potatoes shall be free from serious damage.
- C.** Not more than 30% of the potatoes in any one container or lot may be badly skinned.
- D.** Not more than a total of 12%, by weight, of the potatoes in any one container or bulk lot shall fail to meet the standards prescribed in this Section; provided that the following percentages shall be allowed for the following defects:
- 1. Not more than 6% for potatoes having external defects;
  - 2. Not more than 6% for potatoes which are seriously damaged by hollow heart, internal discoloration, or other internal defects; provided that not more than 3% of the external and internal defects shall be allowed for potatoes which are frozen or affected by southern bacterial wilt, ringrot, or late blight;
  - 3. Not more than 3% shall be allowed for potatoes affected by soft rot or wet breakdown;

#### Historical Note

Adopted effective January 6, 1994 (Supp. 94-1).

#### R3-4-727. Romaine Standards

- A.** Definitions:
- 1. "Serious damage" includes damage caused by decay; seedstems; broken, bruised, or discolored leaves; tipburn; wilting; foreign material; freezing; dirt; insects; mechanical injury.
  - 2. "Well developed" means that the plant shows normal growth and shape.
  - 3. "Well trimmed" means that the stem is trimmed close to the point of the outer leaves.
- B.** Romaine, when being packed or offered for sale, shall consist of plants of the same varietal characteristics which are fresh, well developed, well trimmed, and free from serious damage.
- C.** Seedstems shall be considered as serious damage when the length of the attached seedstem is more than 1/2 the overall plant length, or when any portion of the seedstem has been removed.
- D.** Not more than 5% of the plants in any one container or lot shall be allowed for decay and not more than 10% shall fail to meet the total requirements prescribed in this Section.

#### Historical Note

Adopted effective January 6, 1994 (Supp. 94-1).

#### R3-4-728. Spinach Standards

- A.** Definition.
- "Serious damage" means damage caused by insects, disease, tip burn, frost injury, or any condition which would cause a loss of 20% or more of the leaves during preparation for use.
- B.** Spinach, when being packed or offered for sale, shall be free from serious damage.
- C.** Not more than 5% of the spinach in any one lot shall be allowed for decay and not more than 10% shall fail to meet the total requirements prescribed in this Section.

#### Historical Note

Adopted effective January 6, 1994 (Supp. 94-1).

**R3-4-729. Strawberry Standards****A. Definitions.**

1. "Mature" means any strawberry which has not less than 2/3 of the surface showing a characteristic reddish color.
2. "Serious damage" includes damage caused by rain, irrigation, sun, bruising, disease, insects.

**B.** Strawberries shall be mature but not overripe and not noticeably undeveloped or deformed; shall have the cap (calyx) attached, and shall be free from cuts, molds, decay, and serious damage.

**C.** Strawberries, when being packed or offered for sale, shall be contained in the dry pint basket containing an interior capacity of approximately 33 6/10 cubic inches.

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

**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1).

**R3-4-730. String Bean Standards****A. Definition.**

"Serious damage" means damage caused by freezing, hail, dirt, disease or insect injury, rust, anthracnose, mold, mildew, decay or from mechanical injury, or any condition to an individual pod which would cause a loss of 10% or more to any one bean.

**B.** String beans, when being packed or offered for sale, shall be mature, free-snapping but not overmature, and shall be free from serious damage.

**C.** Not more than 10% of the beans in a lot shall fail to meet the requirements prescribed in this Section.

**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1).

**R3-4-731. Summer Squash Standards****A. Definition.**

"Serious damage" includes damage caused by freezing, discoloration, cuts, bruises, scars, dirt or other foreign material, disease, insects, mechanical damage.

**B.** Summer squash shall consist of one variety or similar varietal characteristics which are not old and tough but are firm, free from decay and breakdown, and free from serious damage.

**C.** Not more than 5%, by weight, of the squash in any container or lot shall be allowed for decay or breakdown and not more than 10%, by weight, shall fail to meet the total requirements prescribed in this Section.

**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1).

**R3-4-732. Sweet Potato Standards****A. Definition.**

"Serious damage" means damage caused by insect injury, bruises, growth cracks, freezing, grass roots, or any condition which would cause a waste of 10%, by weight, to a potato.

**B.** Sweet potatoes shall be free from mold, decay, soft and wet rot, and free from serious damage.

**C.** When packed in lugs, boxes of sacks, sweet potatoes shall be fairly uniform in size.

**D.** Not more than 5%, by weight, of sweet potatoes in a container or bulk lot shall be allowed for decay and not more than 20%, by weight, shall fail to meet the total requirements prescribed in this Section.

**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1).

**R3-4-733. Table Grape Standards****A. Definitions.**

1. "Mature" shall be applied when the following conditions exist in each bunch of grapes tested:

a. The juice of all varieties contains soluble solids equal to, or in excess of, 18 parts to every part of acid contained in the juice (the acidity of the juice to be calculated as tartaric acid without water of crystallization);

b. Perlettes; at least 15% soluble solids;

c. Black Beauty Seedless; at least 15% soluble solids;

d. Thompson Seedless and Flame Seedless varieties; at least 16% soluble solids;

e. Exotic variety; at least 14% soluble solids.

2. "Serious damage" means more than 5%, by count, of the berries on any one bunch are affected by one or more of the defects set forth in subsection (A)(3).

3. "Serious defects" means:

a. "Decay" means any soft breakdown of the flesh or skin of the berry resulting from bacterial or fungus infection. Slight surface development of green mold (cladosporium) shall not be considered decay.

b. "Mildew and insect damage" includes the penetration or damage of the flesh of the berry, mold, decay, raisined berries, sunburned or dried berries, water or red berries, mechanical injury.

c. "Raisined berries" means berries which are fully cured resembling raisins and which do not contain sufficient juice to drop from the berry under ordinary pressure between the thumb and finger.

d. "Red berry" means a condition closely resembling waterberry. Such grapes show a red or brownish red color in addition to the general characteristics of waterberry.

e. "Sunburned or dried berries" means grapes which show complete drying out, from any cause, of part or all of any individual berries.

f. "Waterberry" means a condition characterized by a watery, soft, or flabby condition of the berries. Such affected berries are low in sugar content, have tender skins, and are very easily crushed.

g. "Wet" means that the grapes are wet from moisture due to crushed, leaking, or decayed berries or from rain. Grapes which are moist from dew or other moisture condensation such as that resulting from removing grapes from a refrigerator car or cold storage to a warmer location shall not be considered as wet.

**B.** Table grapes shall consist of bunches of grapes which are mature and free from serious damage due to serious defects.

**C.** Not more than 10%, by weight, of the bunches in any one container or bulk lot shall fail to meet the requirements prescribed in this Section.

**D.** In all varieties, the testing of soluble solids in the juice shall be determined by the hand refractometer.

**E.** The maturity of varieties, prescribed in subsection (A)(1), shall be determined by testing the juice of entire bunches after removing the bunches from a standard 22-pound container; or 10%, by weight, of the least mature grapes in appearance from a contiguous area in the container in any other container.

**F.** No lot of grapes shall be considered as failing to meet the maturity requirements if the sample of grapes from one container fails to meet the required percent of soluble solids for that variety.

**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1).

**R3-4-734. Tomato Standards**

- A.** Definition.  
“Serious damage” means damage caused by blossom end rot, mosaic, alkali spot, sunscald, bruises, catfaced, blossom end scars, and growth cracks.
- B.** Tomatoes shall be mature but not overripe and shall be free from insect injury which has penetrated or materially damaged the flesh, wet or soft rot, blight, freezing injury, and from serious damage.
- C.** Tomatoes when being packed or sold shall be virtually uniform in size.
- D.** Not more than 5% of tomatoes in any container or lot shall be allowed for any one cause and not more than 10% shall fail to meet the total requirements prescribed in this Section.

**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1).

**R3-4-735. Winter Squash Standards**

- A.** Definition.  
“Serious damage” means damage caused by soft rot or wet breakdown, freezing, dirt, diseases, insects, mechanical damage, and also includes:
- Scars caused by rodents or other means, which are not well healed or corked over, or which cover more than 25% of the surface of the squash in the aggregate area;
  - Dry rot which affects an area of more than 2 inches in diameter in the aggregate area on a 10-pound squash or an equivalent amount on a smaller or larger squash.
- B.** Winter squash shall be of similar varietal characteristics which are fairly well mature, not broken or cracked, and are free from serious damage.
- C.** Not more than 5%, by weight, of a squash in any lot shall be allowed for soft rot or wet breakdown and not more than 10%, by weight, shall fail to meet the total requirements prescribed in this Section.

**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1).

**R3-4-736. Standards for Unlisted Fresh Fruits and Vegetables, Experimental Product Standards**

- A.** The following standards shall apply for those fresh fruit and vegetables for which specific quality standards are not otherwise established in this Article.
- B.** At least 90% by weight or by count of all fresh fruit or vegetables packed or offered for sale shall be free from insect injury which has penetrated or damaged the edible portion of the product and shall be free from worms, mold, decay, or other serious defects which damage the appearance or the shipping quality of the commodity as determined by an inspection of a representative sample prescribed in R3-4-738.
- C.** All experimental products shall be subject to the standards for unlisted fresh fruit and vegetables prescribed in this Section and the requirements for labeling containers prescribed in R3-4-737.

**Historical Note**

Section R3-4-736 renumbered from R3-7-705 and amended effective January 6, 1994 (Supp. 94-1).

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

- A.** All containers shall bear in plain sight and plain letters on one outside panel the following:
- Shipper or customer identification:
    - The name of the shipper; and
    - The city, state, and zip code of the shipper; or
    - The name, address, and logo of the customer; and
    - The shipper’s identifying code.

- The common or generic name of the commodity in each container; and
  - The count, measure, or net weight of the commodity contained in each container, except for bulk containers.
- B.** A container shall not bear any false or misleading statement.
- C.** If a shipper or customer reuses a container bearing the name of a different shipper or customer, the shipper or customer shall remove or obliterate all markings or labels from the container before commercial reuse.
- D.** Fruit and vegetables for processing.
- If a pallet or container is clearly marked “FOR PROCESSING ONLY,” the information in subsection (A) is not required if the pallet or container is used to transport fruit or vegetables to a processing plant.
  - Fruit or vegetables transported to a processing plant may be packed on a pallet or in a container bearing a label for a commodity other than the commodity within the container.

**Historical Note**

Section R3-4-737 renumbered from R3-7-706 and amended effective January 6, 1994 (Supp. 94-1).  
Amended by final rulemaking at 5 A.A.R. 569, effective February 3, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 143, effective December 8, 1999 (Supp. 99-4).

**R3-4-738. Inspection and Representative Sampling for Fruit and Vegetables**

- A.** An inspector shall conduct a preliminary inspection of each commodity which includes a visual and physical inspection of specimens of the commodity. When determining compliance of a field packing operation, the inspector shall select specimens from widely separated areas of the packing operation. When determining compliance in a packing shed, warehouse, fruit stand, retail store, or other business which sells fruit or vegetables, containers shall be selected at random from widely separated parts of the lot. If one-half of the containers or specimens in the containers of the lot or field packing operation comply with the requirements of this Article and the other half of the containers or specimens in the containers of the lot or field packing operation do not, an equal number of containers or specimens in the containers shall be examined from each half.
- B.** If, after the preliminary inspection, the inspector determines that the quality of the product meets or exceeds the requirements of this Article, the inspector need not complete a comprehensive inspection. If, after the preliminary inspection, there is a failure to comply with the requirements of this Article, the inspector shall conduct a comprehensive inspection.
- C.** For a comprehensive inspection of a field packing operation, all specimens in each container of the official sample shall be examined by an inspector. For a comprehensive inspection of a wholesale warehouse, fruit stand, retail store, or any other business dealing with the sale of fruit or vegetables, an inspector may examine all specimens in each container of the official sample. The official sample of the lot shall consist of an inspection of no less than two containers for the first 100 containers of the lot and one container for every 100 containers thereafter. For example:

No. of Containers	Containers Sampled
2-100	2
101-200	3
201-300	4
301-400	5
401-500	6

- D.** In a comprehensive inspection of a wholesale warehouse, fruit stand, retail store, or any other business dealing with the sale

of fruit or vegetables, an inspector need only examine a portion of the specimens in each container of the official sample. The official sample of the lot shall consist of an inspection of no less than the following:

No. of Containers	Containers Sampled
less than 10	2
10-30	3
31-50	4
51-100	5
101-200	6
201-300	8
301-500	10

- E. If only a portion of the specimens in each container of the official sample is examined during a comprehensive inspection in lots in excess of 500 containers, the official sample shall consist of the number of containers equal to at least 1/2 the square root of the total number of containers in the lot. For example:

No. of Containers	Containers Sampled
501-600	12
601-700	13
701-800	14
801-900	15
901-1000	16

- F. Except for apples and head lettuce, individual containers in any lot may contain up to double the amount of serious damage and other requirements prescribed for that commodity as long as the percentage of all requirements in the entire lot averages within the percent allowable as determined by inspection of a representative sample.

#### Historical Note

Adopted effective January 6, 1994 (Supp. 94-1).

#### R3-4-739. Reconditioning for Fruit and Vegetables

- A. Any lot or part of a lot in a grower and shipper packing facility which is found to be in violation of Article 7 of these rules shall be reconditioned within 72 hours. If the lot or part of the lot is not brought into compliance within the established time limit, an inspector shall proceed with the provisions prescribed in A.R.S. § 3-486.
- B. Any lot or part of a lot in a wholesale warehouse, fruit stand, retail store, or any other business dealing in the sale of fruit and vegetables which is found to be in violation of Article 7 of these rules shall be reconditioned within 48 hours. If the lot or part of the lot is not brought into compliance within the established time limit, an inspector shall proceed with the provisions, as prescribed in A.R.S. § 3-486.
- C. The supervisor or the supervisor's designee may grant a time extension for reconditioning the lot or part of the lot if the owner or holder of the lot or part of the lot which fails to comply with this Article requests an extension in writing with a specific date and time the lot or part of the lot will be reconditioned. The written request for the time extension for reconditioning may be delivered to the supervisor or the supervisor's designee in person, by mail or by facsimile. If the lot or part of the lot is not brought into compliance with this Article within the established time limit, an inspector shall proceed with the provisions prescribed in A.R.S. § 3-486.

#### Historical Note

Adopted effective January 6, 1994 (Supp. 94-1).

#### R3-4-740. Experimental Pack and Product Permits for Fruit and Vegetables

- A. An applicant for a permit for the use of an "experimental pack" or "experimental product," under A.R.S. § 3-487(B)(3), shall provide the following information on a form furnished by the Department:

1. The applicant's name, company name, address, and telephone number;
  2. The name and description of the product packed in the container;
  3. The description of the arrangement of the product packed in the container; and
  4. The period for use of the experimental pack or product.
- B. The shipper or packer shall make the experimental product conform to the standards for unlisted fresh fruit and vegetables prescribed in R3-4-736.
- C. Upon completion of permit requirements by the applicant, the supervisor shall grant a permit that is valid for one year from the date of issuance.
- D. An applicant may request renewal of an experimental pack or product permit. The Department shall not grant a renewal permit for the same experimental pack or product for more than three consecutive years, unless the rulemaking process prescribed under A.R.S. § 3-497, to standardize the experimental pack or product is initiated.

#### Historical Note

Section R3-4-740 renumbered from R3-4-708 and amended effective January 6, 1994 (Supp. 94-1).  
Amended by final rulemaking at 8 A.A.R. 4454, effective October 2, 2002 (Supp. 02-4).

#### R3-4-741. Inspection Fee

- A. Pursuant to A.R.S. § 3-489, any unlicensed person requesting inspection of citrus, fruit, vegetables, or nuts shall be charged travel expenses and an hourly fee of \$30.00, as prescribed in A.R.S. § 38-621 et seq.
- B. All fees are non-refundable and shall be paid to the Citrus, Fruit and Vegetable Revolving Fund upon completion of the inspection, as prescribed in A.R.S. § 3-489(B).

#### Historical Note

Adopted effective January 6, 1994 (Supp. 94-1).

#### R3-4-742. Recordkeeping and Reporting Requirements for Fruit and Vegetable Commission Merchants

- A. Every commission merchant shall keep a correct record of each consignment of farm products received for sale, showing:
1. The name and address of the consignor;
  2. The date of the consignment received;
  3. The condition and quantity of produce upon arrival;
  4. The date of the sale;
  5. The price for which sold;
  6. An itemized statement of charges to be paid by the consignor;
  7. The names and addresses of purchasers if the commission merchant has a financial interest in the business of the purchasers, or if the purchasers have a financial interest in the business of the commission merchant, either directly or indirectly, as holder of the other's corporate stock, as partner, as lender or borrower of money to or from the other, or otherwise;
  8. The lot number or other identifying mark of each consignment, which shall appear on all records necessary to show what the produce actually sold for;
  9. All claims filed by the commission merchant against any person for overcharges or for damages resulting from the injury of the person.
- B. The commission merchant shall retain the original or a copy of records covering each sale or transaction with respect to farm products for a period of one year from the date thereof, which shall at all times be open to the confidential inspection of the supervisor or the consignor or the authorized representative of either. The burden of proof shall be upon the commission mer-

chant to prove the correctness of the commission merchant's accounting of any transaction which may be questioned.

- C. Unless otherwise agreed to in writing, remittance in full of the amount realized from any sale, including collections, overcharges, and damages, less the agreed commission and other charges, accompanied by a complete statement of the transaction, shall be made to the consignor within 10 days after receipt of the money by the commission merchant.

#### Historical Note

Adopted effective January 6, 1994 (Supp. 94-1).

#### R3-4-743. Recordkeeping and Reporting Requirements for Fruit and Vegetable Shippers

- A. Every shipper shall keep a correct record of each shipment of each assessed commodity shipped, showing:
1. The name and address of each producer;
  2. The shipment totals, by producer.
- B. The shipper shall retain the original or a copy of records covering each shipment or transaction with respect to each assessed commodity shipped for a period of two years from the date thereof, which shall at all times be open to the confidential inspection of the supervisor or the authorized representative. The burden of proof shall be upon the shipper to prove the correctness of the shipper's accounting of any transaction which may be questioned.

#### Historical Note

Adopted effective January 6, 1994 (Supp. 94-1).

### ARTICLE 8. CITRUS FRUIT STANDARDIZATION

#### R3-4-801. Orange and Grapefruit Standards

- A. Oranges are mature if, at the time of picking and at all times thereafter, the following conditions occur:
1. The juice contains soluble solids, as determined by a Brix Scale Hydrometer, of not less than eight parts to every part of acid contained in the juice, except in the case of Bloods, tangerines, tangelos, and mandarins. The acidity of the juice shall be calculated as citric acid without water or crystallization.
  2. Not less than 90% of the oranges, by count, have attained a minimum characteristic yellow or orange color on at least 2/3 of the fruit surface, as indicated by Color Plate Number 20-L3 in A. Maerz and M. Rea Paul Dictionary of Color, first edition, published 1930, except in the case of Valencia oranges that have turned greenish after having reached the soluble solids requirement. This color standard is incorporated herein by reference and does not include any later amendments or editions of the incorporated matter and is on file with the Office of the Secretary of State and may also be examined in the Fruit and Vegetable Standardization Office, Arizona Department of Agriculture, 1688 West Adams, Phoenix, Arizona, 85007; or in the Fruit and Vegetable Division, AMS, U.S. Department of Agriculture, South Building, Washington, D.C. 20250.
- B. Navels, at the time of sale, shall have not less than 90%, by count, a minimum characteristic yellow or orange color on at least 2/3 of the fruit surface.
- C. Grapefruit are mature if, at the time of picking and at all times thereafter, the following conditions occur:
1. The juice contains soluble solids, as determined by a Brix Scale Hydrometer, of not less than six parts to every part of acid contained in the juice. The acidity of the juice shall be calculated as citric acid without water or crystallization.
  2. Not less than 90% of the grapefruit, by count, have attained a minimum characteristic yellow or grape-

fruit color on at least 2/3 of the fruit surface as indicated by Color Plate Number 19-L3 in A. Maerz and M. Rea Paul Dictionary of Color, first edition, published 1930. This color standard is incorporated herein by reference and does not include any later amendments or editions of the incorporated matter and is on file with the Office of the Secretary of State and may also be examined in the Fruit and Vegetable Standardization Office, Arizona Department of Agriculture, 1688 West Adams, Phoenix, Arizona, 85007; or in the Fruit and Vegetable Division, AMS, U.S. Department of Agriculture, South Building, Washington, D.C. 20250.

#### Historical Note

Section R3-4-801 renumbered from R3-7-201 (Supp. 91-4). Section repealed, new Section adopted effective January 6, 1994 (Supp. 94-1).

#### R3-4-802. Lemon Standards

Lemons are mature when they have a juice content of 30% or more by volume, except that lemons packed for export to foreign markets other than Canada shall not be required to meet this standard.

#### Historical Note

Former Rule 1. Section R3-4-802 renumbered from R3-7-202 (Supp. 91-4). Section R3-4-802 repealed, new Section R3-4-802 renumbered from R3-4-806 and heading amended effective January 6, 1994 (Supp. 94-1).

#### R3-4-803. Lime Standards

Limes are mature and free from serious damage, except freezing or drying, if, at the time of picking and all times thereafter, the following conditions occur:

1. Damage is serious if 20% or more of the pulp shows staining, drying, desiccation, or a mushy condition.
2. Damage by freezing or drying is very serious if 40% or more of the pulp shows evidence of drying, desiccation, or a mushy condition.
3. Not more than 10%, by count, of the limes in any container or bulk lot may fail to meet the serious damage requirements prescribed in this Section. Not more than 5% shall be allowed for any one cause.
4. Not more than 15%, by count, of the limes in any container or bulk lot may fail to meet the serious damage requirements because of freezing or drying. Not more than 5% of this tolerance shall be allowed for very serious freezing or drying damage. Evidence of freezing or drying damage shall be determined by making as many cuts of each individual lime as are necessary.

#### Historical Note

Former Rule 2. Amended effective January 10, 1977 (Supp. 77-1). Amended effective November 3, 1983 (Supp. 83-6). Section R3-4-803 renumbered from R3-7-203 (Supp. 91-4). Former Section R3-4-803 renumbered to R3-4-809, new Section R3-4-803 adopted effective January 6, 1994 (Supp. 94-1).

#### R3-4-804. Tangerine, Tangelo, and Mandarin Standards

- A. Definitions.
1. "Diameter" means the greatest dimension measured at a right angle to a straight line from the stem to the blossom end of the fruit.
  2. "Tangerines, tangelos, or mandarins" means all varieties and hybrids of the mandarin group *citrus reticulata*.
  3. "Serious damage" means damage caused by freezing or drying due to any condition if 20% or more of the pulp or edible portion of the fruit shows evidence of drying, des-

iccation, or a mushy condition. Evidence of damage shall be determined by as many cuts of each individual fruit as are necessary.

- B. Tangerines, tangelos, and mandarins shall be:
  1. Well colored; and
  2. Free from serious damage by freezing or drying due to any cause; and
  3. Free from decay.
- C. Tangerines, tangelos, or mandarins are mature if, at the time of picking and at all times thereafter, not less than 90%, by count, of the tangerine type fruit have attained a minimum characteristic yellow or light green color on at least 2/3 of the fruit surface, as indicated by Color Plate Number 19-L3 in A. Maerz and M. Rea Paul Dictionary of Color, first edition, published 1930. This color standard is incorporated herein by reference and does not include any later amendments or editions of the incorporated matter and is on file with the Office of the Secretary of State and may also be examined in the Fruit and Vegetable Standardization Office, Arizona Department of Agriculture, 1688 West Adams, Phoenix, Arizona, 85007; or in the Fruit and Vegetable Division, AMS, U.S. Department of Agriculture, South Building, Washington, D.C. 20250.
- D. Tangerines, tangelos, or mandarins shall meet the requirements prescribed in this Section if, at the time of sale, are well colored if 90%, by count, of the fruit in any lot show the yellow, orange, or red color of 75% or more of the surface of the fruit, and the fruit is free from serious damage.
- E. Not more than 10%, by count, of the tangerines, tangelos, or mandarins in any one container or bulk lot may fail to meet the requirements, as prescribed in this Section, because of damage by freezing or drying due to any cause.
- F. Not more than 5%, by count, of the tangerines, tangelos or mandarins in any one container or bulk lot may fail to meet the requirements prescribed in this Section because of serious decay.

#### Historical Note

Former Rule 3. Section R3-4-804 renumbered from R3-7-204 (Supp. 91-4). Former Section R3-4-804 renumbered to R3-4-807, new Section R3-4-804 adopted effective January 6, 1994 (Supp. 94-1).

#### R3-4-805. Serious Defects in Citrus Fruit

- A. A defect is serious in citrus fruit, other than grapefruit, if the following conditions occur:
    1. Any part of the fruit is affected with decay;
    2. Damage by freezing or drying, if 20% or more of the pulp or edible portion of the fruit shows evidence of drying or a mushy condition or, in a lemon, of staining (except membranous stain). Evidence of damage shall be determined by making as many cuts on each fruit as may be necessary;
    3. Injury, from any cause, if the skin (rind) is broken and the injury is not healed;
    4. Scars, including those caused by insects, if they are dark, rough, or deep, and if an aggregate area of 25% or more of the fruit surface is affected;
    5. Scale, if 50% or more of the fruit surface shows scale infestation in excess of 50 scales per square inch;
    6. Dirt, smudge stain, sooty mold, rot residues, or other foreign material, if an aggregate area of 25% or more of the fruit surface is affected;
    7. Staining, if 50% or more of the fruit surface is affected with a pronounced discoloration;
    8. Greenish or brownish rind oil spots (oleocellosis), if an aggregate area of 25% or more of the fruit surface is affected;
  - 9. Spotting or pitting, if the spots or pits are sunken and an aggregate area of 10% or more of the fruit surface is affected;
  - 10. Sunburn in oranges, if it causes flattening of the fruit, or drying or discoloration of the skin (rind), or if it affects more than 1/3 of the fruit surface;
  - 11. Sunburn in lemons, if 25% or more of the pulp or edible portion of the fruit shows evidence of drying, staining (except membranous stain), or a mushy condition. Evidence of damage shall be determined by making as many cuts on each lemon as may be necessary;
  - 12. Aging, if 1/3 or more of the fruit surface is dried and hard;
  - 13. Roughness in oranges, if 90% or more of the fruit surface is rough, coarse, or lumpy;
  - 14. Softness in oranges, if the fruit is flabby, or if the orange is spongy and puffy over 90% or more of the fruit surface;
  - 15. Water spot in oranges, if the affected skin (rind) is soft or not healed;
  - 16. Protruding or enlarged navel end in oranges, if the navel end protrudes beyond the general contour of the orange to such extent, or the navel opening is so wide considering the size of the orange, or the navel growth is so folded or ridged, that it detracts from the appearance of the orange;
  - 17. Damage to a lemon by internal decline, from any cause, if 20% or more of the pulp or edible portion shows evidence of drying, staining (except membranous stain), or a mushy condition, or if the core shows gumming for its entire length. Evidence of damage shall be determined by making as many cuts on each lemon as may be necessary;
  - 18. Peteca in lemons, if the spots or pits are sunken and an aggregate area of 10% or more of the fruit surface is affected;
  - 19. Deformities in lemons, if 50% or more of the individual fruit is excessively misshapen, ridgy, or lumpy; or
  - 20. Red blotch in lemons, if an aggregate area of 10% or more of the fruit surface is affected.
- B. A defect is serious in grapefruit if the following conditions for serious damage, as referenced in the United States Standards for Grades of Grapefruit (California and Arizona), effective December 27, 1999, occur:
1. Dryness or mushy condition, if it affects all segments for more than half of an inch at the stem end, or the equivalent of this amount by volume when it occurs in other portions of the fruit;
  2. Sprayburn, if it changes the color to such an extent that the appearance of the fruit is seriously injured, or if it causes scarring that affects an aggregate area of more than 10% of the fruit surface;
  3. Fumigation injury, if it causes small, thinly scattered spots over more than half of the fruit surface, or solid scarring or depressions that affect an aggregate area of more than 5% of the fruit surface;
  4. Exanthema that occurs as small, thinly scattered spots over more than half of the fruit surface, or solid scarring that is not cracked, that affects an aggregate area of more than 5% of the fruit surface;
  5. Scars that are very deep, or scars that are very rough or very hard if an aggregate area of more than one inch in diameter is affected;
  6. Scars that are dark, rough, or deep, if an aggregate area of more than 5% of the fruit surface is affected;
  7. Scars that are fairly light in color, slightly rough, or of slight depth, if an aggregate area of more than 15% of the fruit surface is affected;

8. Scars that are light colored, fairly smooth, with no depth, if an aggregate area of more than 25% of the fruit surface is affected;
9. Green spots, oil spots (oleocellosis), or other similar injuries that are soft, or that affect an aggregate area of more than 10% of the fruit surface;
10. Scale, if California red or purple scale is concentrated in a ring or blotch, or if it is more than thinly scattered over the fruit surface, or if the scale affects the appearance of the fruit to a greater extent;
11. Sunburn, if it causes flattening of the fruit, or drying or dark discoloration of the skin (rind), or if it affects more than 1/3 of the fruit surface;
12. Skin breakdown, if it exceeds a circle 5/8 of an inch in diameter;
13. Bruising, if segment walls are collapsed, or the albedo and juice sacs are ruptured;
14. Any part of the fruit is affected with decay;
15. Injury, from any cause, if the skin (rind) is broken and the injury is not healed;
16. Dirt, smudge stain, sooty mold, rot residues, or other foreign material, if an aggregate area of 25% or more of the fruit surface is affected; or
17. Any injury, by any means, if it seriously affects the appearance, or the edible or shipping quality of the fruit.

#### Historical Note

Former Rule 4. Section R3-4-805 renumbered from R3-7-205 (Supp. 91-4). Section repealed, new Section adopted effective January 6, 1994 (Supp. 94-1). Amended by final rulemaking at 7 A.A.R. 5342, effective November 8, 2001 (Supp. 01-4).

#### R3-4-806. Tolerance for Serious Defects

- A. Except as to the requirements relating to maturity and freezing or drying, as set forth in this Article, the following shall apply:
  1. Not more than 10%, by count, of the oranges or grapefruit in any one container or bulk lot may be below the serious defect requirements, as prescribed in R3-4-805, and not more than 5% shall be allowed for any one cause.
  2. Not more than 10%, by count, of the oranges or grapefruit in any one container or bulk lot may be seriously damaged by freezing or drying from any cause as shown by representative samples as set forth in R3-4-812.
  3. When serious damage by freezing or drying from any cause is present, the combined tolerance for all defects shall not exceed 15%.
- B. Except as to the requirements relating to freezing as set forth in R3-4-807, and internal decline, sunburn, or drying as set forth in R3-4-805, the following shall apply:
  1. Not more than 10%, by count, of the lemons in any one container or bulk lot may be below the maturity requirements as set forth in R3-4-802 and the serious defect requirements as set forth in R3-4-805, and not more than 5% shall be allowed for any one cause.
  2. Not more than 10%, by count, of the lemons in any one container or bulk lot may be seriously damaged by freezing, internal decline, sunburn, or drying from any cause as shown by representative samples as set forth in R3-4-812.
  3. When serious damage by freezing, internal decline, sunburn, or drying from any cause is present, the combined tolerance of all defects shall not exceed 10%.

#### Historical Note

Former Rule 5. Section R3-4-806 renumbered from R3-7-206 (Supp. 91-4). Former Section R3-4-806 renum-

bered to R3-4-802, new Section R3-4-806 adopted effective January 6, 1994 (Supp. 94-1).

#### R3-4-807. Freezing Damage

Freezing damage is serious when:

1. Surface membranes show a water-soaked appearance or evidence of previous water soaking; or
2. The presence of crystals or crystalline deposits on the two surface membranes on each side of the two or more segments, as shown upon separation of the segments from one another. The section shall not be less than one inch or more than 1 1/2 inches in thickness of the central portion of the fruit obtained by cutting off a portion of each end. The evidence of freezing injury shall show the entire length, but not necessarily the entire area of the surface membrane.

#### Historical Note

Former Rule 6. Section R3-4-807 renumbered from R3-7-207 (Supp. 91-4). Section repealed, new Section R3-4-807 renumbered from R3-4-804 and amended effective January 6, 1994 (Supp. 94-1).

#### R3-4-808. Standards for Unlisted Citrus Fruit, Experimental Product Standards

- A. The following standards shall apply for that citrus fruit for which specific quality standards are not otherwise established in this Article.
- B. At least 90% by weight of all citrus fruit packed or offered for sale shall be free from insect injury which has penetrated or damaged the edible portion of the product and shall be free from worms, mold, decay, or other serious defects which damage the appearance or the shipping quality of the commodity as determined by an inspection of a representative sample prescribed in R3-4-812.
- C. All experimental products shall be subject to the standards for unlisted citrus fruit prescribed in this Section and the requirements for labeling containers prescribed in R3-4-811.

#### Historical Note

Adopted effective January 6, 1994 (Supp. 94-1).

#### R3-4-809. Bulk Sale of Citrus Fruit; Non-licensed Purchaser

If a non-licensed person purchases citrus fruit in bulk from a licensed citrus dealer for retail sale to the consumer, the non-licensed person shall possess a receipt or bill of lading for that lot. The licensed citrus fruit dealer shall ensure that the citrus fruit meets the minimum quality requirements of each commodity and the lot does not exceed 7,000 pounds.

#### Historical Note

Adopted effective January 6, 1994 (Supp. 94-1). Amended by final rulemaking at 8 A.A.R. 3633, effective August 7, 2002 (Supp. 02-3).

#### R3-4-810. Packaged Count and Average Diameter

- A. Oranges, grapefruit, and lemons, when packed or placed loose without packing in containers, shall be marked, by count, on the container and shall be one of the numbers tabulated in Packing Chart 1, Column A. The average diameter marked on the container shall be the corresponding number tabulated in Packing Chart 1, Column B. The average diameter, in inches, of the oranges, grapefruit, or lemons in the container as determined by inspection of a representative sample shall not be less than the corresponding measurements tabulated in Packing Chart 1, Column B for each fruit.
  1. Oranges, grapefruit, and lemons, when placed loose without packing in containers, shall be placed in the container so compactly that they will not readily move in the con-

- tainer. The container shall be level full of fruit and the count in the container shall be equal to the count marked with a permissible count not exceeding eight percent.
2. The count of oranges, grapefruit, and lemons, when place packed in the container shall be equal to or no more than five percent over the count marked on the container.
  3. Oranges, grapefruit, and lemons may be packed in bulk containers. A bulk container shall contain no more than one size designation.
- B.** Lime containers shall be marked by size and shall be one of the numbers tabulated in Packing Chart 1, Column B. The average diameter, in inches, of the limes in the container, as determined by inspection of a representative sample, shall not be less than the corresponding measurements tabulated in Packing Chart 1, Column A. Each container shall be loosely packed and level full of limes.

PACKING CHART 1

ORANGES		GRAPEFRUIT		LEMONS		LIMES	
Column A	Column B	Column A	Column B	Column A	Column B	Column A	Column B
Count	Av. Dia.	Count	Av. Dia.	Count	Av. Dia.	Range	Size
24	4.370	9	6.200	63	2.925	2-5/16" to 2-5/8"	110
32	3.970	12	5.640	75	2.775	2-5/32" to 2-5/16"	150
36	3.820	14	5.350	95	2.570	2-1/16" to 2-5/32"	175
40	3.680	16	5.120	115	2.410	1-29/32" to 2-1/16"	200
48	3.470	18	4.920	140	2.240	1-25/32" to 1-29/32"	250
56	3.300	23	4.540	165	2.130	1-21/32" to 1-25/32"	275
72	3.040	27	4.270	200	2.010	1-9/16" to 1-21/32"	300
88	2.840	32	4.030	235	1.880		
113	2.600	36	3.880	285	1.770		
138	2.420	40	3.740	319	1.685		
163	2.290	48	3.530	343	1.640		
180	2.220	56	3.350				
210	2.070	64	3.170				
245	1.980	80	2.900				
270	1.920	88	2.840				

- C.** The diameter, in inches, of tangerines, tangelos, or mandarins in containers shall be marked with one of the size designations tabulated in Column A of Packing Chart 2 and shall be between the measurements tabulated in corresponding lines of Column B and Column C; provided that the diameter, in inches, of not more than 10 percent, by count, of the fruit in the container measures less than the corresponding measurement in Column B, and not more than the corresponding measurement in Column C.

PACKING CHART 2

COLUMN A	COLUMN B	COLUMN C
OMG	4.25+	
Ultra Colossal	3.75	4.25
Super Colossal	3.25	3.75
Colossal	3.00	3.25
Mammoth	2.75	3.00
Jumbo	2.50	2.75
Large	2.25	2.50
Medium	2.00	2.25
Small	1.75	2.00

- D.** Minneola tangelos may be packed, by count, using Packing Chart 2, or Packing Chart 3.



## PACKING CHART 3

	COUNT	AVERAGE DIAMETER	PACK PATTERN	ROWS	LAYERS
OMG	36	4.25	4x4	3	3
OMG	40	4.00	3x2	4	4
Super Ultra Colossal	48	3.75	3x3	4	4
Super Ultra Colossal	48	3.75	4x4	3	4
Ultra Colossal	56	3.50	4x3	4	4
Super Colossal	64	3.315	4x4	4	4
Colossal	80	3.125	5x5	4	4
Mammoth	100	2.875	4x4	5	5
Jumbo	125	2.625	5x5	5	5
Large	150	2.375	6x6	5	5
Medium	180	2.125	5x5	6	6
Small	210	1.875	6x6	6	6

- E. If a bulk container of tangerines, tangelos, or mandarins is marked with the words “irregular sizes,” the tangerines, tangelos, or mandarins in the bulk container are exempt from the size requirements in Packing Chart 2 and Packing Chart 3.

**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1).  
Amended by final rulemaking at 8 A.A.R. 3633, effective August 7, 2002 (Supp. 02-3).

**R3-4-811. Container Labeling for Citrus Fruit**

- A. All containers shall bear in plain sight and plain letters on one outside panel the following:
1. Shipper or customer identification:
    - a. The name of the shipper; and
    - b. The city, state, and zip code of the shipper; or
    - c. The name, address, and logo of the customer; and
    - d. The shipper's identifying code.
  2. The common or generic name of the commodity in each container; and
  3. The count, measure, or net weight of the commodity contained in each container, except for bulk containers.
- B. If a shipper or customer reuses a container bearing the name of a different shipper or customer, the shipper or customer shall remove or obliterate all markings or labels from the container before commercial reuse.
- C. Citrus fruit for processing.
1. If a pallet or container is clearly marked “FOR PROCESSING ONLY,” the information in subsection (A) is not required if the pallet or container is used to transport fruit or vegetables to a processing plant.
  2. Fruit or vegetables transported to a processing plant may be packed on a pallet or in a container bearing a label for a commodity other than the commodity within the container.

**Historical Note**

Adopted effective January 6, 1994 (Supp. 94-1).  
Amended by final rulemaking at 6 A.A.R. 143, effective December 8, 1999 (Supp. 99-4).

**R3-4-812. Inspections and Representative Sampling for Citrus Fruit**

- A. An inspector shall conduct a preliminary inspection of each commodity which includes a visual and physical inspection of

specimens of the commodity. When determining compliance of a field packing operation, the inspector shall select specimens from widely separated areas of the packing operation. When determining compliance in a packing shed, warehouse, fruit stand, retail store, or other business which sells citrus fruit, containers shall be selected at random from widely separated parts of the lot. If one-half of the containers or specimens in the containers of the lot or field packing operation comply with the requirements of this Article and the other half of the containers or specimens in the containers of the lot or field packing operation do not, an equal number of containers or specimens in the containers shall be examined from each half.

B. If, after the preliminary inspection, the inspector determines that the quality of the product clearly meets or exceeds the requirements of this Article, the inspector need not complete a comprehensive inspection. If, after the preliminary inspection, the inspector suspects there may be a failure to comply with the requirements of this Article, the inspector shall complete the procedures for a comprehensive inspection.

- C. For a comprehensive inspection of a field or shed packing operation, all specimens in each container of the official sample shall be examined by an inspector. For a comprehensive inspection of a wholesale warehouse, fruit stand, retail store, or any other business dealing with the sale of citrus fruit, an inspector may examine all specimens in each container of the official sample. The official sample of the lot shall consist of an inspection of no less than two containers for the first 100 containers of the lot and one container for every 100 containers thereafter. For example:

No. of Containers	Containers Sampled
2-100	2
101-200	3
201-300	4
301-400	5
401-500	6

- D. In a comprehensive inspection of a wholesale warehouse, fruit stand, retail store, or any other business dealing with the sale of citrus fruit, an inspector need only examine a portion of the specimens in each container of the official sample. The official

sample of the lot shall consist of an inspection of no less than the following:

No. of Containers	Containers Sampled
less than 10	2
10-30	3
31-50	4
51-100	5
101-200	6
201-300	8
301-500	10

- E. If only a portion of the specimens in each container of the official sample is examined during a comprehensive inspection in lots in excess of 500 containers, the official sample shall consist of the number of containers equal to at least 1/2 the square root of the total number of containers in the lot. For example:

No. of Containers	Containers Sampled
501-600	12
601-700	13
701-800	14
801-900	15
901-1000	16

- F. Individual containers in any lot may contain up to double the amount of serious damage and other requirements prescribed for that commodity as long as the percentage of all requirements in the entire lot averages within the percent allowable as determined by inspection of a representative sample.

#### Historical Note

Adopted effective January 6, 1994 (Supp. 94-1).

#### R3-4-813. Reconditioning for Citrus Fruit

- A. Any lot or part of a lot in a grower and shipper packing facility which is found to be in violation of Article 8 of these rules shall be reconditioned within 72 hours, pursuant to A.R.S. § 3-445(B)(5). If the lot or part of a lot is not brought into compliance within the established time limit, an inspector shall proceed with the provisions as prescribed in A.R.S. § 3-444.
- B. Any lot or part of a lot in a wholesale warehouse, fruit stand, retail store, or any other business dealing in the sale of fruit and vegetables which is found to be in violation of Article 8 of these rules shall be reconditioned within 48 hours, pursuant to A.R.S. § 3-445(B)(5). If the lot or part of the lot is not brought into compliance within the established time limit, an inspector shall proceed with the provisions, as prescribed in A.R.S. § 3-444.
- C. Time-limit extensions shall be granted provided that the holder of the product held in violation requests a specific deadline, by facsimile or by letter, to the office of the supervisor. A lot or part of a lot not reconditioned by the requested extension time shall be dealt with according to the provisions, as prescribed in A.R.S. § 3-444.

#### Historical Note

Adopted effective January 6, 1994 (Supp. 94-1).

#### R3-4-814. Experimental Pack and Product Permits for Citrus Fruit

- A. An applicant for a permit for the use of “experimental packs” or “experimental products” under A.R.S. § 3-445(B)(3), shall provide the following information on a form furnished by the Department:
1. The name, company name, address, and telephone number of the applicant;
  2. The name and description of the product packed in the container;
  3. The description of the arrangement of the product packed in the container; and
  4. The period for use of the experimental pack or product.

- B. All experimental products shall conform to the standards prescribed in this Article.
- C. Upon completion of permit requirements, the supervisor shall grant a permit that is valid for one year from the date of issuance.
- D. An applicant may request renewal of an experimental pack or product permit. The Department shall not grant a renewal permit for the same experimental pack or product for more than three consecutive years, unless the rulemaking process, prescribed under A.R.S. § 3-446, to standardize the experimental pack or product is initiated.

#### Historical Note

Adopted effective January 6, 1994 (Supp. 94-1).

Amended by final rulemaking at 8 A.A.R. 3633, effective August 7, 2002 (Supp. 02-3).

#### R3-4-815. Recordkeeping and Reporting Requirements for Citrus Fruit Commission Merchants

- A. Every commission merchant shall keep a correct record of each consignment of farm products received for sale showing:
1. The name and address of the consignor;
  2. The date of the consignment received;
  3. The condition and quantity of produce upon arrival;
  4. The date of the sale;
  5. The price for which sold;
  6. An itemized statement of charges to be paid by the consignor;
  7. The names and addresses of purchasers if the commission merchant has a financial interest in the business of the purchasers, or if the purchasers have a financial interest in the business of the commission merchant, either directly or indirectly, as holder of the other’s corporate stock, as partner, as lender, or borrower of money to or from the other, or otherwise;
  8. The lot number or other identifying mark of each consignment;
  9. All claims filed by the commission merchant against any person for overcharges or for damages resulting from the injury of the person.
- B. The commission merchant shall retain the original or a copy of records covering each sale or transaction with respect to farm products for a period of one year from the date thereof, which shall at all times be open to the confidential inspection of the supervisor or the consignor, or the authorized representative of either. The burden of proof shall be upon the commission merchant to prove the correctness of the commission merchant’s accounting of any transaction which may be questioned.

#### Historical Note

Adopted effective January 6, 1994 (Supp. 94-1).

#### R3-4-816. Recordkeeping and Reporting Requirements for Citrus Fruit Shippers

- A. Every shipper shall keep a correct record of each shipment of each assessed citrus commodity shipped, showing:
1. The name and address of the producer;
  2. The shipment totals, by producer.
- B. The shipper shall retain the original or a copy of records covering each shipment or transaction with respect to each assessed citrus commodity shipped for a period of two years from the date thereof, which shall at all times be open to the confidential inspection of the supervisor or the authorized representative. The burden of proof shall be upon the shipper to prove the correctness of the shipper’s accounting of any transaction which may be questioned.

#### Historical Note

Adopted effective January 6, 1994 (Supp. 94-1).

**ARTICLE 9. BIOTECHNOLOGY****R3-4-901. Genetically Engineered Organisms and Products****A. Definitions.** In addition to the definitions provided in A.R.S. § 3-101, the following shall apply:

1. “Associate Director” means the Associate Director of the Plant Services Division of the Arizona Department of Agriculture.
2. “Genetically engineered” means the genetic modification of organisms by recombinant DNA techniques, including genetic combinations resulting in novel organisms or genetic combinations that would not naturally occur.
3. “Organisms” means any active, infective, or dormant stage or life form of any entity characterized as living, including vertebrate and invertebrate animals, plants, bacteria, fungi, mycoplasmas, mycoplasma-like organisms, as well as entities such as viroid, viruses, or any entity characterized as living related to the foregoing.
4. “Permit” means an application which has been approved by USDA and the Department.
5. “Permit application” means an application filed with USDA, which may be supplemented with requirements from the Department, for the introduction of genetically engineered organisms and products, as provided by 7 CFR 340, revised June 16, 1987, pages 22908 through 22915. The material incorporated herein by reference is on file with the Office of the Secretary of State and does not include any later amendments or editions of the incorporated matter.
6. “Product” means plant reproductive parts including pollen, seeds, and fruit, spores, or eggs.
7. “USDA” means the United States Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine (USDA, APHIS, PPQ).

**B. Permit applications.** A genetically engineered organism or product shall not be introduced into Arizona, sold, offered for sale, or distributed for release into Arizona’s environment unless a permit issued pursuant to the application has been issued by USDA, or the Department has been notified by the USDA that the genetically engineered organisms or product is eligible under the notification procedure, as prescribed by 7 CFR 340.3, revised April 1993, or it has been determined by the USDA to be of nonregulated status, as prescribed by 7 CFR 340.6, revised April 1993. The material incorporated herein by reference is on file with the Office of the Secretary of State and does not include any later amendments or editions of the incorporated matter.

1. Applicants for the release or use of genetically engineered organisms or products shall follow all permit application procedures required by USDA.
2. In addition to USDA’s requirements, permit applications shall demonstrate to the Department that:
  - a. Genetically engineered organisms or products shall be handled in such a manner so that no genetically engineered organism or product accidentally escapes into Arizona’s environment.
  - b. All permit applicants shall comply with Arizona quarantine rules regulating the plants, pests, or organisms being introduced into Arizona.
3. The Department may, if it deems necessary to protect agriculture, public health, or the environment from potential adverse effects from the introduction of a specific genetically engineered organism or product:
  - a. Place restrictions on the number and location of organisms or products released, method of release, training of persons involved with the release of organisms or products, disposal of organisms or products, and other conditions of use;
  - b. Require measures to limit dispersal of released organisms or spread of inserted genes or gene products;
  - c. Require monitoring of the abundance and dispersal of the released organism or inserted genes or gene products;
  - d. Request the USDA to deny, suspend, modify, or revoke the permit for failure to comply with this rule.
  - e. Request the USDA to suspend the permit if it is determined that an adverse effect is occurring or is likely to occur because of a release authorized by such permit.
4. To the extent possible, the Department shall accept for review and base its decision on the data submitted with the federal application. However, the Department may request additional information from the applicant to assess the risks to animals and plants, including risks of vector transmissions of genetically engineered organisms or products.
5. The Associate Director shall review the application recommendations with the Director who shall, within the time period prescribed on each USDA application, approve, conditionally approve, or deny the permit.
6. The Director shall return the completed application with the resolution to USDA for final action.

**Historical Note**

Adopted effective November 22, 1993 (Supp. 93-4).

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## Department of Agriculture - Office of Commodity Development and Promotion

## TITLE 3. AGRICULTURE

CHAPTER 6. DEPARTMENT OF AGRICULTURE  
OFFICE OF COMMODITY DEVELOPMENT AND PROMOTION

*Title 3, Chapter 6, consisting of Section R3-6-101, adopted by final rulemaking at 6 A.A.R. 45, effective December 8, 1999 (Supp. 99-4).*

*Former Title 3, Chapter 6, Article 1, Sections R3-6-101 through R3-6-109, renumbered to Title 3, Chapter 2, Article 9, Sections R3-2-901 through R3-2-909 (Supp. 91-4).*

## ARTICLE 1. MARKETING

*Article 1, consisting of Section R3-6-101, adopted by final rulemaking at 6 A.A.R. 45, effective December 8, 1999 (Supp. 99-4).*

## Section

- R3-6-101. Certificate of Free Sale  
R3-6-102. Phytosanitary Certification

## ARTICLE 2. JOINT-VENTURES

*Article 2, consisting of Sections R3-6-201 through R3-6-204, expired under A.R.S. § 41-1056(E) at 11 A.A.R. 867, effective December 31, 2004 (05-1).*

*Article 2, consisting of Sections R3-6-201 through R3-6-204, adopted by final rulemaking at 6 A.A.R. 1573, effective April 5, 2000 (Supp. 00-2).*

## Section

- R3-6-201. Expired  
R3-6-202. Expired  
R3-6-203. Expired  
R3-6-204. Expired

## ARTICLE 1. MARKETING

## R3-6-101. Certificate of Free Sale

- A. Any person manufacturing or distributing a consumable product in Arizona and who wants to sell it domestically or abroad, may apply to the Department for a Certificate of Free Sale. If an applicant is a subsidiary of a corporation, the application will be accepted only from the parent company. The application shall contain:

1. The name, address, telephone, and facsimile number of the company;
2. The name of the contact person;
3. A list of the consumable products manufactured, distributed, or sold in Arizona;
4. The printed name, signature, and social security number of the responsible party;
5. The country of export, if applicable;
6. The fee prescribed in subsection (B);
7. Copies of 3 different invoices or bills-of-lading from the 3 months preceding the application; and
8. The purchaser's telephone number cited on each invoice or bill-of-lading.

## B. Fees.

1. Certificate of Free Sale: \$25 for each 100 products, plus the cost of postage;
2. Duplicate certificates, if requested within 3 months of the original certificate issue: \$1 per page, plus the cost of postage.

## Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 45, effective December 8, 1999 (Supp. 99-4).

## R3-6-102. Phytosanitary Certification

- A. During fiscal year 2015, a person who applies to the Department for phytosanitary certification shall pay the following fee:

1. For state certification, \$50 for the first lot plus \$10 for each additional lot per Department site trip.
2. For federal certification, \$50 plus the federal administrative user fee set out in 7 CFR 354.3(g)(3)(i), revised January 1, 2014, which is incorporated by reference and does not include any later amendments or editions. A copy of the incorporated material is available for inspection at the Department, 1688 W. Adams St., Phoenix, Arizona 85007 or may also be viewed at <http://www.gpo.gov/fdsys/>.

- B. This Section does not apply to phytosanitary certification under A.A.C. R3-4-301.

## Historical Note

New Section made by exempt rulemaking at 16 A.A.R. 1339, effective June 29, 2010 (Supp. 10-2). Amended by exempt rulemaking at 17 A.A.R. 1765, effective July 20, 2011 (Supp. 11-3). Amended by exempt rulemaking at 18 A.A.R. 2066, effective August 2, 2012 (Supp. 12-3). Amended by exempt rulemaking at 19 A.A.R. 3146, effective September 14, 2013 (Supp. 13-3). Amended by exempt rulemaking at 20 A.A.R. 2457, effective July 24, 2014 (Supp. 14-3).

## ARTICLE 2. JOINT-VENTURES

## R3-6-201. Expired

## Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 1573, effective April 5, 2000 (Supp. 00-2). Section expired under A.R.S. 41-1056(E) at 11 A.A.R. 867, effective December 31, 2004 (05-1).

## R3-6-202. Expired

## Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 1573, effective April 5, 2000 (Supp. 00-2). Section expired under A.R.S. 41-1056(E) at 11 A.A.R. 867, effective December 31, 2004 (05-1).

## R3-6-203. Expired

## Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 1573, effective April 5, 2000 (Supp. 00-2). Section expired under A.R.S. 41-1056(E) at 11 A.A.R. 867, effective December 31, 2004 (05-1).

## R3-6-204. Expired

## Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 1573, effective April 5, 2000 (Supp. 00-2). Section expired under A.R.S. 41-1056(E) at 11 A.A.R. 867, effective December 31, 2004 (05-1).

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**TITLE 3. AGRICULTURE****CHAPTER 9. DEPARTMENT OF AGRICULTURE  
AGRICULTURAL COUNCILS AND COMMISSIONS**

*Chapter 9 heading amended by final rulemaking at 5 A.A.R. 4439, effective November 3, 1999 (Supp. 99-4).*

*Former Title 3, Chapter 9, Articles 1 through 7, Sections 3-9-101 through R3-9-703, renumbered to Title 3, Chapter 2, Articles 1 through 7, Sections 3-2-101 through R3-2-703 (Supp. 91-4).*

**ARTICLE 1. ARIZONA ICEBERG LETTUCE RESEARCH  
COUNCIL**

*Article 1, consisting of Sections R3-9-101 through R3-9-106, made by final rulemaking at 12 A.A.R. 208, effective March 11, 2006 (Supp. 06-1).*

## Section

R3-9-101.	Definitions
R3-9-102.	Elections
R3-9-103.	Hearings and Rehearings
R3-9-104.	Annual Report
R3-9-105.	Records
R3-9-106.	Grants

**ARTICLE 2. ARIZONA GRAIN RESEARCH AND  
PROMOTION COUNCIL**

(Authority: A.R.S. § 3-581 et seq.)

*Article 2, consisting of Section R3-9-201, renumbered from Title 3, Chapter 13, Article 2, Section R3-13-201 (Supp. 91-4).*

## Section

R3-9-201.	Definitions
R3-9-202.	Fees; Grain Assessment and Refund
R3-9-203.	Hearings
R3-9-204.	Records
R3-9-205.	Grants

**ARTICLE 3. ARIZONA COTTON RESEARCH AND  
PROTECTION COUNCIL**

(Authority: A.R.S. § 3-1083)

*Article 3, consisting of Section R3-9-301, renumbered from Title 3, Chapter 12, Article 2, Section R3-12-201 (Supp. 91-4).*

## Section

R3-9-301.	Ginning and Remittance Forms
R3-9-302.	Non-Bt Cotton Acreage Registration Form
R3-9-303.	Weather Related Extensions

**ARTICLE 4. EXPIRED**

*Article 4, consisting of Sections R3-9-401 through R3-9-405, formerly the rules for the Arizona Wine Commission expired under A.R.S. § 41-1056(E). The rules are no longer authorized as the Commission was terminated on July 1, 2004, under A.R.S. § 41-3004.18. The statutes under which the Commission operated, A.R.S. §§ 3-551 through 3-557, added by Laws 1993, Ch. 40, § 1, were repealed on January 1, 2005, by A.R.S. § 41-3004.18. Accordingly, under A.R.S. § 41-1011(C), the rules of this agency have been removed from the Code. The rescinded Article is on file in the Office of the Secretary of State (Supp. 05-2).*

*Article 4, consisting of Sections R3-9-401 through R3-9-405, made by final rulemaking at 9 A.A.R. 519, effective February 5, 2003 (Supp. 03-1).*

## Section

R3-9-401.	Expired
R3-9-402.	Expired
R3-9-403.	Expired
R3-9-404.	Expired

R3-9-405. Expired

**ARTICLE 5. ARIZONA CITRUS RESEARCH COUNCIL**

*Article 5, consisting of Sections R3-9-501 through R3-9-505, made by final rulemaking at 9 A.A.R. 5548, effective December 2, 2004 (Supp. 03-4).*

## Section

R3-9-501.	Definitions
R3-9-502.	Elections
R3-9-503.	Hearings
R3-9-504.	Annual Report
R3-9-505.	Records
R3-9-506.	Grants

**ARTICLE 6. LEAFY GREENS FOOD SAFETY  
COMMITTEE**

*Article 6, consisting of Sections R3-9-601 through R3-9-606, made by exempt rulemaking at 16 A.A.R. 2282, effective October 28, 2010 (Supp. 10-4).*

## Section

R3-9-601.	Definitions
R3-9-602.	Best Practices; LGMA Compliance
R3-9-603.	Service Mark Usage
R3-9-604.	Loss of Use of Service Mark
R3-9-605.	Violation Levels; Repeated Violations
R3-9-606.	Corrective Action Plans

**ARTICLE 1. ARIZONA ICEBERG LETTUCE RESEARCH  
COUNCIL****R3-9-101. Definitions**

In addition to the definitions in A.R.S. § 3-526, the following terms apply to this Article:

1. "AILRC" means the Arizona Iceberg Lettuce Research Council.
2. "Authorized signature" means the signature of an individual authorized to receive funds on behalf of the applicant and responsible for the execution of the applicant's project.
3. "Awardee" means a successful applicant to whom the AILRC awards grant funds for research on a specific project.
4. "Department" means the Arizona Department of Agriculture.
5. "Governmental unit" means any department, commission, council, board, bureau, committee, institution, agency, government corporation, or other establishment or official of the executive branch or corporation commission of this state, another state, or the federal government.
6. "Grant" means an award of financial support to an applicant according to A.R.S. § 3-526.02(B) and (C)(5).
7. "Grant award agreement" means a document that advises an applicant of the amount of money awarded following receipt by the AILRC of the applicant's signed acceptance.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 208, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 14 A.A.R. 3658, effective November 8, 2008 (Supp. 08-3).

**R3-9-102. Elections**

- A. The AILRC shall elect officers as specified in A.R.S. § 3-526.02(A)(2) during the first quarter of each calendar year.
- B. Officers continue in office until the next annual election.
- C. An officer may be reelected successively.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 208, effective March 11, 2006 (Supp. 06-1).

**R3-9-103. Hearings and Rehearings**

- A. The AILRC shall follow the Uniform Administrative Procedure Act, A.R.S. Title 41, Chapter 6, Article 10, for a hearing before the AILRC.
- B. A party may file a motion for rehearing or review under A.R.S. § 41-1092.09.
- C. The AILRC shall grant a rehearing or review of a decision for any of the following causes materially affecting the moving party's rights:
  - 1. The decision is not justified by the evidence or is contrary to law;
  - 2. There is newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original proceeding;
  - 3. One or more of the following deprived the party of a fair hearing:
    - a. Irregularity or abuse of discretion in the conduct of the proceeding;
    - b. Misconduct of the AILRC, the administrative law judge, or the prevailing party; or
    - c. Accident or surprise that could not have been prevented by ordinary prudence; or
  - 4. Excessive or insufficient sanction.
- D. The AILRC may grant a rehearing or review to any or all of the parties. The rehearing or review may cover all or part of the issues for any of the reasons stated in subsection (C). An order granting a rehearing or review shall particularly state the grounds for granting the rehearing or review, and the rehearing or review shall cover only the grounds stated.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 208, effective March 11, 2006 (Supp. 06-1).

**R3-9-104. Annual Report**

The AILRC shall prepare a report according to A.R.S. § 3-526.02(A)(5), by October 31 of each year.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 208, effective March 11, 2006 (Supp. 06-1).

**R3-9-105. Records**

The AILRC shall retain records required by A.R.S. § 3-526.02(A)(4). A person may review records at the AILRC's office, Monday through Friday, except an Arizona legal holiday, during the hours of 8 a.m. to 5 p.m. Upon request, the AILRC shall provide a copy of the records according to A.R.S. § 39-121 et seq.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 208, effective March 11, 2006 (Supp. 06-1).

**R3-9-106. Grants**

- A. Grant application process.

1. The AILRC shall award grants according to the competitive grant solicitation requirements of this Article.
2. The AILRC shall post the grant application and manual on the AILRC's web site at least four weeks before the due date of a grant application.
3. The AILRC shall ensure that the grant application manual contains the following items:
  - a. Grant topics related to AILRC programs specified by A.R.S. § 3-526.02(B) and (C)(5);
  - b. A statement that the information contained in an application is not confidential;
  - c. A statement that the AILRC funding source is primarily from per carton assessments on iceberg lettuce grown in Arizona;
  - d. An application form including sections about the description of the grant project, scope of work to be performed, an authorized signature line, and a sample budget form;
  - e. A statement that the applicant shall not include overhead expenses in the budget for the proposed project;
  - f. The criteria that the AILRC shall use to evaluate an application;
  - g. The date and time by which the applicant shall submit an application;
  - h. The anticipated date of the AILRC award;
  - i. A copy of the AILRC grant solicitation rules; and
  - j. Any other information necessary for the grant application.
4. The AILRC shall not consider an application received by the AILRC after the due date and time.
- B. Criteria. The AILRC shall consider the following when reviewing a grant application and deciding whether to award AILRC funds:
  1. The applicant's successful completion of prior research projects,
  2. The extent to which the proposed project identifies solutions to current issues facing the iceberg lettuce industry,
  3. The extent to which the proposed project addresses future issues facing the iceberg lettuce industry,
  4. The extent to which the proposed project addresses the findings of any industry surveys conducted within the previous year,
  5. The appropriateness of the budget request in achieving the project objectives,
  6. The appropriateness of the proposal time-frame to the stated project objectives, and
  7. Relevant experience and qualifications of the applicant.
- C. Public participation.
  1. The AILRC shall make all applications available for public inspection by the business day following the application due date.
  2. Before awarding a grant, the AILRC shall discuss and evaluate grant applications and proposed projects at a meeting conducted under A.R.S. § 38-431 et seq.
- D. Evaluation of grant applications.
  1. The AILRC may allow applicants to make oral or written presentations at the public meeting if time, applicant availability, and meeting space permit.
  2. The AILRC may modify an applicant's proposed project in awarding funding.
  3. The AILRC shall notify an applicant in writing of the AILRC's decision to fund, modify, or deny funding for a proposed project within 10 business days of the AILRC decision. The AILRC shall notify applicants by the U.S.

Postal Service, commercial delivery, electronic mail, or facsimile.

**E. Awards and project monitoring.**

1. Before releasing grant funds, the AILRC shall execute a grant award agreement with the awardee. The awardee shall agree to accept the grant's legal requirements and conditions and authorize the AILRC to monitor the progress of the project by signing a grant award agreement.
2. The AILRC shall pay no more than 50% of the grant in the initial payment to the awardee.
3. During the term of the project, the awardee shall inform the AILRC of changes to the awardee's address, telephone number, or other contact information.
4. The AILRC may require an interim written report or oral presentation from the awardee during the pendency of the project.
5. The AILRC shall not award grant funds remaining after the initial payment until the awardee submits to the AILRC:
  - a. A final research report, and
  - b. An invoice for actual final project expenses not exceeding the remaining portion of the award.
6. The AILRC shall make research findings and reports resulting from any grant awarded by the AILRC available to Arizona iceberg lettuce producers.

**F. Repayment.** If the awardee does not complete the project as specified in the grant award agreement, the awardee shall return all unexpended grant funds within 30 days after receipt of a written request by the AILRC.

**G. Governmental units.**

1. The AILRC may request one or more governmental units to submit grant applications as prescribed in subsection (G)(3), without regard to subsections (A), (E)(2), and (E)(5).
2. The AILRC may issue grants to governmental units without regard to subsections (A), (E)(2), and (E)(5).
3. A governmental unit may apply to the AILRC for a grant when there is no pending request for grant applications under subsection (A) under the following conditions:
  - a. The application shall include a description of the project, the scope of work to be performed, a budget that does not include overhead expenses, and an authorized signature.
  - b. The application shall be available for public inspection upon receipt by the AILRC.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 208, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 14 A.A.R. 3658, effective November 8, 2008 (Supp. 08-3).

**ARTICLE 2. ARIZONA GRAIN RESEARCH AND PROMOTION COUNCIL**

**R3-9-201. Definitions**

In addition to the definitions in A.R.S. § 3-581, the following term applies to this Article:

"AGRPC" means the Arizona Grain Research and Promotion Council.

"Department" means the Arizona Department of Agriculture.

**Historical Note**

Adopted effective August 28, 1986 (Supp. 86-4). Section R3-9-201 renumbered from R3-13-201 (Supp. 91-4). Amended effective December 22, 1993 (Supp. 93-4). Former Section R3-9-201 renumbered to R3-9-202; new Section R3-9-201 made by final rulemaking at 9 A.A.R.

31, effective December 11, 2002 (Supp. 02-4). Amended by final rulemaking at 14 A.A.R. 3661, effective November 8, 2008 (Supp. 08-3).

**R3-9-202. Fees; Grain Assessment and Refund**

- A.** The AGRPC shall annually prescribe the fee to be assessed per hundredweight of grain sold in Arizona within the limitations established under A.R.S. § 3-587.
- B.** The person who pays the fee required under subsection (A) shall ensure that:
  1. The grain assessment fee is remitted to the AGRPC; and
  2. The following information is provided to the AGRPC on a form obtained from the Department:
    - a. First buyer's name, address, and telephone number;
    - b. Report date and months covered by the report;
    - c. Total amount remitted to the AGRPC for the reporting period;
    - d. Producer's name, address, and telephone number;
    - e. Type of grain and tonnage by grain type; and
    - f. First buyer's or designee's signature.
- C. Refund.**
  1. A producer may request a refund as prescribed under A.R.S. § 3-592 and shall provide the following information to the AGRPC on a form obtained from the Department:
    - a. Producer's name, address, telephone number, and signature;
    - b. Name of the first buyer;
    - c. Amount of grain sold subject to the refund request; and
    - d. First buyer's or designee's notarized signature confirming the purchase, funds withheld, and date remitted to the AGRPC.
  2. An executive committee member shall authorize a refund as prescribed in A.R.S. § 3-592 if the person requesting the refund complies with the requirements of subsection (B)(1).

**Historical Note**

Section R3-9-202 renumbered from R3-9-201 and amended by final rulemaking at 9 A.A.R. 31, effective December 11, 2002 (Supp. 02-4). Amended by final rulemaking at 14 A.A.R. 3661, effective November 8, 2008 (Supp. 08-3).

**R3-9-203. Hearings**

- A.** The AGRPC shall use the uniform administrative procedures of A.R.S. Title 41, Chapter 6, Article 10 to govern any hearing before the AGRPC required under A.R.S. § 3-591.
- B.** A party may file a motion for rehearing or review under A.R.S. § 41-1092.09.
- C.** The AGRPC shall grant a rehearing or review of an administrative law decision for any of the following causes materially affecting the moving party's rights:
  1. The decision is not justified by the evidence or is contrary to law;
  2. There is newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original proceeding;
  3. One or more of the following deprived the party of a fair hearing:
    - a. Irregularity or abuse of discretion in the conduct of the proceeding;
    - b. Misconduct of the AGRPC, the administrative law judge, or the prevailing party;
    - c. Accident or surprise which could not have been prevented by ordinary prudence; or
  4. Excessive or insufficient sanction.

- D. The AGRPC may grant a rehearing or review to any or all of the parties. The rehearing or review may cover all or part of the issues for any of the reasons stated in subsection (C). An order granting a rehearing or review shall particularly state the grounds for granting the rehearing or review, and the rehearing or review shall cover only the grounds stated.

#### Historical Note

New Section made by final rulemaking at 9 A.A.R. 31, effective December 11, 2002 (Supp. 02-4). Amended by final rulemaking at 14 A.A.R. 3661, effective November 8, 2008 (Supp. 08-3).

#### R3-9-204. Records

The Department shall retain the AGRPC's records as prescribed in A.R.S. § 3-586. A record may be reviewed at the Department's main office, Monday through Friday, except an Arizona legal holiday, during the hours of 8:00 a.m. to 5:00 p.m. A copy of a record will be provided according to the provisions of A.R.S. § 39-121 et seq.

#### Historical Note

New Section made by final rulemaking at 9 A.A.R. 31, effective December 11, 2002 (Supp. 02-4). Amended by final rulemaking at 14 A.A.R. 3661, effective November 8, 2008 (Supp. 08-3).

#### R3-9-205. Grants

##### A. Definitions.

"Authorized signature" means the signature of an individual authorized to receive funds on behalf of an applicant and responsible for the execution of the applicant's project.

"Awardee" means an applicant to whom the AGRPC awards grant funds for a proposed project.

"Governmental unit" means any department, commission, council, board, bureau, committee, institution, agency, government corporation, or other establishment or official of the executive branch or corporation commission of this state, another state, or the federal government.

"Grant" means an award of financial support to an applicant according to A.R.S. § 3-584(C)(5).

"Grant award agreement" means a document advising an applicant of the amount of money awarded following receipt by the AGRPC of the applicant's signed acceptance of the award.

##### B. Grant application process.

1. The AGRPC shall award grants according to the competitive grant solicitation requirements of this Article.
2. The AGRPC shall post the grant application and manual on the AGRPC's web site at least four weeks before the due date of a grant application.
3. The AGRPC shall ensure that the grant application and manual contain the following items:
  - a. Grant topics related to AGRPC projects specified in A.R.S. § 3-584(C)(5);
  - b. A statement that the information contained in a grant application is not confidential;
  - c. A statement that the AGRPC funding source is primarily from assessments on the seed of barley and wheat of all classes produced in Arizona for use as food, feed, or seed or produced for any industrial or commercial use;
  - d. An application form including sections about the description of the grant project, scope of work to be performed, an authorized signature line, and a sample budget form;

- e. A statement that the applicant shall not include overhead expenses in the budget for the proposed project;
- f. The criteria that the AGRPC shall use to evaluate an application;
- g. The date and time by which the applicant shall submit an application;
- h. The anticipated date of the AGRPC award;
- i. A copy of this Section consisting of grant solicitation procedures and requirements; and
- j. Any other information necessary for the grant application.

4. The AGRPC shall not evaluate an application received by the AGRPC after the due date and time.

##### C. Criteria. The AGRPC shall consider the following when reviewing a grant application and deciding whether to award AGRPC funds:

1. The applicant's successful completion of prior research projects, if applicable;
2. The extent to which the proposed project identifies solutions to current issues facing the grain industry;
3. The extent to which the proposed project addresses future issues facing the grain industry;
4. The extent to which the proposed project addresses the findings of any industry surveys conducted within the previous year;
5. The appropriateness of the budget request in achieving the project objectives;
6. The appropriateness of the proposal time-frame to the stated project objectives; and
7. Relevant experience and qualifications of the applicant.

##### D. Public participation.

1. The AGRPC shall make all applications available for public inspection by the business day following the application due date.
2. Before awarding a grant, the AGRPC shall discuss, evaluate, and make a decision on grant applications and proposed projects at a meeting conducted under A.R.S. § 38-431 et seq.

##### E. Evaluation of grant applications.

1. The AGRPC may allow applicants to make oral or written presentations at the public meeting if time, applicant availability, and meeting space permit.
2. The AGRPC may modify an applicant's proposed project in awarding funding.
3. The AGRPC shall notify an applicant in writing of the AGRPC's decision to fund, modify, or deny funding for a proposed project within 10 business days of the AGRPC decision. The AGRPC shall notify applicants by the U.S. Postal Service, commercial delivery, electronic mail, or facsimile.

##### F. Awards and project monitoring.

1. Before releasing grant funds, the AGRPC shall execute a grant award agreement with the awardee. The awardee shall agree to accept the grant's legal requirements and conditions and authorize the AGRPC to monitor the progress of the project by signing the grant award agreement.
2. The AGRPC shall pay no more than 50% of the grant in the initial payment to the awardee.
3. During the term of the project, the awardee shall inform the AGRPC of changes to the awardee's address, telephone number, or other contact information.
4. The AGRPC may require an interim written report or oral presentation from the awardee during the term of the project.

5. The AGRPC shall not award the grant funds remaining after the initial payment until the awardee submits to the AGRPC:
  - a. A final research report, and
  - b. An invoice for actual final project expenses not exceeding the remaining portion of the grant funds.
6. The AGRPC shall make research findings and reports resulting from any grant awarded by the AGRPC available to Arizona grain producers.
- G. Repayment. If the awardee does not complete the project as specified in the grant award agreement, the awardee shall return all unexpended grant funds within 30 days after receipt of a written request by the AGRPC.
- H. Governmental units.
  1. The AGRPC may request one or more governmental units to submit grant applications as prescribed in subsection (H)(3), without regard to subsections (B), (F)(2), and (F)(5).
  2. The AGRPC may issue grants to governmental units without regard to subsections (B), (F)(2), and (F)(5).
  3. A governmental unit may apply to the AGRPC for a grant when there is no pending request for grant applications under subsection (B) under the following conditions:
    - a. The application shall include a description of the project, the scope of work to be performed, a budget that does not include overhead expenses, and an authorized signature.
    - b. The application shall be available for public inspection upon receipt by the AGRPC.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4684, effective February 3, 2007 (Supp. 06-4). Amended by final rulemaking at 14 A.A.R. 3661, effective November 8, 2008 (Supp. 08-3).

### ARTICLE 3. ARIZONA COTTON RESEARCH AND PROTECTION COUNCIL

#### R3-9-301. Ginning and Remittance Forms

- A. Each September the Arizona Cotton Research and Protection Council shall send the ginning and remittance report forms and a fee schedule to the operator of each gin for which a report was made during the previous year. A gin operator who has not submitted a report in the previous year may obtain the report forms and a fee schedule from the Arizona Cotton Research and Protection Council office.
- B. Each gin operator who gins for Arizona producers during the current crop year shall complete the following reports and submit them with the appropriate fees, to the Arizona Cotton Research and Protection Council within the times specified below:
  1. On or before February 15 of each year:
    - a. The name and number of the reporting gin;
    - b. The business mailing address, telephone number, and county of the reporting gin;
    - c. The name of the authorized agent for the gin;
    - d. The crop year;
    - e. The name and mailing address of each crop producer;
    - f. The Farm Service Agency (FSA) farm number;
    - g. An estimate of the number of bales to be ginned by March 15 from cotton grown at or below 2,700 feet elevation; and
    - h. An estimate of the number of bales to be ginned by March 15 from cotton grown above 2,700 feet elevation;
  2. On or before March 15 of each year:

- a. The information in subsections (B)(1)(a) through (f),
- b. The total number of bales actually ginned and the certification number issued by the Department for meeting the tillage deadline for cotton grown at or below 2,700 feet elevation, and
- c. The total number of bales actually ginned from cotton grown above 2,700 feet elevation.

**Historical Note**

Adopted as an emergency effective September 10, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-5). Emergency expired. Adopted as a permanent rule effective March 7, 1985 (Supp. 85-2). Amended subsection (A) as an emergency effective November 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-6). Amended subsection (A) as permanent action effective February 5, 1986 (Supp. 86-1). Amended subsection (A) effective September 24, 1986 (Supp. 86-5). Former Section R3-12-201 repealed and a new Section R3-12-201 adopted effective December 2, 1987 (Supp. 87-4). Section 3-9-301 renumbered from R3-12-201 (Supp. 91-4). Section repealed, new Section adopted effective April 4, 1994 (Supp. 94-2). Amended by final rulemaking at 5 A.A.R. 4439, effective November 3, 1999 (Supp. 99-4).

#### R3-9-302. Non-Bt Cotton Acreage Registration Form

- A. Each December the Arizona Cotton Research and Protection Council shall mail the Non-Bt Cotton Acreage Registration Form and a fee schedule to cotton producers who certify cotton acreage with the Farm Service Agency during the year. A producer who did not certify cotton acreage with the Farm Service Agency may obtain the report form and a fee schedule from the Arizona Cotton Research and Protection Council office.
- B. Within 30 days after the tillage deadline in R3-4-204 a producer shall complete and submit Non-Bt Cotton Acreage Registration Form to the Arizona Cotton Research and Protection Council. The producer shall provide the following information:
  1. The producer name, mailing address, telephone and facsimile number;
  2. The Farm Service Agency farm number;
  3. The cultural zone;
  4. The crop year;
  5. The intended non-Bt cotton acreage.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 4741, effective January 1, 2005 (Supp. 04-4).

#### R3-9-303. Weather Related Extensions

- A. For the purpose of this Section:
  1. "Council" means the Arizona Cotton Research and Protection Council.
  2. "Qualifying weather event" means substantial interference with post-harvest activities as outlined in (E)(1) to detach the cotton root from the soil caused by significant rain or moisture or by sustained winds within an established PM10 nonattainment area.
- B. A cotton producer may request an extension of the tillage deadline in R3-4-204(E) based on a qualifying weather event that has delayed or prevented compliance.
- C. A cotton producer requesting an extension shall submit the following information to the Council Staff Director:
  1. The producer's name, address, and telephone number;
  2. The registered Farm Service Agency (FSA) farm names of the farms for which the extension is requested;

3. The legal description of the fields or an accurate scale farm map of the fields for which the extension is requested;
4. A detailed description of the qualifying weather events supporting the extension request, including the dates of the events; and
5. The number of days requested as an extension of the tillage deadline.

**D. Submission Deadline.**

1. Extension requests shall be received a minimum of one business day prior to the tillage deadline.
2. Extension requests that are illegible or missing information required by subsection (C) shall be considered incomplete and returned to the requestor with a written explanation of the deficiencies. Corrected extension requests shall also be received a minimum of one business day prior to the tillage deadline.

**E. Administrative Review.**

1. The Council Staff Director may amend, grant or deny a request for extension based on the information provided and any other relevant information available, including but not limited to data collected from meteorological sources, staff recommendations, field notes and photographs.
2. The Council Staff Director shall issue a written notice granting or denying an extension request within ten business days of receipt of a complete request advising whether or not the request fell within the parameters of a qualified weather event.

**F. Blanket Extensions.** The Council, by vote, may authorize a blanket weather-related extension for a county, cultural zone or a subset of either based on an area-wide qualifying weather event or events.**Historical Note**

Section made by emergency rulemaking at 20 A.A.R. 124, effective January 10, 2014, for 180 days (Supp. 14-1). Emergency expired; new Section made by final rulemaking at 20 A.A.R. 2521, effective August 18, 2014 (Supp. 14-3).

**ARTICLE 4. EXPIRED**

*Article 4, consisting of Sections R3-9-401 through R3-9-405, formerly the rules for the Arizona Wine Commission expired under A.R.S. § 41-1056(E). The rules are no longer authorized as the Commission was terminated on July 1, 2004, under A.R.S. § 41-3004.18. The statutes under which the Commission operated, A.R.S. §§ 3-551 through 3-557, added by Laws 1993, Ch. 40, § 1, were repealed on January 1, 2005, by A.R.S. § 41-3004.18. Accordingly, under A.R.S. § 41-1011(C), the rules of this agency have been removed from the Code. The rescinded Article is on file in the Office of the Secretary of State (Supp. 05-2).*

*Article 4, consisting of Sections R3-9-401 through R3-9-405, made by final rulemaking at 9 A.A.R. 519, effective February 5, 2003 (Supp. 03-1).*

**R3-9-401. Expired****Historical Note**

New Section made by final rulemaking at 9 A.A.R. 519, effective February 5, 2003 (Supp. 03-1). Section expired under A.R.S. § 41-1056(E). The agency terminated on July 1, 2004, under A.R.S. § 41-3004.18 and the related statutes were repealed on January 1, 2005, by A.R.S. § 41-3004.18 (Supp. 05-2).

**R3-9-402. Expired****Historical Note**

New Section made by final rulemaking at 9 A.A.R. 519, effective February 5, 2003 (Supp. 03-1). Section expired under A.R.S. § 41-1056(E). The agency terminated on July 1, 2004, under A.R.S. § 41-3004.18 and the related statutes were repealed on January 1, 2005, by A.R.S. § 41-3004.18 (Supp. 05-2).

**R3-9-403. Expired****Historical Note**

New Section made by final rulemaking at 9 A.A.R. 519, effective February 5, 2003 (Supp. 03-1). Section expired under A.R.S. § 41-1056(E). The agency terminated on July 1, 2004, under A.R.S. § 41-3004.18 and the related statutes were repealed on January 1, 2005, by A.R.S. § 41-3004.18 (Supp. 05-2).

**R3-9-404. Expired****Historical Note**

New Section made by final rulemaking at 9 A.A.R. 519, effective February 5, 2003 (Supp. 03-1). Section expired under A.R.S. § 41-1056(E). The agency terminated on July 1, 2004, under A.R.S. § 41-3004.18 and the related statutes were repealed on January 1, 2005, by A.R.S. § 41-3004.18 (Supp. 05-2).

**R3-9-405. Expired****Historical Note**

New Section made by final rulemaking at 9 A.A.R. 519, effective February 5, 2003 (Supp. 03-1). Section expired under A.R.S. § 41-1056(E). The agency terminated on July 1, 2004, under A.R.S. § 41-3004.18 and the related statutes were repealed on January 1, 2005, by A.R.S. § 41-3004.18 (Supp. 05-2).

**ARTICLE 5. ARIZONA CITRUS RESEARCH COUNCIL**

*Article 5, consisting of Sections R3-9-501 through R3-9-505, made by final rulemaking at 9 A.A.R. 5548, effective December 2, 2004 (Supp. 03-4).*

**R3-9-501. Definitions**

*"Department" means the Arizona department of agriculture. A.R.S. § 3-468(3).*

**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 5548, effective December 2, 2004 (Supp. 03-4).

**R3-9-502. Elections**

- A. The Council shall elect officers during the first quarter of each calendar year.
- B. Officers shall continue in office until the next annual election is held.
- C. An officer may be successively reelected.

**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 5548, effective December 2, 2004 (Supp. 03-4).

**R3-9-503. Hearings**

- A. The Council shall use the uniform administrative procedures of A.R.S. Title 41, Chapter 6, Article 10 to govern any hearing before the Council.
- B. A party may file a motion for rehearing or review under A.R.S. § 41-1092.09.



- C. The Council shall grant a rehearing or review of an administrative law decision for any of the following causes materially affecting the moving party's rights:
1. The decision is not justified by the evidence or is contrary to law;
  2. There is newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original proceeding;
  3. One or more of the following deprived the party of a fair hearing:
    - a. Irregularity or abuse of discretion in the conduct of the proceeding;
    - b. Misconduct of the Council, the administrative law judge, or the prevailing party; or
    - c. Accident or surprise that could not have been prevented by ordinary prudence; or
  4. Excessive or insufficient sanction.
- D. The Council may grant a rehearing or review to any or all of the parties. The rehearing or review may cover all or part of the issues for any of the reasons stated in subsection (C). An order granting a rehearing or review shall particularly state the grounds for granting the rehearing or review, and the rehearing or review shall cover only the grounds stated.

**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 5548, effective December 2, 2004 (Supp. 03-4).

**R3-9-504. Annual Report**

The Council shall prepare an annual report as prescribed under A.R.S. § 3-468.02(A)(5), by October 31.

**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 5548, effective December 2, 2004 (Supp. 03-4).

**R3-9-505. Records**

The Department shall retain the Council's records as authorized by A.R.S. § 3-468.02(A)(4). A record may be reviewed at the Department's main office, Monday through Friday, except an Arizona legal holiday, during the hours of 8:00 a.m. to 5:00 p.m. A copy of a record shall be provided according to the provisions of A.R.S. § 39-121 et seq.

**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 5548, effective December 2, 2004 (Supp. 03-4).

**R3-9-506. Grants****A. Definitions.**

1. "ACRC" means the Arizona Citrus Research Council.
2. "Authorized signature" means the signature of an individual authorized to receive funds on behalf of the applicant and responsible for the execution of the applicant's project.
3. "Awardee" means a successful applicant to whom the ACRC awards grant funds for research on a specific project.
4. "Governmental unit" means any department, commission, council, board, bureau, committee, institution, agency, government corporation, or other establishment or official of the executive branch or corporation commission of this state, another state, or the federal government.
5. "Grant" means an award of financial support to an applicant according to A.R.S. § 3-468.02(B) and (C)(5).
6. "Grant award agreement" means a document advising the applicant of the amount of money awarded following

receipt by the ACRC of the applicant's signed acceptance.

**B. Grant application process.**

1. The ACRC shall award grants according to the competitive grant solicitation requirements of this Article.
  2. The ACRC shall post the grant application and manual on the ACRC's web site at least four weeks before the due date of a grant application.
  3. The ACRC shall ensure that the grant application manual contains the following items:
    - a. Grant topics related to ACRC programs specified by A.R.S. § 3-468.02(B) and (C)(5);
    - b. A statement that the information contained in an application is not confidential;
    - c. A statement that the ACRC funding source is primarily from per carton assessments on citrus grown in Arizona;
    - d. An application form including sections about the description of the grant project, scope of work to be performed, an authorized signature line, and a sample budget form;
    - e. A statement that the applicant shall not include overhead expenses in the budget for the proposed project;
    - f. The criteria that the ACRC shall use to evaluate an application;
    - g. The date and time by which the applicant shall submit an application;
    - h. The anticipated date of the ACRC award;
    - i. A copy of the ACRC grant solicitation rules; and
    - j. Any other information necessary for the grant application.
  4. The ACRC shall not consider an application received by the ACRC after the due date and time.
- C. Criteria. The ACRC shall consider the following when reviewing a grant application and deciding whether to award ACRC funds:
1. The applicant's successful completion of prior research projects,
  2. The extent to which the proposed project identifies solutions to current issues facing the citrus industry,
  3. The extent to which the proposed project addresses future issues facing the citrus industry,
  4. The extent to which the proposed project addresses the findings of any industry surveys conducted within the previous year,
  5. The appropriateness of the budget request in achieving the project objectives,
  6. The appropriateness of the proposal time-frame to the stated project objectives, and
  7. Relevant experience and qualifications of the applicant.
- D. Public participation.
1. The ACRC shall make all applications available for public inspection by the business day following the application due date.
  2. Before awarding a grant, the ACRC shall discuss and evaluate grant applications and proposed projects at a meeting conducted under A.R.S. § 38-431 et seq.
- E. Evaluation of grant applications.
1. The ACRC may allow applicants to make oral or written presentations at the public meeting if time, applicant availability, and meeting space permit.
  2. The ACRC may modify an applicant's proposed project in awarding funding.
  3. The ACRC shall notify an applicant in writing of the ACRC's decision to fund, modify, or deny funding for a

proposed project within 10 business days of the ACRC decision. The ACRC shall notify applicants by the U.S. Postal Service, commercial delivery, electronic mail, or facsimile.

**F. Awards and project monitoring.**

1. Before releasing grant funds, the ACRC shall execute a grant award agreement with the awardee. The awardee shall agree to accept the grant's legal requirements and conditions and authorize the ACRC to monitor the progress of the project by signing a grant award agreement.
2. The ACRC shall pay no more than 50% of the grant in the initial payment to the awardee.
3. During the term of the project, the awardee shall inform the ACRC of changes to the awardee's address, telephone number, or other contact information.
4. The ACRC may require an interim written report or oral presentation from the awardee during the pendency of the project.
5. The ACRC shall not award the grant funds remaining after the initial payment until the awardee submits to the ACRC:
  - a. A final research report, and
  - b. An invoice for actual final project expenses not exceeding the remaining portion of the award.
6. The ACRC shall make research findings and reports resulting from any grant awarded by the ACRC available to Arizona citrus producers.

**G. Repayment.** If the awardee does not complete the project as specified in the grant award agreement, the awardee shall return all unexpended grant funds within 30 days after receipt of written request by the ACRC.

**H. Governmental units.**

1. The ACRC may request one or more governmental units to submit grant applications as prescribed in subsection (H)(3), without regard to subsections (B), (F)(2), and (F)(5).
2. The ACRC may issue grants to governmental units without regard to subsections (B), (F)(2), and (F)(5).
3. A governmental unit may apply to the ACRC for a grant when there is no pending request for grant applications under subsection (B) under the following conditions:
  - a. The application shall include a description of the project, the scope of work to be performed, a budget that does not include overhead expenses, and an authorized signature.
  - b. The application shall be available for public inspection upon receipt by the ACRC.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 176, effective March 11, 2006 (Supp. 06-1). Amended by final rulemaking at 14 A.A.R. 3665, effective November 8, 2008 (Supp. 08-3).

**ARTICLE 6. LEAFY GREENS FOOD SAFETY COMMITTEE**

**R3-9-601. Definitions**

"Act" means A.R.S. Title 3, Chapter 3, Article 1.

"Auditor" or "Inspector" means a state or federal agricultural regulatory agency or their designee(s), or a private entity contracted by the Committee to perform inspections authorized by the Act.

"Best practices" means the "Commodity Specific Food Safety Guidelines for the Production and Harvest of Lettuce and Leafy Greens: Version 7 – Arizona" dated August 1, 2013. This document is incorporated by reference, does not include

any later amendments or editions, and is available for review online at <http://www.arizona-leafygreens.org/members/resources/> and at the Arizona Department of Agriculture, 1688 W. Adams St., Phoenix, Arizona 85007.

"Committee" means the Leafy Greens Food Safety Committee established pursuant to the Marketing Agreement.

"LGMA" or "Marketing Agreement" means the Arizona Leafy Green Products Shipper Marketing Agreement, as amended effective October 1, 2011, that was approved pursuant to the Act. This document is incorporated by reference, does not include any later amendments or editions, and is available for review online at <http://www.arizona-leafygreens.org/members/resources/> and at the Arizona Department of Agriculture, 1688 W. Adams, Phoenix, Arizona 85007.

"SOP" means standard operating procedure.

**Historical Note**

New Section made by exempt rulemaking at 16 A.A.R. 2282, effective October 28, 2010 (Supp. 10-4). Amended by exempt rulemaking at 17 A.A.R. 1767, effective August 1, 2011 (Supp. 11-3). Amended by exempt rulemaking at 17 A.A.R. 2569, effective November 29, 2011 (Supp. 11-4). Amended by exempt rulemaking at 18 A.A.R. 2928, effective August 1, 2012 (Supp. 12-4). Amended by exempt rulemaking at 19 A.A.R. 4019, effective October 15, 2013 (Supp. 13-4).

**R3-9-602. Best Practices; LGMA Compliance**

- A.** Signatories shall comply with the best practices, maintain a trace-back system, and be subject to periodic audit by an auditor.
- B.** Signatories shall only buy, consign, or otherwise accept or handle leafy green products (grown in Arizona) from a shipper or producer who is in compliance with the best practices (including recordkeeping requirements), maintains a trace-back system, and is subject to periodic audit by an auditor.
- C.** When the best practices require a SOP, there shall be an appropriate SOP and that SOP shall be followed.

**Historical Note**

New Section made by exempt rulemaking at 16 A.A.R. 2282, effective October 28, 2010 (Supp. 10-4). Amended by exempt rulemaking at 17 A.A.R. 2569, effective November 29, 2011 (Supp. 11-4). Amended by exempt rulemaking at 19 A.A.R. 4019, effective October 15, 2013 (Supp. 13-4).

**R3-9-603. Service Mark Usage**

- A.** A signatory's compliance with the LGMA and R3-9-602 is a condition precedent and subsequent to the signatory's privilege to use the service mark.
- B.** An authorized signatory may use the service mark on all bills of lading and on other documents.
- C.** A signatory shall:
  1. Use the service mark without reference to a private brand or label.
  2. Provide reasonable assurances that the signatory has a system in place to comply with this Section, maintain records sufficient to audit the system for the duration of the LGMA, and make those records available to the Committee upon request.
- D.** A signatory shall not:
  1. Use the service mark on packaging or product or as a certification mark to certify product.
  2. Use the service mark as the signatory's own mark or as the exclusive representation of its business entity.

3. Insert within or overlap the boundaries of the service mark with the signatory's name or trademark.
4. Alter the service mark in any way other than proportionately adjusting the size of the service mark.

**Historical Note**

New Section made by exempt rulemaking at 16 A.A.R. 2282, effective October 28, 2010 (Supp. 10-4). Amended by exempt rulemaking at 17 A.A.R. 2569, effective November 29, 2011 (Supp. 11-4).

**R3-9-604. Loss of Use of Service Mark**

- A. A signatory shall lose the privilege to use the service mark if the signatory:
  1. Commits a flagrant violation or repeated major deviation;
  2. Fails to comply with R3-9-603;
  3. Has not paid assessments due for the prior fiscal year; or
  4. Withdraws from participation in the LGMA pursuant to Article XVI, section C of the LGMA.
- B. The first flagrant violation or repeated major deviation shall result in a suspension of the privilege to use the service mark for a minimum two-week period.
- C. A flagrant violation or repeated major deviation following the first flagrant violation or repeated major deviation shall result in an indefinite suspension of the privilege to use the service mark.
- D. A flagrant violation or repeated major deviation following a suspension pursuant to subsection (C) shall result in an indefinite revocation of the privilege to use the service mark. The privilege to use the service mark shall not be restored to the signatory for a minimum of two years unless the signatory demonstrates to the satisfaction of the auditor and the Committee a significant change in management and brand.
- E. A signatory whose privilege to use the service mark is suspended or revoked pursuant to subsections (B) through (D) shall not use the service mark until the signatory has undergone at least one new audit without the finding of any major deviations or flagrant violations and has evidenced that the signatory has corrected any minor deviations found.
- F. At least two weeks of any suspension of the privilege to use the service mark under subsections (B) through (D) shall occur between December 1 and March 31.
- G. The Committee may accelerate the progression of penalties under this Section if the signatory's product seriously affects a person's health and the signatory handled the product with intentional, knowing or reckless disregard for the signatory's obligations under the LGMA and best practices.
- H. A signatory shall not lose the privilege to use the service mark under subsections (A)(1) and (2) without an opportunity for a hearing under A.R.S. Title 41, Chapter 6, Article 10, except if the Committee finds that the public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, the Committee may order summary suspension of a signatory's privilege to use the service mark.
- I. A signatory that loses the privilege to use the mark under subsection (A)(3) shall pay all assessments due from prior fiscal years, including penalties and interest, before regaining the privilege to use the service mark.
- J. The Committee may publish a list of signatories whose privilege to use the service mark has been suspended.

**Historical Note**

New Section made by exempt rulemaking at 16 A.A.R. 2282, effective October 28, 2010 (Supp. 10-4). Amended by exempt rulemaking at 17 A.A.R. 2569, effective November 29, 2011 (Supp. 11-4). Amended by exempt

rulemaking at 19 A.A.R. 4019, effective October 15, 2013 (Supp. 13-4).

**R3-9-605. Violation Levels; Repeated Violations**

- A. Violations of R3-9-602 fall into four levels: flagrant violations, major deviations, minor deviations, and minor infractions. The Committee or its designee shall determine the level of a violation consistent with this Section.
- B. A flagrant violation occurs when a signatory buys, consigns, or otherwise accepts or handles a leafy green product and knows or should have known the product was grown, packed, shipped, processed or handled in violation of R3-9-602 and the violation:
  1. Significantly increases the risk of delivering unsafe product into commerce;
  2. Affects the integrity of the LGMA's food safety program; or
  3. In the Committee's judgment, merits more serious treatment than a major deviation based on the consideration of, as relevant:
    - a. The position of the employee responsible for the violation,
    - b. Whether the employee responsible for the violation knowingly committed the violation,
    - c. The circumstances surrounding the violation,
    - d. Whether the signatory took prompt corrective action,
    - e. Whether the signatory has committed the same or a similar violation previously, and
    - f. Any other relevant facts.
- C. A major deviation is a violation of R3-9-602 that may inhibit the maintenance of food safety, but that does not necessarily result in unsafe product.
- D. The following violations constitute at least major deviations and are potentially flagrant violations:
  1. Falsification of any record for any reason;
  2. Spitting in the field;
  3. Unclean sanitation facilities, including the presence of soiled toilet paper;
  4. Failure to:
    - a. Properly wash hands after using a restroom or returning to the field;
    - b. Follow the best practices with respect to feces or fecal matter found in the field;
    - c. Follow the best practices with respect to the use of compost or animal manure, including creating and maintaining proper records related to that use;
    - d. Have a trace-back system;
    - e. Sanitize gloves and knives;
    - f. Follow a work health practices program concerning the transfer of human pathogens by workers; or
    - g. Provide a Compliance Plan, as defined in the best practices, to an auditor;
  5. Refusing an audit; and
  6. Conditions for which an automatic "unsatisfactory" would be assessed by USDA if performing a GAP/GHP audit.
- E. Violations constituting flagrant violations or major deviations are not limited to those listed in subsection (D).
- F. A minor deviation is a violation of R3-9-602 that the signatory can correct within five business days of the audit and that does not necessarily increase the risk of a food borne illness.
- G. A minor infraction is a violation of R3-9-602 that the signatory corrects before the auditor leaves the audited premises and that does not necessarily increase the risk of a food borne illness.
- H. The Committee or its designee may assess a signatory with a major deviation if an auditor discovers several minor devia-

tions or minor infractions of the same type or if a signatory fails to timely submit a corrective action plan.

- I.** Repeated major violations are limited to violations occurring during the current and prior fiscal year.

**Historical Note**

New Section made by exempt rulemaking at 16 A.A.R. 2282, effective October 28, 2010 (Supp. 10-4). Amended by exempt rulemaking at 17 A.A.R. 2569, effective November 29, 2011 (Supp. 11-4). Amended by exempt rulemaking at 19 A.A.R. 4019, effective October 15, 2013 (Supp. 13-4).

**R3-9-606. Corrective Action Plans**

- A.** A signatory who commits a flagrant violation, major deviation, or minor deviation shall correct the violation and submit a corrective action plan to the Committee or its designee within five business days of receipt of the audit report noting the violation. If the Committee or its designee rejects the cor-

rective action plan, the signatory has 24 hours to submit a revised corrective action plan.

- B.** In the case of a flagrant violation or major deviation, once the Committee or its designee accepts the signatory's corrective action plan, an auditor shall perform an unannounced audit of the signatory within three business days.
- C.** The signatory shall comply with the corrective action plan.
- D.** Notwithstanding subsection (A), in the case of a violation that creates an immediate danger to public health, the signatory shall submit a correction action plan immediately and take necessary action to minimize the threat to public health.

**Historical Note**

New Section made by exempt rulemaking at 16 A.A.R. 2282, effective October 28, 2010 (Supp. 10-4). Amended by exempt rulemaking at 19 A.A.R. 4019, effective October 15, 2013 (Supp. 13-4).

**Supplement to the**

**Arizona Administrative Code**

The official compilation of Arizona Rules

**Arizona Secretary of State's Office**

Public Services Division

1700 W. Washington Street, Fl 7.

Phoenix, AZ 85007

**Replacement Check List**

For rules filed within the

Third

July 1, 2014 - September 30, 2014

**Code Release Number: Supp. 14-3**

Within the stated calendar quarter, this Title contains all rules made, amended, repealed, renumbered, and recodified; or rules that have expired or were terminated due to an agency being eliminated under sunset law. These rules were either certified by the Governor's Regulatory Review Council or the Attorney General's Office; or exempt from the rulemaking process, and filed with the Office of the Secretary of State. Refer to the historical notes for more information. Please note that some rules you are about to remove may still be in effect after the publication date of this Supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

**Follow the instructions to replace the updated Chapters.**

**TITLE 04. Professions and Occupations**

**Chapter 07. Board of Chiropractic Examiners**

Sections, Parts, Exhibits, Tables or Appendices modified

Article 14, R4-7-1401 through R4-7-1408

REMOVE Supp. 12-3

Pages: 1 - 16

REPLACE with Supp. 14-3

Pages: 1 - 20

**Chapter 12. Board of Funeral Directors and Embalmers**

Sections, Parts, Exhibits, Tables or Appendices modified

R4-12-101, R4-12-602, R4-12-612, R4-12-613, R4-12-621, R4-12-631 through R4-12-634

REMOVE Supp. 12-1

Pages: 1 - 33

REPLACE with Supp. 14-3

Pages: 1 - 32

**Chapter 15. Board of Massage Therapy**

Sections, Parts, Exhibits, Tables or Appendices modified

R4-15-101 through R4-15-103, R4-15-201, R4-15-203 through R4-15-205, R4-15-207, Table 1,  
R4-15-301 through R4-15-303

REMOVE Supp. 09-4

Pages: 1 - 5

REPLACE with Supp. 14-3

Pages: 1 - 6

**Chapter 16. Arizona Medical Board**

Sections, Parts, Exhibits, Tables or Appendices modified

R4-16-205

REMOVE Supp. 13-2

Pages: 1 - 14

REPLACE with Supp. 14-3

Pages: 1 - 15

Sections, Parts, Exhibits, Tables or Appendices modified

R4-16-201

REMOVE Supp. 13-2

Pages: 1 - 14

REPLACE with Supp. 14-3

Pages: 1 - 15

**Chapter 19. Board of Nursing**

Sections, Parts, Exhibits, Tables or Appendices modified

Articles 1, 2 and 8

REMOVE Supp. 13-3

Pages: 1 - 52

REPLACE with Supp. 14-3

Pages: 1 - 56

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**Follow the instructions to replace the updated Chapters.**

**Chapter 22. Board of Osteopathic Examiners in Medicine and Surgery**

Sections, Parts, Exhibits, Tables or Appendices modified

R4-22-101 through R4-22-108, R4-22-110 through R4-22-112, R4-22-115, Article 2, R4-22-201 through R4-22-207, R4-22-212, Article 3, R4-22-301 through R4-22-305, Article 4, R4-22-401 through R4-22-403, Article 5, R4-22-501 through R4-22-508

REMOVE Supp. 12-3  
Pages: 1 - 6

REPLACE with Supp. 14-3  
Pages: 1 - 12

**Chapter 30. Board of Technical Registration**

Sections, Parts, Exhibits, Tables or Appendices modified

R4-30-212

REMOVE Supp. 13-3  
Pages: 1 - 35

REPLACE with Supp. 14-3  
Pages: 1 - 35

**TITLE 4. PROFESSIONS AND OCCUPATIONS**  
**CHAPTER 7. BOARD OF CHIROPRACTIC EXAMINERS**

(Authority: A.R.S. § 32-904 et seq.)

*Editor's Note: All former rules renumbered, and a new Article 10 added (Supp. 85-5).*

**ARTICLE 1. DEFINITIONS; MEETINGS**

Section	
R4-7-101.	Definitions
R4-7-102.	Repealed
R4-7-103.	Renumbered
R4-7-104.	Meetings

**ARTICLE 2. COMMITTEES**

Section	
R4-7-201.	Formation
R4-7-202.	Powers and duties
R4-7-203.	Renumbered

**ARTICLE 3. HEARINGS**

Section	
R4-7-301.	Investigation of a Complaint
R4-7-302.	Service
R4-7-303.	Conduct of Hearing
R4-7-304.	Repealed
R4-7-305.	Rehearing or Review

**ARTICLE 4. EXAMINATIONS**

Section	
R4-7-401.	Repealed
R4-7-402.	Renumbered
R4-7-403.	Repealed
R4-7-404.	Investigations
R4-7-405.	Refusal to Issue Licenses
R4-7-406.	Repealed

**ARTICLE 5. LICENSES**

Section	
R4-7-501.	Display of Licenses
R4-7-502.	Procedures for Processing Initial License Applications
R4-7-503.	Renewal License: Issuance, Reinstatement
R4-7-504.	License: Denial
R4-7-505.	Renumbered

**ARTICLE 6. ACUPUNCTURE CERTIFICATION**

Section	
R4-7-601.	Definition of Acupuncture as Applied to Chiropractic
R4-7-602.	Repealed
R4-7-603.	Renumbered
R4-7-604.	Renumbered
R4-7-605.	Renumbered
R4-7-606.	Renumbered

**ARTICLE 7. STANDARDS OF EDUCATION**

Section	
R4-7-701.	Repealed
R4-7-702.	Educational Requirements for Licensure

**ARTICLE 8. CONTINUING EDUCATION**

*New Article 8, consisting of Sections R4-7-801 through R4-7-803, adopted effective June 19, 1997 (Supp. 97-2).*

*Article 8, consisting of Sections R4-7-60 through R4-7-62, renumbered as Sections R4-7-801 through R4-7-803, effective September 27, 1985 (Supp. 85-5).*

*Article 8, consisting of Sections R4-7-60 through R4-7-63, repealed effective May 14, 1980 (Supp. 80-3).*

Section	
R4-7-801.	Continuing Education Requirements
R4-7-802.	Documenting Compliance with Continuing Education Requirements
R4-7-803.	Effect on Suspension of Continuing Education Requirements

**ARTICLE 9. UNPROFESSIONAL CONDUCT**

Section	
R4-7-901.	Advertising of a Deceptive and Misleading Nature
R4-7-902.	Unprofessional or Dishonorable Conduct

**ARTICLE 10. PRECEPTORSHIP TRAINING PROGRAM**

*Former Sections R4-7-1001 through R4-7-1003 repealed by final rulemaking at 5 A.A.R. 1602, effective May 20, 1999 (Supp. 99-2). New Sections R4-7-1001 through R4-7-1003 adopted by final rulemaking at 5 A.A.R. 1602, effective May 20, 1999 (Supp. 99-2).*

*Article 10, consisting of Sections R4-7-1001 through R4-7-1003, adopted effective September 27, 1985.*

Section	
R4-7-1001.	Eligibility; Application
R4-7-1002.	Practice Limitations
R4-7-1003.	Regulation and Termination of the Preceptorship Program
Appendix A.	Repealed
Appendix B.	Repealed
Appendix C.	Repealed
Appendix D.	Repealed
Appendix E.	Repealed
Appendix F.	Repealed

**ARTICLE 11. CHIROPRACTIC ASSISTANTS**

*Article 11, consisting of Sections R4-7-1101 through R4-7-1103, adopted effective December 18, 1992 (Supp. 92-4).*

Section	
R4-7-1101.	Use of the Term "Chiropractic Assistant"
R4-7-1102.	Chiropractic Assistant Training
R4-7-1103.	Scope of Practice

**ARTICLE 12. EXPIRED**

*Article 12, consisting of Sections R4-7-1201 through R4-7-1204, expired under A.R.S. § 41-1056(E) at 12 A.A.R. 688, effective December 31, 2005 (Supp. 06-1).*

*Article 12, consisting of Sections R4-7-1201 through R4-7-1204, made by final rulemaking at 8 A.A.R. 259, effective December 17, 2001 (Supp. 01-4).*

Section	
R4-7-1201.	Expired
R4-7-1202.	Expired
R4-7-1203.	Expired
R4-7-1204.	Expired

**ARTICLE 13. CHARGES**

*Article 13, consisting of Section R4-7-1301, adopted by final rulemaking at 5 A.A.R. 4532, effective November 9, 1999 (Supp. 99-4).*

## Section

R4-7-1301. Additional Charges

**ARTICLE 14. BUSINESS ENTITIES**

*Article 14, consisting of Section 3 R4-7-1401 through R4-7-1408, made by final rulemaking at 20 A.A.R. 2239, effective October 5, 2014 (Supp. 14-3).*

## Section

R4-7-1401. Application for Business Entity; qualifications of applicant; fee; background investigations

R4-7-1402. Display of Registration

R4-7-1403. Procedures for Processing Initial Registration Applications

R4-7-1404. Business Entity Registration Renewal: Issuance, Reinstatement

R4-7-1405. Business Entity Registration: Denial

R4-7-1406. Reporting; Civil Penalty

R4-7-1407. Licensed Doctors of Chiropractic and Business Entities, Unprofessional Conduct

R4-7-1408. Exemptions

**ARTICLE 1. DEFINITIONS; MEETINGS****R4-7-101. Definitions**

In addition to the definitions in A.R.S. § 32-900, unless otherwise specified, the following terms have the following meanings:

1. "Adequate patient records" means legible chiropractic records containing, at the minimum, sufficient information to identify the patient and physician, support the diagnosis, identify the specific elements of the chiropractic service performed, indicate special circumstances or instruction provided to the patient, if any, identify a treatment plan, and provide sufficient information for another practitioner to assume continuity of patient care.
2. "Business day" means Monday through Friday, 8:00 a.m. to 5:00 p.m. except for state holidays.
3. "C.A." means a chiropractic assistant under A.R.S. § 32-900.
4. "Certification" means approval to practice chiropractic specialties under A.R.S. § 32-922.02.
5. "Chiropractor" means doctor of chiropractic or chiropractic physician pursuant to A.R.S. §§ 32-925(A), 32-926(A) and (B) and may be designated by the abbreviation "D.C."
6. "Controlled substance" means a drug or substance identified, defined, or listed in A.R.S. Title 36, Chapter 27, Article 2.
7. "Device" has the same meaning as prescribed in A.R.S. § 32-1901.
8. "Diagnosis" means the determination of the nature of a condition or illness under A.R.S. § 32-925(A) and (B).
9. "Dispense" means to deliver to an ultimate user under A.R.S. § 32-925(A) and (B).
10. "Extern" means a student of a Board-approved chiropractic college who participates in the preceptorship training program.
11. "License" means a document issued by the Board to practice chiropractic
12. "Non-prescription drug" or "over-the-counter drug" has the same meaning as prescribed in A.R.S. § 32-1901. Drug has the same meaning as prescribed in A.R.S. § 32-1901, but does not include those substances referenced in subsection (13).
13. "Nutrition" includes, but is not limited to, vitamins, minerals, water, enzymes, botanicals, homeopathic preparations, phytonutrients, glandular extracts, and natural hormones.

14. "Preceptor" means a supervising chiropractor approved by the Board to supervise a student in a Board approved preceptorship training program.

15. "Preceptorship training program" means a Board approved program by which a student may practice chiropractic under the supervision of a preceptor.

16. "Prescribe" means to order or recommend a treatment or device.

17. "Prescription drug" has the same meaning as prescribed in A.R.S. § 32-1901.

18. "Supervision" means a licensed chiropractor is present in the office, sees a patient, assigns the work to be done regarding the patient, and is available to check the work of the supervised individual as it progresses and the completed work.

**Historical Note**

Adopted effective December 31, 1975 (Supp. 75-2). Former Section R4-7-01 renumbered as Section R4-7-101 and amended effective September 27, 1985 (Supp. 85-5).

Amended effective December 18, 1992 (Supp. 92-4). Amended effective July 6, 1993 (Supp. 93-3). Amended effective June 19, 1997 (Supp. 97-2). Amended by final rulemaking at 5 A.A.R. 998, effective March 16, 1999 (Supp. 99-1). Amended by final rulemaking at 14 A.A.R. 502, effective April 5, 2008 (Supp. 08-1).

**R4-7-102. Repealed****Historical Note**

Adopted effective December 31, 1975 (Supp. 75-2). Former Section R4-7-02 renumbered as Section R4-7-101 without change effective September 27, 1985 (Supp. 85-5). Repealed effective July 6, 1993 (Supp. 93-3).

**R4-7-103. Renumbered****Historical Note**

Former Section R4-7-03 renumbered as Section R4-7-103 effective September 27, 1985 (Supp. 85-5).

**R4-7-104. Meetings**

The Board shall hold its annual election of officers during its July meeting.

**Historical Note**

Former Article I, Rules 1, 2, and 3; Amended effective December 31, 1975 (Supp. 75-2). Former Section R4-7-04 renumbered as Section R4-7-104 without change effective September 27, 1985 (Supp. 85-5). Amended effective July 6, 1993 (Supp. 93-3).

**ARTICLE 2. COMMITTEES****R4-7-201. Formation**

The Board may from time to time appoint such committees as it deems necessary or proper to assist it in carrying out its duties. Committees may be appointed for such periods of time as the Board designates.

**Historical Note**

Former Article II, Rule 1; Amended effective December 31, 1975 (Supp. 75-2). Former Section R4-7-10 renumbered as Section R4-7-201 without change effective September 27, 1985 (Supp. 85-5). Amended effective July 6, 1993 (Supp. 93-3).

**R4-7-202. Powers and duties**

Committees appointed by the Board shall make reports to the Board based on their findings or investigations and may make recommendations for further action by the Board.



**Historical Note**

Former Article II, Rule 2; Former Section R4-7-11 renumbered as Section R4-7-202 without change effective September 27, 1985 (Supp. 85-5).

**R4-7-203. Renumbered**

**Historical Note**

Former Article II, Rule 3; Repealed effective December 31, 1975 (Supp. 75-2). Former Section R4-7-12 renumbered as Section R4-7-203 effective September 27, 1985 (Supp. 85-5).

**ARTICLE 3. HEARINGS**

**R4-7-301. Investigation of a Complaint**

- A. The Board may investigate any complaint alleging violation of A.R.S. § 32-900 et seq. or this Chapter.
- B. A subpoena compelling the production of documentary evidence or testimony of a witness under A.R.S. § 32-929 shall bear the seal of the Board and the signature of any member of the Board or the Board's executive director.
- C. If the Board finds probable cause that a licensee has violated A.R.S. § 32-900 et seq. or this Chapter, the Board shall notice the licensee of the time and place for a formal interview under A.R.S. Title 32, Chapter 8, Article 2, for a public hearing under A.R.S. Title 41, Chapter 6, Article 10.

**Historical Note**

Former Article III, Rule 1; Former Section R4-7-15 repealed, new Section R4-7-15 adopted effective December 31, 1975 (Supp. 75-2). Former Section R4-7-15 renumbered as Section R4-7-301 without change effective September 27, 1985 (Supp. 85-5). Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). Amended by final rulemaking at 7 A.A.R. 1539, effective March 13, 2001 (Supp. 01-1). Amended by final rulemaking at 13 A.A.R. 1848, effective July 10, 2007 (Supp. 07-2).

**R4-7-302. Service**

- A. Service of any document, or a copy thereof, is deemed to have been made upon personal service or by enclosing a copy of the document in a sealed envelope and depositing the envelope as certified mail in the United States mail, with first-class postage prepaid, addressed to the party, at the address last provided to the Board.
- B. Service by mail is deemed complete five days following the day the paper to be served is deposited in the United States mail.
- C. In computing time, the date of mailing is not counted. All intermediate Sundays and holidays are counted but, if the last day falls on a Sunday or a holiday, that day is not counted and service is considered completed on the next business day.
- D. The Board shall mail each notice of formal interview or hearing and final decision by certified mail to the last known address reflected in the records of the Board.
- E. In addition to service of any pleading upon the Board or any member of the Board, a copy of the pleading shall also be served upon the Attorney General of this state.

**Historical Note**

Former Article III, Rule 2; Amended effective December 31, 1975 (Supp. 75-2). Former Section R4-7-16 renumbered as Section R4-7-302 without change effective September 27, 1985 (Supp. 85-5). Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). Amended by final rulemaking at 13 A.A.R. 1848, effective July 10, 2007 (Supp. 07-2).

**R4-7-303. Conduct of Hearing or Formal Interview**

- A. All hearings shall be conducted before the Board or a hearing officer pursuant to A.R.S. Title 41, Chapter 6, Article 10. All formal interviews shall be conducted before the Board pursuant to A.R.S. Title 32, Chapter 8, Article 2.
  - 1. Parties may stipulate to any facts that are not in dispute. Stipulations may be made in writing or orally by reading the stipulation into the record. A stipulation is binding upon the parties unless the Board grants permission to withdraw from the stipulation. The Board may set aside any stipulation and proceed to ascertain the facts.
  - 2. The Board may, of its own motion or at request of any party, call a conference of the parties at the opening of any hearing or formal interview or at any subsequent time, for the purpose of clarifying the procedural steps to be followed in the proceeding, or the legal or factual issues involved.
  - 3. By order of the Board, proceedings involving a common question of law or fact may be consolidated for hearing or formal interview regarding any or all matters at issue.
- B. If a licensee fails to appear when noticed at any proceeding before the Board, the Board may act upon the available evidence and information without further notice to the licensee.

**Historical Note**

Former Article III, Rule 3; Former Section R4-7-17 repealed, new Section R4-7-17 adopted effective December 31, 1975 (Supp. 75-2). Former Section R4-7-17 renumbered as Section R4-7-303 without change effective September 27, 1985 (Supp. 85-5). Section repealed, new Section adopted effective July 6, 1993 (Supp. 93-3). Amended by final rulemaking at 13 A.A.R. 1848, effective July 10, 2007 (Supp. 07-2).

**R4-7-304. Repealed**

**Historical Note**

Former Article III, Rule 4; Former Section R4-7-18 renumbered as Section R4-7-304 without change effective September 27, 1985 (Supp. 85-5). Section repealed effective July 6, 1993 (Supp. 93-3).

**R4-7-305. Rehearing or Review**

- A. Except as provided in subsection (G), any party in an appealable agency action or contested case before the Board aggrieved by a decision may file with the Board a written motion for rehearing or review specifying the particular grounds not later than 30 days after service of the final administrative decision.
- B. A party may amend a motion for rehearing or review no later than eight days prior to the date set for the Board to rule on the motion. A party may respond within 15 days after service of the motion or amended motion. The Board may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.
- C. The Board may grant a rehearing or review for any of the following causes materially affecting the moving party's rights:
  - 1. Irregularity in the administrative proceedings of the Board, its hearing officer, or the prevailing party, or any order or abuse of discretion that deprives the moving party of a fair hearing;
  - 2. Misconduct of the Board, the hearing officer, 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 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; or
  7. That the decision is not justified by the evidence or is contrary to law.
- D.** The Board may affirm or modify the decision or grant a rehearing or review to all or any of the parties on all or part of the issues for any of the reasons in subsection (C). An order granting a rehearing or review shall specify with particularity the grounds for the order.
- E.** Not later than 10 days after the decision, the Board may, after serving each party with notice and an opportunity to be heard, 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. The Board may grant a motion for rehearing or review for a reason not stated in the motion. In either case, the order granting a rehearing or review shall specify the grounds on which it is granted.
- F.** When a motion for rehearing or review is based upon an affidavit, the affidavit shall be served with the motion. An opposing party may, within 10 days after service, serve an opposing affidavit. The Board may extend the period for serving an opposing affidavit for not more than 20 days for good cause shown or by written stipulation of the parties. The Board may permit a reply affidavit.
- G.** If the Board makes a specific finding that the immediate effectiveness of a particular decision is necessary for the preservation of the public peace, health, or safety and that a rehearing or review 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 may be made within the time limits permitted for applications for judicial review of the Board's final decisions.

**Historical Note**

Adopted effective September 15, 1978 (Supp. 78-5). Former Section R4-7-19 renumbered as Section R4-7-305 without change effective September 27, 1985 (Supp. 85-5). Amended effective July 6, 1993 (Supp. 93-3). Amended effective June 23, 1997 (Supp. 97-2). Amended by final rulemaking at 7 A.A.R. 1539, effective March 13, 2001 (Supp. 01-1). Amended by final rulemaking at 13 A.A.R. 1846, effective July 10, 2007 (Supp. 07-2).

**ARTICLE 4. EXAMINATIONS****R4-7-401. Repealed****Historical Note**

Former Article IV, Rule 1 (in part); Amended effective December 31, 1975 (Supp. 75-2). Former Section R4-7-20 renumbered as Section R4-7-401 without change effective September 27, 1985 (Supp. 85-5). Repealed effective December 9, 1994 (Supp. 94-4).

**R4-7-402. Renumbered****Historical Note**

Former Article IV, Rule 1 (in part); Repealed effective December 31, 1975 (Supp. 75-2). Former Section R4-7-21 renumbered as Section R4-7-402 effective September 27, 1985 (Supp. 85-5).

**R4-7-403. Repealed****Historical Note**

Former Article IV, Rule 1 (in part); Amended effective December 31, 1975 (Supp. 75-2). Former Section R4-7-

22 renumbered as Section R4-7-403 without change effective September 27, 1985 (Supp. 85-5). Repealed effective December 9, 1994 (Supp. 94-4).

**R4-7-404. Investigations**

The Board may require an applicant to appear and supply to the Board information or documents necessary to establish the qualifications of applicant.

**Historical Note**

Former Article IV, Rule 2; Former Section R4-7-23 renumbered as Section R4-7-404 without change effective September 27, 1985 (Supp. 85-5). Amended by final rulemaking at 7 A.A.R. 1539, effective March 13, 2001 (Supp. 01-1). Amended by final rulemaking at 18 A.A.R. 2552, effective November 19, 2012 (Supp. 12-3).

**R4-7-405. Refusal to Issue Licenses**

If the Board, after investigation of an applicant either before or after the applicant has taken the examination, determines that an applicant is not qualified to be issued a license, the Board shall notify applicant immediately of its decision to refuse to issue a license and the reasons therefore.

**Historical Note**

Former Article IV, Rule 3; Former Section R4-7-24 renumbered as Section R4-7-405 without change effective September 27, 1985 (Supp. 85-5). Amended effective December 9, 1994 (Supp. 94-4).

**R4-7-406. Repealed****Historical Note**

Former Article IV, Rule 4; Former Section R4-7-25 renumbered as Section R4-7-406 without change effective September 27, 1985 (Supp. 85-5). Repealed effective December 9, 1994 (Supp. 94-4).

**ARTICLE 5. LICENSES****R4-7-501. Display of Licenses**

A licensee shall, at all times, display the license issued to the licensee by the Board in a conspicuous place at all locations where the licensee engages in the practice of chiropractic, including mobile practices. A licensee shall, upon request of any person, produce for inspection the license renewal certificate for the current calendar year.

**Historical Note**

Former Article V, Rule 1; Former Section R4-7-30 renumbered as Section R4-7-501 without change effective September 27, 1985 (Supp. 85-5). Amended by final rulemaking at 7 A.A.R. 2821, effective June 12, 2001 (Supp. 01-2). Amended by final rulemaking at 13 A.A.R. 1848, effective July 10, 2007 (Supp. 07-2).

**R4-7-502. Procedures for Processing Initial License Applications**

- A.** An applicant may obtain a license application package at the Board Office on business days, or by requesting that the Board mail the application to an address specified by the applicant. An applicant shall pay the Board a non-refundable \$10 fee for each license application package.
- B.** A completed license application package shall be submitted to the Board office on business days. The Board shall deem the license application package received on the date that the Board stamps on the package as the date the package is delivered to the Board office;
- C.** To complete a license application package, an applicant shall provide the following information and documentation:

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1. Two identical photographs, measuring three inches by four inches, showing the applicant's full front face as the applicant will appear at the time of the examination and a description of identifying characteristics, if any;
  2. The applicant's full current name and any former names;
  3. The applicant's current home and all office addresses, current home and all office phone numbers, all current office fax numbers, and any previous home or office address or addresses for the past five years;
  4. The type of license, for which application is made;
  5. All fees required by A.R.S. §§ 32-921(D) and (E) and 32-922.02(E);
  6. A record of education requirements described in A.R.S. § 32-921(B) including the applicant's chiropractic college transcript and the applicant's certificate of attainment of passing scores for Parts I, II, III, and IV of the examination conducted by the National Board of Chiropractic Examiners;
  7. Any record of being convicted of, pleading guilty to, or pleading nolo contendere to a misdemeanor or a felony, even if the record of the conviction or plea was sealed or expunged or the conviction was set aside or forgiven, and any record of an arrest, investigation, indictment, or charge within the last 12 months. The applicant shall submit any record of being refused a license to practice chiropractic or any other health care profession in this or any other state, and any record of a formal sanction taken against the applicant's license in this or any other state;
  8. A completed fingerprint card;
  9. A list of all other states or jurisdictions in which the applicant is or has been licensed or certified to practice chiropractic or any other health care profession with a verification of good standing for each current license or certification submitted directly by the licensing agency of the other state or jurisdiction;
  10. The name and professional designation of the owner or owners of the clinic or office at which the applicant will be employed, if applicable;
  11. The applicant's Social Security number;
  12. The applicant's notarized signature, attesting to the truthfulness of the information provided by the applicant;
  13. A score of 75% or higher on the Arizona Jurisprudence Examination. The applicant shall not sit for the Arizona Jurisprudence Examination until the application package is otherwise complete.
- D.** Within 25 business days of receiving a license application package, the Board shall notify the applicant in writing that the package is either complete or incomplete. If the package is incomplete, the notice shall specify the information that is missing. If the Board does not provide notice to the applicant, the license application package shall be deemed complete after the passage of 25 business days.
- E.** An applicant with an incomplete license application package shall supply the missing information within 60 calendar days from the date of the notice. An applicant who is unable to supply the missing information within 60 calendar days may submit a written request to the Board for an extension of time in which to provide a complete application package. The request for an extension of time shall be submitted to the Board office before the 60-day deadline for submission of a complete application package, and shall state the reason that the applicant is unable to comply with the 60-day requirement and the amount of additional time requested. The Board shall grant a request for an extension of time if the Board finds that the reason the applicant was unable to comply with the 60-day requirement was due to circumstances beyond the applicant's control and that compliance can reasonably be expected to be remedied during the extension of time.
- F.** If an applicant fails to submit a complete license application package within the time permitted, the Board shall close the applicant's file and send a notice to the applicant by U.S. Mail that the application file has been closed. An applicant whose file has been closed and who later wishes to become licensed, shall apply anew.
- G.** After receiving all missing information as specified in subsection (E), the Board shall notify the applicant that the license application package is complete.
- H.** The Board shall render a licensing decision no later than 120 business days after receiving a completed license application package. The Board shall deem a license application package to be complete on the postmarked date of the notice advising the applicant that the package is complete.
- I.** An applicant seeking initial licensure by reciprocity under A.R.S. § 32-922.01 shall submit an application to the Board and shall comply with all provisions of R4-7-502 except that the applicant is not required to submit proof of obtaining a passing score on Part IV of the examination conducted by the National Board of Chiropractic Examiners.
- J.** For the purpose of A.R.S. § 41-1073, the Board establishes the following time-frames for initial licenses:
1. Administrative completeness review time-frame: 25 business days.
  2. Substantive review time-frame: 120 business days.
  3. Overall time-frame: 145 business days.

**Historical Note**

Former Article V, Rule 2; Amended effective December 31, 1975 (Supp. 75-2). Former Section R4-7-31 renumbered as Section R4-7-502 without change effective September 27, 1985 (Supp. 85-5). Repealed effective July 6, 1993 (Supp. 93-3). Adopted effective November 1, 1998; filed in the Office of the Secretary of State October 22, 1998 (Supp. 98-4). Amended by final rulemaking at 13 A.A.R. 1848, effective July 10, 2007 (Supp. 07-2).

**R4-7-503. Renewal License: Issuance, Reinstatement**

- A.** At least 30 days before a renewal application and renewal fee are due, the Executive Director of the Board shall send by first class mail to a licensee at the licensee's address of record, a renewal application and notice.
- B.** The licensee renewal application shall be returned to the Board office on a business day. The date of receipt shall be the postmarked date or the date the licensee hand delivers the license renewal application.
- C.** To complete a license renewal application, a licensee shall provide the following information and documentation:
1. The licensee's full name;
  2. The licensee's current home and office addresses, current home and all office phone numbers, and all current office fax numbers;
  3. The name and professional designation of the owner or owners of the clinic or office at which the licensee is employed;
  4. The licensee's Social Security number;
  5. A record of any professional disciplinary investigation or sanction taken against the licensee by a licensing board since the licensee last applied for renewal of a license in this or any other state;
  6. A record of any arrest, indictment or charge or any conviction or plea agreement for a misdemeanor or felony since the licensee last applied for renewal of the license;
  7. The renewal fee of \$170.00 required by A.R.S. § 32-923;

8. Attestation of compliance with the continuing education requirements under A.R.S. § 32-931 and R4-7-801. The licensee shall attest to compliance with continuing education requirements by documenting, on the renewal form, the date or dates the continuing education course was attended, the number of hours of continuing education completed, the qualifying course topic or topics, and the name of the accredited college or university with whom the course instructor is affiliated with as faculty. If the course does not meet the requirements under A.R.S. § 32-931 and R4-7-801, but has been approved by the Board, the applicant shall provide the continuing education course approval number issued by the Board instead of the name of the affiliated college or university;
  9. The licensee's signature attesting to the truthfulness of the information provided by the licensee.
- D.** In accordance with A.R.S. § 32-923(C), the Board shall automatically suspend a license if the licensee does not submit a completed application for renewal before January 1 of each calendar year. The Board shall send written notice of the license suspension to the licensee on or before January 20.
- E.** The Board shall reinstate a suspended license if the licensee pays the annual license renewal fee, pays an additional fee of \$100 as required by A.R.S. § 32-923(D), and submits a completed license renewal application between January 1, and March 31 of the calendar year for which the license renewal is made.
- F.** On or after April 1 of the calendar year for which a license renewal application was to be made, an individual who wishes to have a suspended license reinstated shall apply for reinstatement in accordance with A.R.S. § 32-923(D).
- G.** An application for reinstatement of license may be obtained at the Board office on business days or by requesting that the Board mail one to an address specified by the applicant.
- H.** A completed application for reinstatement of a license shall be submitted to the Board office on a business day. The Board shall deem an application for reinstatement of a license received on the date that the Board stamps on the application as the date it is delivered to the Board office.
- I.** To complete an application for reinstatement of license, an applicant shall provide the following information and documentation:
1. The applicant's full current name, suspended license number, and certification number if a specialty certification was held by the licensee;
  2. The applicant's current home and all office addresses, current home and all office phone numbers, and all current office fax numbers;
  3. The name and professional designation of the owner or owners of the office or clinic at which the applicant will be employed;
  4. The applicant's Social Security number;
  5. A list of all other states or jurisdictions in which the applicant is or has been licensed or certified to practice chiropractic or any other health care profession with a verification of good standing for each current license or certification submitted directly by the licensing agency of the other states or jurisdictions;
  6. A list of required continuing education courses completed and certification of course completion;
  7. A record of any professional disciplinary investigation or sanction initiated since the applicant last applied to renew the license;
  8. A record of any arrest, indictment or charge or any conviction or plea agreement for a misdemeanor or a felony since the date of the applicant's last application for licensure;
- J.** The Board shall process a license reinstatement application in accordance with R4-7-502(D) through (J). The Board shall deem the application received on the date that the Board stamps on the application as the date the application is delivered to the Board Office.
- K.** The Board shall reinstate or renew a license if:
1. The applicant or licensee has complied with the requirements of this Chapter and A.R.S. § 32-900 et seq.;
  2. The applicant or licensee has not had any professional disciplinary sanction taken against the applicant's or licensee's license by a licensing board since the last application for licensure;
  3. The applicant or licensee has not been convicted of, pled guilty to, or pled nolo contendere to a misdemeanor or a felony since the last application for licensure.
- L.** If the provisions of subsection (K) are satisfied, the Board shall issue a license renewal certificate on or before February 1, of each year. The license renewal certificate shall serve as notice that the renewal application is complete and approved.
- M.** If there is reason to believe that the provisions of subsection (K) have not been satisfied or that possible grounds for denying the renewal or reinstatement application exist, the Board shall notify the applicant of this possibility within 25 business days of the date that the application is received at the Board office.
- N.** An applicant who is so notified that renewal or reinstatement may be denied may provide a written response and shall submit any documentation as required through written notice by the Board within 60 calendar days from the date of the Board's notice. An applicant who is unable to supply the required documentation within 60 calendar days may submit a written request to the Board for an extension of time in which to provide the required documentation. The request for an extension of time shall be submitted to the Board office before the 60-day deadline for submission of the required documentation, and shall state the reason that the applicant is unable to comply with the 60-day requirement and the amount of additional time requested. The Board shall grant a request for an extension of time if the Board finds that the reason the applicant was unable to comply with the 60-day requirement was due to circumstances beyond the applicant's control and that compliance can reasonably be expected to be remedied during the extension of time.
- O.** If an applicant fails to submit required documentation within the time permitted, the Board shall issue a notice of intent to deny the renewal application or reinstatement application.
- P.** The Board shall make a licensing decision no later than 70 business days after receiving all required documentation as specified in subsection (N). The Board shall deem required documentation received on the date that the Board stamps on the documentation as the date the documentation is delivered to the Board's office.
- Q.** For the purpose of A.R.S. § 41-1073, the Board establishes the following time-frames for renewal or reinstatement of licenses:
1. Administrative completeness review time-frame: 25 business days.
  2. Substantive review time-frame: 70 business days.
  3. Overall time-frame: 95 business days.

#### Historical Note

Former Article V, Rule 3; Repealed effective December 31, 1975 (Supp. 75-2). Former Section R4-7-32 renamed.

bered as Section R4-7-503 effective September 27, 1985 (Supp. 85-5). Adopted effective November 1, 1998; filed in the Office of the Secretary of State October 22, 1998 (98-4). Amended by final rulemaking at 13 A.A.R. 1848, effective July 10, 2007 (Supp. 07-2).

**R4-7-504. License: Denial**

If the Board denies a license, the Board shall send the applicant written notice explaining:

1. The reason for denial, with citations to supporting statutes or rules;
2. The applicant's right to seek a fair hearing to challenge the denial;
3. The time periods for appealing the denial; and
4. The right to request an informal settlement conference with the Board's authorized agent.

**Historical Note**

Former Article V, Rule 4 (in part); Amended effective December 31, 1975 (Supp. 75-2). Former Section R4-7-33 renumbered as Section R4-7-504 without change effective September 27, 1985 (Supp. 85-5). Repealed effective July 6, 1993 (Supp. 93-3). Adopted effective November 1, 1998; filed in the Office of the Secretary of State October 22, 1998 (98-4). Amended by final rulemaking at 18 A.A.R. 2552, effective November 19, 2012 (Supp. 12-3).

**R4-7-505. Renumbered**

**Historical Note**

Former Article V, Rule 4 (in part); Repealed effective December 31, 1975 (Supp. 75-2). Former Section R4-7-34 renumbered as Section R4-7-505 effective September 27, 1985 (Supp. 85-5).

**ARTICLE 6. ACUPUNCTURE CERTIFICATION**

**R4-7-601. Definition of Acupuncture as Applied to Chiropractic**

- A. Acupuncture as applied to chiropractic is stimulation of a certain meridian point or points on or near the surface of the body to control and regulate the flow and balance of energy of the body.
- B. Acupuncture includes acupuncture by needle, electrical stimulation, ultrasound, acupressure, laser, auricular therapy, or any implement that stimulates acupuncture points.
- C. Acupuncture does not include cupping, moxibustion, or cosmetic therapy.

**Historical Note**

Repealed effective December 31, 1975 (Supp. 75-2). New Section R4-7-40 adopted effective January 25, 1984 (Supp. 84-1). Former Section R4-7-40 renumbered as Section R4-7-601 without change effective September 27, 1985 (Supp. 85-5). Amended by final rulemaking at 7 A.A.R. 2821, effective June 12, 2001 (Supp. 01-2). Amended by final rulemaking at 18 A.A.R. 2552, effective November 19, 2012 (Supp. 12-3).

**R4-7-602. Repealed**

**Historical Note**

Repealed effective December 31, 1975 (Supp. 75-2). New Section R4-7-41 adopted effective January 25, 1984 (Supp. 84-1). Former Section R4-7-41 renumbered as Section R4-7-602 without change effective September 27, 1985 (Supp. 85-5). Repealed effective December 9, 1994 (Supp. 94-4).

**R4-7-603. Renumbered**

**Historical Note**

Repealed effective December 31, 1975 (Supp. 75-2). Former Section R4-7-42 renumbered as Section R4-7-603 effective September 27, 1985 (Supp. 85-5).

**R4-7-604. Renumbered**

**Historical Note**

Repealed effective December 31, 1975 (Supp. 75-2). Former Section R4-7-43 renumbered as Section R4-7-604 effective September 27, 1985 (Supp. 85-5).

**R4-7-605. Renumbered**

**Historical Note**

Repealed effective December 31, 1975 (Supp. 75-2). Former Section R4-7-44 renumbered as Section R4-7-605 effective September 27, 1985 (Supp. 85-5).

**R4-7-606. Renumbered**

**Historical Note**

Repealed effective December 31, 1975 (Supp. 75-2). Former Section R4-7-45 renumbered as Section R4-7-606 effective September 27, 1985 (Supp. 85-5).

**ARTICLE 7. STANDARDS OF EDUCATION**

**R4-7-701. Repealed**

**Historical Note**

Adopted as an emergency effective June 24, 1977 (Supp. 77-3). Former Section R4-7-50 adopted as an emergency pursuant to A.R.S. § 41-1003, valid for only 90 days. New Section R4-7-50 adopted effective December 29, 1977 (Supp. 77-6). Former Section R4-7-50 renumbered as Section R4-7-701 without change effective September 27, 1985 (Supp. 85-5). Amended effective July 6, 1993 (Supp. 93-3). Section repealed by final rulemaking at 8 A.A.R. 4895, effective January 7, 2003 (Supp. 02-4).

**R4-7-702. Educational Requirements for Licensure**

To qualify for licensure, an individual shall have graduated from a college of chiropractic that is accredited as specified in A.R.S. § 32-921(B)(2)(a) or that meets the standards of education for accreditation contained in The Council on Chiropractic Education Standards for Doctor of Chiropractic Programs and Institutions.

**Historical Note**

Adopted as an emergency effective June 24, 1977 (Supp. 77-3). Former Section R4-7-51 adopted as an emergency pursuant to A.R.S. § 41-1003, valid for only 90 days. New Section R4-7-51 adopted effective December 29, 1977 (Supp. 77-6). Former Section R4-7-51 renumbered as Section R4-7-702 without change effective September 27, 1985 (Supp. 85-5). Amended effective July 6, 1993 (Supp. 93-3). Section repealed; new Section made by final rulemaking at 8 A.A.R. 4895, effective January 7, 2003 (Supp. 02-4).

**ARTICLE 8. CONTINUING EDUCATION**

**R4-7-801. Continuing Education Requirements**

- A. To be eligible to renew a license, a licensee shall complete 12 credits of continuing education between January 1 and December 31 of each year, and document compliance with continuing education requirements on the license renewal application as required by R4-7-503(C). Continuing education credit shall be given for a minimum of 50 minutes of continuous study for each class hour. No credit shall be allowed for breaks or for time expended for study outside of the classroom.

- B.** Basic requirements – The primary consideration in determining whether or not a specific course qualifies as acceptable continuing education is that it must be a formal program of learning which will contribute directly to the professional competence of a licensee in the practice of chiropractic. Each course shall be on subjects of clinical benefit to the consumer of chiropractic services.
1. The content of the course, seminar or workshop must be recognized by reputable authorities as having validity, and must conform to the scope of practice for assessment, treatment and diagnosis as authorized under A.R.S. § 32-925 and A.R.S. § 32-922.02.
  2. Instructors shall be qualified by education and/or experience to provide instruction in the relevant subject matter.
  3. Each licensee is responsible for determining in advance that the course which he or she attends qualifies for continuing education credit under this Article.
- C.** A licensee shall only obtain continuing education credit by:
1. Attending a course, (which includes a seminar or workshop), through a provider and on subjects that have been pre-approved by the Board.
  2. Participating in the development of, or proctoring the National Board of Chiropractic Examiners (NBCE) examinations. Continuing education credits earned in this manner are calculated as one credit hour for each hour of participation in the development of the NBCE examination for a maximum credit of eight hours per year, and one credit hour for each hour proctoring the NBCE exam for a total of eight hours per year. A licensee shall obtain a certificate of participation from the National Board of Chiropractic Examiners to verify compliance with this provision.
  3. By teaching a post-graduate course that has been pre-approved by the Board for continuing education credit under this Section as a faculty member of a college or university that is accredited by or is in good standing with the Council on Chiropractic Education or is accredited by an accrediting agency recognized by the United States Department of Education or the Private Postsecondary Education Board during the renewal year. Continuing education credits earned in this manner are calculated as one credit of continuing education for each hour of post-graduate course instruction. A maximum of six credits of continuing education credit may be earned in this manner annually.
  4. By completing a post-graduate mediated instruction or programmed learning course pre-approved by the Board through an accredited college or university that meets the requirements of A.R.S. § 32-931(B). Mediated instruction and programmed learning refers to learning transmitted by intermediate mechanisms such as webinar or other internet delivered courses that are structured to confirm 50 minutes of continuous instruction for each credit hour received. A licensee shall obtain a certificate of program completion from the accredited college or university to verify compliance with this provision.
- D.** The following are predetermined to meet Board approval as providers for continuing education. Additional approval is not required, nor should it be expected. An application submitted for a course that falls under this subsection shall be returned to the applicant without a review and subsection (E) does not apply. Coursework provided by these entities is approved as meeting continuing education requirements only for those subjects listed in subsections (J) and (K) of this Section. Pre-approval does not include mediated instruction or programmed learning courses.
1. A college or university that meets the requirements of A.R.S. § 32-921(B)(2)(a), the American Chiropractic Association and the International Chiropractors Association, with qualified instructors and that provide courses that meet the subject requirements under subsections (J) or (K).
  2. CPR training provided or sponsored by the American Heart Association, the American Red Cross, or an entity that meets equivalent standards of the American Heart Association and the American Red Cross. A maximum of four credits of continuing education credit may be earned in this manner annually.
  3. Participation in the development of or proctoring the NBCE examinations.
- E.** Prior approval is required for all course providers not mentioned in subsection (D) and for all mediated instruction or programmed learning courses regardless of subsection (D). A provider applying for approval of a continuing education course shall submit a complete application to the Board at least 60 days prior to the anticipated initial date of the course if submitted by internet, or 75 days if provided in hard copy form. The Board shall notify the applicant in writing that the package is either complete or incomplete. If the package is incomplete, the notice shall specify the information that is missing and the applicant must submit the missing information within 10 days of the notice. The Board will not approve a course if a complete application has not been submitted at least 15 business days prior to the initial date of the course identified in the initial application. If the applicant changes the initial date of the course or the course content or the instructors, it shall be considered a new application. A complete application shall include:
1. The name, dates, and locations of the course.
  2. The number of hours requested for approval.
  3. The subjects of the course, broken down by the specific time of instruction in/of each subject.
  4. A course description including the content, explicit written objectives identifying expected learner outcomes for each section of the course and teaching method (i.e. lecture, discussion, PowerPoint, internet, webinar).
  5. A detailed, hour by hour syllabus identifying the subject of instruction for each hour, with the instructor for each section identified. If less than an hour is dedicated to a subject, the syllabus shall identify the number of minutes dedicated to instruction on that subject.
  6. A resume or curriculum vitae for each instructor and an attestation of the following:
    - a. Licenses for all instructors are currently in good standing.
    - b. No instructor has had a license placed on probation or restricted within the past five years in this or any other jurisdiction.
    - c. No instructor has ever had a license suspended or surrendered for unprofessional conduct or revoked in this or any other jurisdiction.
    - d. No instructor has had a license application or renewal denied for unprofessional conduct.
    - e. No instructor has been convicted of a misdemeanor involving moral turpitude or a felony in this or any other jurisdiction.
  7. Documentation of license in good standing for each instructor for each state in which the instructor has or currently holds a license, if applicable. If an instructor is currently under investigation by a regulatory agency or is under investigation for, or been charged with, a criminal

offence, the applicant shall disclose the investigation or charge and shall provide all relevant records.

8. One letter of reference for each course instructor from a person familiar with the instructor's qualifications as an instructor and education and/or experience in the relevant subject.
  9. Identification of a sponsor, if applicable, and disclosure of any connection between the provider and/or instructor and/or sponsor of any commercial relationship and/or any external entity giving financial support to the course. If the course does have a sponsor, a completed sponsor/program provider agreement for continuing education, signed and notarized by a responsible party must be provided with the application.
  10. Documentation of the method by which attendance will be monitored, confirmed and documented.
  11. The name and contact information for the attendance certifying officer with an attestation that the certifying officer is supervised by the applicant provider and a description of the supervision method employed to confirm that the certifying officer is performing the duty of monitoring and confirming attendance.
  12. Attestation that each course hour consists of no less than 50 minutes of continuous instruction and that credit is not provided for breaks.
  13. The non-refundable fee required under R4-7-1301 for each course, whether individual or included in a program of multiple courses.
  14. The name, address, telephone number, fax number and e-mail of a contact person.
  15. Any other information required or requested by the Board.
  16. If the course is a mediated instruction or programmed learning course, a detailed description of the method used to confirm that the participant was engaged in 50 minutes of continuous instruction for each credit hour awarded.
  17. The Board may require that the applicant provide additional information in support of the application if the course qualifications are not clearly demonstrated through the materials provided.
- F.** The Board shall approve a continuing education course if the applicant has submitted a complete application to the Board's satisfaction within the time-frame required by this Chapter and has demonstrated the following:
1. The course complies with this Chapter.
  2. The course instructors is faculty with an accredited college or university that meets the requirements of A.R.S. § 32-921(B)(2)(a) or demonstrates equivalent qualifications through postgraduate study and experience teaching postgraduate coursework. An instructor must:
    - a. Hold an applicable license in good standing.
    - b. Shall not have had a license placed on probation within the last five years.
    - c. Shall not ever had a license suspended, surrendered for unprofessional conduct or revoked.
    - d. Shall not have had a license application or renewal denied for unprofessional conduct.
    - e. Shall not or been convicted of a felony in this or any other jurisdiction.
  3. The course instructor is qualified by education and experience to provide instruction in the relevant subject matter.
  4. The subject of the course qualifies under subsections (D)(2) and (3), (J) and (K).
  5. The course demonstrates attendance and/or monitoring procedures. Monitoring procedures must provide confirmation that a licensee was engaged in 50 minutes of continuous study for each credit hour.
- G.** The Board shall not approve a continuing education course if the applicant fails to submit a complete application within the time-frame required by this Chapter or if:
1. The course does not qualify under this Chapter.
  2. The course subject does not qualify for continuing education credit under subsections (D)(2) and (3), (J) and (K).
  3. The instructor does not qualify as per subsection (F)(2).
  4. The instructor's references do not support the qualifications of the instructor as per subsection (F).
  5. The course primary focus is to promote a product or service.
  6. The course requires participants to purchase a product or service.
  7. The course has no significant relationship to the assessment, diagnosis or treatment of patients within the scope of practice of chiropractic as defined under A.R.S. §§ 32-925 and 32-922.02.
  8. The content cannot be verified.
  9. The course refutes generally accepted medical care and treatment and/or instructs participants to encourage patients to stop taking medication and/or stops participating in generally accepted medical care or fails to qualify under subsection (K).
- H.** A course approved by the Board pursuant to subsections (E) and (F) shall be issued an approval number. Once approved, a course provider shall:
1. Provide course attendees with a certificate confirming course participation. The certificate shall:
    - a. Include the name of the college or university through which the course was completed, or the course approval code issued by the Board, if applicable;
    - b. The name and Arizona license number of the attendee;
    - c. The name of the course provider, the course subject matter;
    - d. The name of the course if different than the subject matter listed;
    - e. The date and location of the course; and
    - f. The number of hours of continuing education completed.
  2. Maintain a list of all course attendees for a minimum of five years after each date that the course is held, and shall provide a copy of the list to the board within 10 days of a written request to do so.
  3. Maintain a copy of the course syllabus and stated learning objectives, a list of instructors and documentation of the name, location and date of the course for a minimum of five years and shall provide the Board with a copy of these materials within 10 days of a written request to do so.
  4. Monitor course attendance by each attendee in a manner that confirms that the attendee was present and participating in the course for a continuous 50 minutes for each hour of continuing education credited.
  5. Notify the Board immediately of concerns or problems that may arise regarding the approved course, to include discipline being imposed on the license of an instructor or an instructor being convicted of a criminal offense.
  6. Reapply for Board approval every two years no later than the first day of the month in which the course was initially approved, and every time the subject of the course changes and/or there is a change in instructors that does not include an instructor already approved by the Board.

- Failure to reapply as per this subsection shall disqualify the course for ongoing continuing education credit.
7. Not represent that the course is sanctioned or promoted by the state of Arizona Board of Chiropractic Examiners. The provider may state that the course meets the continuing education requirements as per A.R.S. § 32-931. If the course has been directly approved by the Board, the provider may display the Board's course approval number.
- I.** The Board may monitor a continuing education provider's compliance with continuing education statutes and rules as follows:
1. The Board may request any or all documentation as per Section (H) of this rule from a board-approved continuing education provider for any course registered for license renewal to ensure compliance with this rule.
  2. A representative of the Board may attend any approved continuing education course for the purpose of verifying the content of the program and ensuring compliance with the Board's continuing education rules at no charge to the Board representative.
  3. If the Board finds that a course or provider is not compliant with the continuing statutes or rules, has misrepresented course content or instructors in an application, failed to obtain new approval for a course with a change in subject or instructor or failed to pay the course fee, the Board may withdraw its approval for continuing credit for the course and/or the provider. The withdrawal of approval shall be effective upon written notification to the provider's contact of record by the Board.
  4. The Board shall notify a provider that it will consider withdrawal of course approval and provide the date, time and location of the meeting at which the matter will be discussed and possible action taken.
  5. If approval is withdrawn, the Board shall notify the provider of the reasons for withdrawal of approval.
  6. The provider shall notify all Arizona licensees who attended the course that any course hours obtained through the course cannot be used for continuing education credit of license renewal in the state of Arizona. If a provider fails to provide appropriate notice to Arizona licensed attendees, within ten business days of written notice from the Board that course approval has been withdrawn, that provider shall not be considered for approval of continuing education credit in the future. The notice to the Arizona licensed attendees must be made by certified mail in order to establish documentation that the requirement was met.
- J.** Course subjects approved for continuing education for renewal of an Arizona chiropractic license are:
1. Adjusting techniques;
  2. Spinal analysis;
  3. Physical medicine modalities and therapeutic procedures as defined in A.R.S. § 32-900(7) and (8);
  4. Recordkeeping and documentation;
  5. Ethics;
  6. CPR;
  7. Public health;
  8. Communicable diseases;
  9. Sexual boundaries;
  10. Emergency procedures;
  11. Acupuncture;
  12. Nutrition;
  13. Examination;
  14. Assessment and diagnostic procedures to include physical, orthopedic, neurological procedures;
  15. Radiographic technique;
  16. Diagnostic imaging and interpretation;
  17. Laser as permitted by law;
  18. Clinical laboratory procedures limited to urine collection, fingerpicks and venipuncture (not to be confused with evaluation of lab reports);
  19. Anatomy;
  20. Physiology;
  21. Bacteriology;
  22. Chiropractic orthopedics and neurology;
  23. Chemistry;
  24. Pathology;
  25. Patient management;
  26. Evidence-based clinical interventions models;
  27. Symptomatology;
  28. Arizona jurisprudence, and;
  29. Participation in National Board of Chiropractic Examiners examination development or administration of examinations.
- K.** In addition to the subjects in subsections (A), (C), (D) and (J), courses for the purpose of recognizing, assessing and determining appropriate referral or collaborative treatment of complex conditions, including but not limited to cancer, autism, multiple sclerosis, diabetes, and developmental disorders, for the purpose of co-management of the patient's condition with qualified medical providers shall qualify for continuing education credit.
- L.** The following subjects shall not qualify for continuing education for the purpose of license renewal and shall not be approved by the Board:
1. Billing, coding;
  2. Malpractice defense;
  3. Practice management;
  4. Risk management;
  5. Promotion of a product or a service or a requirement that attendees purchase a product or service;
  6. Strategies to increase insurance payments;
  7. Administrative or economic aspects of a practice;
  8. Motivational courses;
  9. Legal courses other than pre-approved Board jurisprudence;
  10. Anti-aging;
  11. Hormone treatment;
  12. Aroma therapy;
  13. Stress management;
  14. Psychological treatment;
  15. HIPAA;
  16. Homeopathic practice that exceeds A.R.S. § 32-925;
  17. Professional or business meetings, speeches at luncheons, banquets, etc.;
  18. Subject matter that exceeds the assessment, diagnosis and treatment of patients within the scope of practice of chiropractic as defined in this Chapter;
  19. Any course without a significant relationship to the safe and effective practice of chiropractic under A.R.S. § 32-925 and A.R.S. § 32-922.02;
  20. And any course that involves a distance learning format or materials if the course has not been pre-approved by the board and issued a board approval number;
- M.** A licensee's compliance with subsections (A), and (C), shall include the following coursework in order to renew a license.
1. Each licensee shall complete a minimum of two hours of continuing education in recordkeeping for every even numbered year.
  2. Each person who is issued a new license to practice chiropractic in Arizona on or after January 1, 2013, is required to attend three hours of a single regularly scheduled Board meeting within the first year of residence in Arizona. The licensee cannot distribute the three hours of



Board meeting attendance over two or more Board meetings. The licensee shall notify the Board in writing within ten days of moving to Arizona. The meeting attendance must be pre-scheduled and pre-approved by Board staff. Continuing education credit will not be awarded if the licensee is attending the meeting as a subject of an investigation or other Board review or if the licensee fails to properly schedule attendance as per this Section. This subsection does not pertain to any person who has had a license to practice chiropractic in Arizona issued prior to January 1, 2013.

- N. The Board shall grant an extension of 90 days to comply with the continuing education requirements to a qualified licensee. To qualify for an extension, a licensee shall:
  1. Timely file a license renewal application and renewal fee; and
  2. Submit a written request for an extension no later than December 1 of the current renewal year, including evidence of good cause why the continuing education requirements cannot be met by December 31 of the current renewal year.
- O. The following reasons constitute good cause for the Board to grant an extension of time to comply with the continuing education requirements:
  1. The licensee lived in a country where there was no accredited chiropractic college, or a college that meets the requirements of R4-7-702, for at least seven months during the year that the continuing education requirements are to be met;
  2. The licensee was in active military service for at least seven months during the year that the continuing education requirements are to be met; or
  3. The licensee was not able to complete the continuing education requirements because of a documented disability of the licensee or the licensee's spouse, child, or parent.
- P. If the Board grants an extension of time to complete the required 12 hours of continuing education requirements, 12 hours of required continuing education credits obtained during the 90-day extension shall be applied to meet only the requirements for which the extension is granted. A licensee shall not report those 12 hours of continuing education credit earned during a 90-day extension for a subsequent renewal year.

#### Historical Note

Adopted as an emergency effective Oct. 7, 1977 (Supp. 77-5). Former Section R4-7-60 repealed, New Section R4-7-60 adopted effective December 29, 1977 (Supp. 77-6). Repealed effective May 14, 1980 (Supp. 80-3). Former Section R4-7-60 renumbered as Section R4-7-801 effective September 27, 1985 (Supp. 85-5). Adopted effective June 19, 1997 (Supp. 97-2). Amended by final rulemaking at 7 A.A.R. 2821, effective June 12, 2001 (Supp. 01-2). Amended by final rulemaking at 13 A.A.R. 1848, effective July 10, 2007 (Supp. 07-2). Amended by final rulemaking at 18 A.A.R. 2554, effective November 19, 2012 (Supp. 12-3).

#### R4-7-802. Documenting Compliance with Continuing Education Requirements

- A. A licensee shall retain documents to verify compliance with the continuing education requirements for at least five years from the date the continuing education credit is used to qualify the licensee for renewal. The Board may audit continuing education compliance at any time during those five years by requiring submission of documentation of course completion.
- B. With each license renewal application, a licensee shall attest by providing the licensee's signature, that the licensee has met

the continuing education requirements, and complied with R4-7-503(C)(8) and subsection (A). A licensee's documentation of compliance on the license renewal application shall include the name of the approved course provider.

- C. The Board may require a licensee to provide documentation to verify compliance with continuing education requirements, including evidence that:
  1. Each continuing education credit was for 50 minutes of education,
  2. The requirements of subsections (A) and (B) were satisfied,
  3. Continuing education credit was earned between the immediately preceding January 1 and the date that the license renewal application was filed or the date on which an extension of time expired,
  4. No continuing education credit earned between the immediately preceding January 1 and the date that the license renewal application was filed was earned under an extension of time to comply with the continuing education requirements of a previous year, and
  5. The provisions of A.R.S. § 32-931 and R4-7-801 were met.
- D. Documentation shall be in the form of a certificate of completion issued by a Board-approved provider. The Board may require submission of a time sheet demonstrating that the licensee was in attendance for a continuous 50 minutes for every hour of continuing education credit awarded.
- E. The Board shall suspend a license upon notification to the licensee that the licensee has failed to demonstrate compliance with continuing education requirements as per A.R.S. §§ 32-923(C) and 32-931.

#### Historical Note

Adopted as an emergency effective Oct. 7, 1977 (Supp. 77-5). Former Section R4-7-61 repealed, new Section R4-7-61 adopted effective December 29, 1977 (Supp. 77-6). Repealed effective May 14, 1980 (Supp. 80-3). Former Section R4-7-61 renumbered as Section R4-7-802 effective September 27, 1985 (Supp. 85-5). Adopted effective June 19, 1997 (Supp. 97-2). Amended by final rulemaking at 13 A.A.R. 1848, effective July 10, 2007 (Supp. 07-2). Amended by final rulemaking at 18 A.A.R. 2554, effective November 19, 2012 (Supp. 12-3).

#### R4-7-803. Effect of Suspension on Continuing Education Requirements

A licensee whose license is suspended under A.R.S. §§ 32-923, 32-924, or 32-931, shall complete 12 credits of continuing education for each calendar year or part of a calendar year that the license is suspended before the license may be reinstated or renewed.

#### Historical Note

Adopted as an emergency effective Oct. 7, 1977 (Supp. 77-5). Former Section R4-7-62 repealed, new Section R4-7-62 adopted effective December 29, 1977 (Supp. 77-6). Repealed effective May 14, 1980 (Supp. 80-3). Former Section R4-7-62 renumbered as Section R4-7-803 effective September 27, 1985 (Supp. 85-5). Adopted effective June 19, 1997 (Supp. 97-2).

#### ARTICLE 9. UNPROFESSIONAL CONDUCT

##### R4-7-901. Advertising of a Deceptive and Misleading Nature

The Board shall investigate an allegation of advertising in a false, deceptive, or misleading manner by a licensee and may sanction a licensee for a violation under A.R.S. § 32-924. Advertising of a false, deceptive, or misleading manner includes, but is not limited to, the following:

1. Advertising painless procedures;
2. Advertising complete health services; or
3. Advertising that uses the words “specialist,” “specializing,” or “expert.”

#### Historical Note

Adopted effective May 8, 1978 (Supp. 78-3). Former Section R4-7-70 renumbered as Section R4-7-901 without change effective September 27, 1985 (Supp. 85-5). Amended by final rulemaking at 8 A.A.R. 4895, effective January 7, 2003 (Supp. 02-4).

#### R4-7-902. Unprofessional or Dishonorable Conduct

Unprofessional or dishonorable conduct, as used in A.R.S. § 32-924(A)(5), means:

1. Failing to disclose, in writing, to a patient or a third-party payor that the licensee has a financial interest in a diagnostic or treatment facility, test, good, or service when referring a patient for a prescribed diagnostic test, treatment, good, or service and that the diagnostic test, treatment, good or service is available on a competitive basis from another provider. This subsection does not apply to a referral by one licensee to another within a group of licensees who practice together. This subsection applies regardless of whether the referred service is provided at the licensee's place of practice or at another location.
2. Knowingly making a false or misleading statement to a patient or a third-party payor.
3. Knowingly making a false or misleading statement, providing false or misleading information, or omitting material information in any oral or written communication, including attachments, to the Board, Board staff, or a Board representative or on any form required by the Board.
4. Knowingly filing with the Board an application or other document that contains false or misleading information.
5. Failing to create an adequate patient record that includes the patient's health history, clinical impression, examination findings, diagnostic results, x-ray films if taken, x-ray reports, treatment plan, notes for each patient visit, and a billing record. The notes for each patient visit shall include the patient's name, the date of service, the chiropractic physician's findings, all services rendered, and the name or initials of the chiropractic physician who provided services to the patient.
6. Failing to maintain the information required by subsection (5) for a patient, for at least six years after the last treatment date, or for a minor, six years after the minor's 18th birthday, or failing to provide written notice to the Board about how to access the patient records of a chiropractic practice that is closed by providing, at a minimum, the physical address, telephone number and full name of a person who can be contacted regarding where the records are maintained, for at least six years after each patient's last treatment date or 18th birthday.
7. Failing to:
  - a. Release a copy of all requested patient records under subsection (5), including the original or diagnostic quality radiographic copy x-rays, to another licensed physician, the patient, or the authorized agent of the patient, within 10 business days of the receipt of a written request to do so. This subsection does not require the release of a patient's billing record to another licensed physician.
  - b. Release a copy of any specified portion or all of a patient's billing record to the patient or the authorized agent of the patient, within 10 business days of the receipt of a written request to do so.
- c. In the case of a patient or a patient's authorized agent who has verbally requested the patient record:
  - i. Provide the patient record, or
  - ii. Inform the patient or patient's authorized agent that the record must be provided if a written request is made under subsection (7)(a) or (b).
- d. Return original x-rays to a licensed physician within 10 business days of a written request to do so.
- e. Provide free of charge, copies of patient records to another licensed physician, the patient, or the authorized agent of the patient in violation of A.R.S. Title 12, Chapter 13, Article 7.1.
8. Representing that the licensee is certified by this Board in a specialty area in which the licensee is not certified or has academic or professional credentials that the licensee does not have.
9. Failing to provide to a patient upon request documentation of being certified by the Board in a specialty area or the licensee's academic certification, degree, or professional credentials.
10. Practicing, or billing for services under any name other than the name by which the chiropractic physician is licensed by the Board, including corporate, business, or other licensed health care providers' names, without first notifying the Board in writing.
11. Suggesting or having sexual contact, as defined in A.R.S. § 13-1401, in the course of patient treatment or within three months of the last chiropractic examination, treatment, or consultation with an individual with whom a consensual sexual relationship did not exist prior to a chiropractic/patient relationship being established.
12. Intentionally viewing a completely or partially disrobed patient in the course of an examination or treatment if the viewing is not related to the patient's complaint, diagnoses, or treatment under current practice standards.
13. Improper billing. Improper billing means:
  - a. Knowingly charging a fee for services not rendered;
  - b. Knowingly charging a fee for services not documented in the patient record as being provided;
  - c. Charging a fee by fraud or misrepresentation, or willfully and intentionally filing a fraudulent claim with a third-party payor;
  - d. Misrepresenting the service provided for the purpose of obtaining payment; and
  - e. Charging a fee for a service provided by an unlicensed person who is not a chiropractic assistant under A.R.S. § 32-900 or for services provided by an unsupervised chiropractic assistant; and
  - f. Repeatedly billing for services not rendered or not documented as rendered or repeatedly engaging in acts prohibited under subsections (13)(c) through (e).
14. Failing to timely comply with a board subpoena pursuant to A.R.S. § 32-929 that authorizes Board personnel to have access to any document, report, or record maintained by the chiropractic physician relating to the chiropractic physician's practice or professional activities.
15. Failing to notify the Board of hiring a chiropractic assistant or to register a chiropractic assistant under R4-7-1102 or failing to supervise a chiropractic assistant, under A.R.S. § 32-900 that is supervised or employed by the chiropractic physician.
16. Allowing or directing a person who is not a chiropractic assistant and who is not licensed to practice a health care

- profession to provide patient services, other than clerical duties.
17. Intentionally misrepresenting the effectiveness of a treatment, diagnostic test, or device.
  18. Administering, prescribing, or dispensing prescription-only medicine, or prescription-only drugs, or a prescription-only device as defined in A.R.S. § 32-1901 and pursuant to A.R.S. § 32-925(B). This subsection does not apply to those substances identified under R4-7-101(13).
  19. Performing surgery or practicing obstetrics in violation of A.R.S. § 32-925(B).
  20. Performing or providing colonic irrigation.
  21. Penetration of the rectum by a rectal probe or device for the administration of ultrasound, diathermy, or other modalities.
  22. Use of ionizing radiation in violation of A.R.S. § 32-2811.
  23. Promoting or using diagnostic testing or treatment for research or experimental purposes:
    - a. Without obtaining informed consent from the patient, in writing, before the diagnostic test or treatment. Informed consent includes disclosure to the patient of the research protocols, contracts the licensee has with researchers, if applicable, and information on the institutional review committee used to establish patient protection.
    - b. Without conforming to generally accepted research or experimental criteria, including following protocols, maintaining detailed records, periodic analysis of results, and periodic review by a peer review committee; or
    - c. For the financial benefit of the licensee.
  24. Having professional connection with, lending one's name to, or billing on behalf of an illegal practitioner of chiropractic or an illegal practitioner of any healing art.
  25. Holding oneself out to be a current or past Board member, Board staff member or a Board chiropractic consultant if this is not true.
  26. Claiming professional superiority in the practice of chiropractic under A.R.S. § 32-925.
  27. Engaging in disruptive or abusive behavior in a clinical setting.
  28. Providing substandard care due to an intentional or negligent act or failure to act regardless of whether actual injury to the patient is established.
  29. Intentionally disposing of confidential patient information or records without first redacting all personal identifying patient information or by any means other than shredding or incinerating the information or record.
  30. Intentionally disclosing a privileged communication or document, or confidential patient information except as otherwise required or allowed by law.
  31. Having been diagnosed by a physician whom the Board determines is qualified to render the diagnosis as habitually using or having habitually used alcohol, narcotics, or stimulants to the extent of incapacitating the licensee for the performance of professional duties.
  32. Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. Conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.
  33. Having an action taken against a professional license in another jurisdiction, any limitation or restriction of the license, probation, suspension, revocation, surrender of the license as a disciplinary measure or denial of a license

application or license renewal for a reason related to unprofessional conduct.

34. Directly or indirectly dividing a professional fee for patient referrals among health care providers or health care institutions or between providers and institutions or entering into a contractual arrangement to that effect. This subsection does not prohibit the members of any regularly and properly organized business entity recognized by law from dividing fees received for professional services among themselves as they determine necessary.
35. Failing to report in writing to the Board any information based upon personal knowledge that a chiropractic physician may be grossly incompetent, guilty of unprofessional or dishonorable conduct, or mentally or physically unable to provide chiropractic services safely. Any person who reports or provides information to the Board in good faith is not subjected to civil damages as a result of reporting or providing the information. If the informant requests that the informant's name not be disclosed, the Board shall not disclose the informant's name unless disclosure is essential to the disciplinary proceedings conducted under A.R.S. § 32-924 or required under A.R.S. § 41-1010.
36. Violating any federal or state statute or rule or regulation applicable to the practice of chiropractic.
37. Any act or omission identified in A.R.S. § 32-924(A).

#### Historical Note

Adopted effective September 9, 1997 (Supp. 97-3).  
Amended by final rulemaking at 14 A.A.R. 502, effective April 5, 2008 (Supp. 08-1).

### ARTICLE 10. PRECEPTORSHIP TRAINING PROGRAM

#### R4-7-1001. Eligibility; Application

- A. Both extern and preceptor shall submit a written application to the Board for approval of participation in a preceptor training program. The Board shall process the application within the time-frames provided in R4-7-502(J).
  1. The application shall be submitted on a form that contains:
    - a. The extern's photo;
    - b. The extern's and preceptor's names, addresses, telephone numbers, and any other names of the extern or preceptor;
    - c. The preceptor's license number, number of years in practice, and disciplinary history;
    - d. A waiver of confidentiality under subsection (B)(2) and notarized signature from both the extern and preceptor;
    - e. The beginning and ending date of the program;
    - f. Location, days, and hours of the program;
    - g. The name and contact number for the college sponsoring the preceptorship program under subsection (B)(1);
    - h. The date of extern graduation from a chiropractic college and identification of the proposed scope of the program for which the application is being submitted and the eligibility of the applicants for approval.
  2. The application shall require the extern and the preceptor to disclose any convictions or sanctions and whether the extern or preceptor is currently under investigation for a violation of criminal or administrative law.
- B. Except as provided in subsection (D), the Board shall approve participation by an extern who does not come under subsection (C) and who:

1. Concurrently participates in an undergraduate or post-graduate preceptorship program offered by an accredited chiropractic college and provides verifiable proof of enrollment;
  2. Submits a written waiver of confidentiality that permits the Board access to any information, records, or documentation collected or used by the college to evaluate the extern's eligibility for or performance in the program;
  3. Provides a certificate of attainment on Parts I and II of the examination by the National Board of Chiropractic Examiners;
  4. Successfully completes and provides documentation of the coursework required by A.R.S. § 32-922.02 for practice of chiropractic specialties, if specialties are to be included in the training program; and
  5. Submits the \$75.00 filing fee, which is non-refundable except if A.R.S. § 41-1077 applies.
- C.** The Board shall not approve participation for an extern who:
1. Has been the subject of disciplinary sanction or convicted of a felony or misdemeanor involving moral turpitude;
  2. Is currently under investigation for a licensing violation, or a felony or misdemeanor involving moral turpitude;
  3. Fails to demonstrate good character and reputation;
  4. Fails to demonstrate the physical and mental ability to practice chiropractic skillfully and safely; or
  5. Has practiced chiropractic without a license or through participation in an approved preceptor program.
- D.** The Board shall approve participation for a preceptor who:
1. Concurrently participates as a preceptor at the chiropractic college in which the extern is enrolled throughout the time period of the preceptor program and provides verifiable proof of participation;
  2. Submits a written waiver of confidentiality that permits the Board access to any information, records, or documentation collected or used by the college to evaluate the preceptor's eligibility for or performance in the program; and
  3. Is continuously licensed in Arizona for at least five years before the date the program is to begin and, if the program is to include practice of chiropractic specialties, is certified in those specialties for at least three years before the date upon which the program is to begin; and
- E.** The Board shall not approve participation for a preceptor who:
1. Has been the subject of disciplinary sanction or convicted of a felony or a misdemeanor involving moral turpitude;
  2. Is currently under investigation for a licensing violation, felony, or misdemeanor involving moral turpitude;
  3. Fails to demonstrate good character and reputation; or
  4. Fails to demonstrate the physical and mental ability to practice chiropractic skillfully and safely.

**Historical Note**

Adopted effective September 27, 1985 (Supp. 85-5). Section repealed and new Section adopted by final rulemaking at 5 A.A.R. 1602, effective May 20, 1999 (Supp. 99-2). Amended by final rulemaking at 8 A.A.R. 3293, effective July 17, 2002 (Supp. 02-3).

**R4-7-1002. Practice Limitations**

- A.** Under the supervision of the preceptor and commensurate with the extern's education, training, and experience, an extern may engage in the practice of health care, as defined in A.R.S. § 32-925, except that an extern shall not perform any procedure defined as a chiropractic specialty requiring certification unless the extern and the preceptor have met the eligibility requirements in R4-7-1001 for that specialty.

- B.** At all times when patients may be present, the extern shall wear a badge showing the extern's name and the title "Extern" in capital letters equal in size to the name.
- C.** Before an extern conducts an examination or renders care to a patient, the preceptor shall secure from the patient a written consent to the examination or care. The written consent shall specify that the patient understands that an extern is not a licensed doctor, and that the preceptor retains responsibility for quality of care. The preceptor shall maintain the signed consent as a part of the patient's file.

**Historical Note**

Adopted effective September 27, 1985 (Supp. 85-5). Section repealed and new Section adopted by final rulemaking at 5 A.A.R. 1602, effective May 20, 1999 (Supp. 99-2).

**R4-7-1003. Regulation and Termination of the Preceptorship Program**

- A.** The Board, on its own initiative or upon receipt of a complaint, may investigate conduct of an extern or preceptor occurring within the program for compliance with this Chapter and A.R.S. § 32-924. The Board may, pursuant to A.R.S. § 32-929, obtain patient records as part of the investigation.
- B.** If after investigation, the Board determines that the conduct of the extern or preceptor imperatively requires emergency action, the Board shall suspend approval of the program pending proceedings for termination or other action. The Board shall promptly notify the extern, the preceptor, and the college of the suspension, the reasons for the suspension, and the conditions under which the suspension may be lifted, if any.
- C.** If after a hearing, the Board determines that the conduct of the preceptor or the extern constitutes a violation of this Chapter or A.R.S. § 32-924, the Board shall terminate the program and may sanction the preceptor or deny licensure to the extern if the extern has applied for a license.
- D.** If the Board receives written verification from a chiropractic college that the extern or preceptor is no longer concurrently participating in the associated chiropractic college program, the Board shall terminate approval of the extern's training program.
- E.** An extern may participate in a preceptorship program until the results of the next scheduled Part IV of the National Board of Chiropractic Examiners examination are released or for six months immediately following the extern's date of graduation from chiropractic college, whichever occurs first.

**Historical Note**

Adopted effective September 27, 1985 (Supp. 85-5). Section repealed and new Section adopted by final rulemaking at 5 A.A.R. 1602, effective May 20, 1999 (Supp. 99-2). Amended by final rulemaking at 8 A.A.R. 3293, effective July 17, 2002 (Supp. 02-3).

**Appendix A. Repealed****Historical Note**

Adopted effective September 27, 1985 (Supp. 85-5). Repealed by final rulemaking at 5 A.A.R. 1602, effective May 20, 1999 (Supp. 99-2).

**Appendix B. Repealed****Historical Note**

Adopted effective September 27, 1985 (Supp. 85-5). Repealed by final rulemaking at 5 A.A.R. 1602, effective May 20, 1999 (Supp. 99-2).

**Appendix C. Repealed****Historical Note**

Adopted effective September 27, 1985 (Supp. 85-5).

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Repealed by final rulemaking at 5 A.A.R. 1602, effective May 20, 1999 (Supp. 99-2).

**Appendix D. Repealed**

**Historical Note**

Adopted effective September 27, 1985 (Supp. 85-5).  
Repealed by final rulemaking at 5 A.A.R. 1602, effective May 20, 1999 (Supp. 99-2).

**Appendix E. Repealed**

**Historical Note**

Adopted effective September 27, 1985 (Supp. 85-5).  
Repealed by final rulemaking at 5 A.A.R. 1602, effective May 20, 1999 (Supp. 99-2).

**Appendix F. Repealed**

**Historical Note**

Adopted effective September 27, 1985 (Supp. 85-5).  
Repealed by final rulemaking at 5 A.A.R. 1602, effective May 20, 1999 (Supp. 99-2).

**ARTICLE 11. CHIROPRACTIC ASSISTANTS**

**R4-7-1101. Use of the Term “Chiropractic Assistant”**

Only a chiropractic assistant as defined in A.R.S. § 32-900 who assists a chiropractor by performing basic health care duties, shall use the term “chiropractic assistant” or “C.A.”

**Historical Note**

Adopted effective December 18, 1992 (Supp. 92-4).  
Amended by final rulemaking at 5 A.A.R. 998, effective March 16, 1999 (Supp. 99-1).

**R4-7-1102. Chiropractic Assistant Training**

- A.** A C.A. shall complete 24 clock hours of coursework, with a minimum of four hours in each of the following subjects: chiropractic principles, management of common diseases, history taking, recordkeeping, professional standards of conduct, and CPR. If a chiropractor supervising a C.A. is certified in physiotherapy under A.R.S. § 32-922.02, the C.A. shall complete 12 hours of training in physiotherapy in addition to the 24 hours of coursework. If a chiropractor supervising a C.A. is certified in acupuncture under A.R.S. § 32-922.02, the C.A. shall complete two hours of training in acupuncture in addition to the 24 hours of coursework.
- B.** A C.A. shall take coursework from a Board-approved facility or chiropractor. The facility or chiropractor providing coursework shall submit documentation that describes each subject listed in subsection (A) to the Board for approval prior to offering the course.
- C.** A chiropractor shall inform the Board, in writing, that the chiropractor has employed a chiropractic assistant within seven days of hiring the C.A. by submitting the name of the C.A., the name and license number of the supervising chiropractor, the address and phone number where the C.A. is employed, and the initial date of hire. A C.A. shall begin Board-approved coursework within three months of initial employment with a supervising chiropractor, and shall complete the coursework within one year of initial employment with the supervising chiropractor.
- D.** A C.A. shall register with the Board upon completing required coursework. A C.A. shall submit a separate registration form for each place of employment and each supervisor. A C.A. shall register by submitting documentation to the Board on a Board-approved form, signed by the supervising chiropractor, showing the date that the C.A. completed each required subject. The Board shall issue the C.A.’s registration upon approval of the registration form.

- E.** A chiropractor supervising a C.A. shall maintain at the C.A.’s place of employment a copy of the C.A.’s registration.

**Historical Note**

Adopted effective December 18, 1992 (Supp. 92-4).  
Amended by final rulemaking at 5 A.A.R. 998, effective March 16, 1999 (Supp. 99-1). Amended by final rulemaking at 13 A.A.R. 4584, effective February 2, 2008 (Supp. 07-4).

**R4-7-1103. Scope of Practice**

- A.** A C.A. may only perform clinical duties that are:
  1. Consistent with a supervising chiropractor’s licensure and certification; and
  2. Delegated by the supervising chiropractor.
- B.** Clinical duties that a chiropractic assistant may perform as directed by the supervising chiropractor under subsection (A) include, but are not limited to:
  1. Asepsis and infection control,
  2. Taking patient histories and vital signs,
  3. Performing first aid and CPR,
  4. Preparing patients for procedures,
  5. Assisting the supervising chiropractor with examinations and treatments, and
  6. Collecting and processing specimens.
- C.** A chiropractic assistant who meets the education requirements for physiotherapy under R4-7-1102(A) may administer, under the direct supervision of a chiropractor certified in physiotherapy, but is not limited to administering:
  1. Whirlpool treatments,
  2. Diathermy treatments,
  3. Electronic galvanization stimulation treatments,
  4. Ultrasound therapy,
  5. Massage therapy,
  6. Traction treatments,
  7. Transcutaneous nerve stimulation unit treatments, and
  8. Hot and cold pack treatments.
- D.** A chiropractic assistant that meets the education requirements for acupuncture under R4-7-1102(A) may prepare and sterilize instruments and may remove acupuncture needles under the direct supervision of a chiropractor certified in acupuncture.
- E.** A C.A. shall not:
  1. Take an x-ray,
  2. Perform an independent examination,
  3. Diagnose a patient,
  4. Determine a regimen of patient care,
  5. Change the regimen of patient care set by the supervising chiropractor,
  6. Perform an adjustment, or
  7. Perform acupuncture by needle insertion.
- F.** A person who has had a license to practice chiropractic or any other health care profession suspended, revoked, or denied for any reason other than failing to meet education or licensing examination requirements in this or any other jurisdiction shall not perform the clinical duties of a chiropractic assistant.
- G.** As per A.R.S. § 32-900(3), a chiropractic assistant shall not be licensed to practice chiropractic in this or any other jurisdiction.
- H.** A supervising chiropractor shall be responsible for all acts or omissions of a C.A.
- I.** A person who does not meet the requirements of R4-7-1102 shall perform only clerical or administrative duties.

**Historical Note**

Adopted effective December 18, 1992 (Supp. 92-4).  
Amended by final rulemaking at 5 A.A.R. 998, effective March 16, 1999 (Supp. 99-1). Amended by final rulemaking at 13 A.A.R. 4584, effective February 2, 2008

(Supp. 07-4).

**ARTICLE 12. EXPIRED****R4-7-1201. Expired****Historical Note**

New Section made by final rulemaking at 8 A.A.R. 259, effective December 17, 2001 (Supp. 01-4). Section expired under A.R.S. § 41-1056(E) at 12 A.A.R. 688, effective December 31, 2005 (Supp. 06-1).

**R4-7-1202. Expired****Historical Note**

New Section made by final rulemaking at 8 A.A.R. 259, effective December 17, 2001 (Supp. 01-4). Section expired under A.R.S. § 41-1056(E) at 12 A.A.R. 688, effective December 31, 2005 (Supp. 06-1).

**R4-7-1203. Expired****Historical Note**

New Section made by final rulemaking at 8 A.A.R. 259, effective December 17, 2001 (Supp. 01-4). Section expired under A.R.S. § 41-1056(E) at 12 A.A.R. 688, effective December 31, 2005 (Supp. 06-1).

**R4-7-1204. Expired****Historical Note**

New Section made by final rulemaking at 8 A.A.R. 259, effective December 17, 2001 (Supp. 01-4). Section expired under A.R.S. § 41-1056(E) at 12 A.A.R. 688, effective December 31, 2005 (Supp. 06-1).

**ARTICLE 13. CHARGES****R4-7-1301. Additional Charges**

- A.** The Board shall collect charges for services as follows:
1. Annual license renewal fee: \$170.00;
  2. Copies of public records: \$0.25 per page, with a minimum fee of \$2.00;
  3. Directories or labels: \$40.00;
  4. Annual subscription for meeting minutes: \$70.00;
  5. Agendas: \$25.00 for an annual subscription or \$2.00 per agenda;
  6. Recordings of Board meetings: \$5.00 per disc or tape;
  7. Lists of licensees, applicants, chiropractic assistants: \$0.05 per name, with a minimum fee of \$2.00;
  8. Hard copy credential verification: \$2.00 per name;
  9. Verification of license status: \$25.00;
  10. Continuing education course review for approval: \$50.00;
  11. Jurisprudence booklet: \$10.00;
  12. Duplicate renewal receipt: \$5.00;
  13. Duplicate ornamental license: \$20.00;
  14. Duplicate ornamental certificate: \$20.00; and
  15. Penalty for insufficient funds check submitted to Board as payment of fee or other charge: \$25.00.
- B.** All charges are non-refundable, except if A.R.S. § 41-1077 applies.
- C.** The fees in this Section pertain regardless of the method by which the document is delivered.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 4532, effective November 9, 1999 (Supp. 99-4). Amended by final rulemaking at 7 A.A.R. 4328, effective September 20, 2001 (Supp. 01-3). Amended by final rulemaking at 9 A.A.R. 5026, effective January 3, 2004 (Supp. 03-4). Amended by final rulemaking at 12 A.A.R.

4687, effective February 3, 2007 (Supp. 06-4).

**ARTICLE 14. BUSINESS ENTITIES****R4-7-1401. Application for Business Entity; qualifications of applicant; fee; background investigations**

- A.** A business entity that wishes to operate a clinic, franchise, business, club, or any other entity which uses the services of a licensed doctor of chiropractic to provide a service, supervise the provision of services, act as clinical director or otherwise perform any function under a person's chiropractic license (doctor of chiropractic) shall submit a complete application to the Board at least sixty days prior to the intended implementation of engaging the services of a licensed doctor of chiropractic. A business entity that uses the services of a doctor of chiropractic as defined in this subsection prior to the effective date of these rules shall submit a complete application to the Board no later than ten days from the effective date of these rules. A business entity shall not engage the services of a doctor of chiropractic as noted in this section until the Board has approved and issued the registration. The registration shall serve as a license for the purpose of compliance with this Chapter.
- B.** "Owner, officer or director" means any person with a fiscal or an administrative interest in the business entity, regardless of whether the business is a for-profit or non-profit affiliation.
- C.** To be eligible for business entity registration, the applicant owners, officers or directors shall:
1. Be of good character and reputation.
  2. Have obtained a license or a permit to conduct a business under applicable law and jurisdiction.
- D.** The board may deny registration to a business entity if:
1. The business entity is not eligible for registration.
  2. An owner, an officer or a director has had a license to practice any profession refused, revoked, suspended, surrendered or restricted by a regulatory entity in this or any other jurisdiction for any act that constitutes unprofessional conduct pursuant to this Chapter.
  3. An owner, an officer or a director is currently under investigation by a regulatory entity in this or any other jurisdiction for an act that may constitute unprofessional conduct pursuant to this Chapter.
  4. An owner, an officer or a director has surrendered a license for an act that constitutes unprofessional conduct pursuant to this Chapter in this or any other jurisdiction.
  5. An owner, an officer or a director has been convicted of criminal conduct that constitutes grounds for disciplinary action pursuant to this Chapter.
  6. The business entity allows or has allowed any person to practice chiropractic without a license or fails or failed to confirm that a person that practices chiropractic is properly licensed.
  7. The business entity allows or has allowed a person who is not a licensed doctor of chiropractic and who is not a chiropractic assistant to provide patient services according to this Chapter.
- E.** The applicant shall pay to the Board a nonrefundable application fee of \$400.00.
- F.** In order to determine an applicant business entity's (applicant) eligibility for approval, the Board may require the business entity's owners, officers and directors to submit a full set of fingerprints to the Board. The Board shall submit the fingerprints to the department of public safety for the purpose of obtaining a state and federal criminal records check pursuant to A.R.S. § 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation. The board shall charge each

applicant a fee that is necessary to cover the cost of the investigation. The Board shall forward this fee to the Department of Public Safety.

#### Historical Note

New Section made by final rulemaking at 20 A.A.R. 2239, effective October 5, 2014 (Supp.14-3).

#### R4-7-1402. Display of Registration

A business entity shall, at all times, display the registration issued to the business entity by the Board in a conspicuous place at all locations where a doctor of chiropractic is employed, contracted or otherwise functions in any capacity under a chiropractic license, including mobile practices. The business entity shall, upon request of any person, immediately produce for inspection the annual renewal certificate for the current registration period and shall keep a renewal certificate issued by the Board present at all locations.

#### Historical Note

New Section made by final rulemaking at 20 A.A.R. 2239, effective October 5, 2014 (Supp.14-3).

#### R4-7-1403. Procedures for Processing Initial Registration Applications

- A. An applicant may obtain an application package at the Board Office on a business day, or by requesting that the Board send the application to an address specified by the applicant.
- B. A completed business entity registration application package shall be submitted to the Board office on a business day. The Board shall deem the business entity application package received on the date that the Board stamps on the package as the date the package is delivered to the Board office.
- C. To complete a business entity application package, an applicant shall provide the following information and documentation:
  1. The full current name and any former names and title of any and all owners, officers or directors.
  2. The current home and all office addresses, current home and all office phone numbers, all current office fax numbers, and any previous home or office addresses for the past five years for each owner, officer or director.
  3. The business name and the current addresses, phone numbers and fax numbers for each office, clinic or other setting where any service is performed, supervised or directed by a licensed doctor of chiropractic according to R4-7-1401(A) and this Chapter.
  4. The non-refundable application fee of \$400.00.
  5. The name and license number of each doctor of chiropractic employed with, contracted with, or otherwise affiliated with the business entity according to R4-7-1401(A) and this Chapter.
  6. A completed fingerprint card for each owner, officer and director.
  7. Copies of any and all contracts or any other agreement between the business entity and the doctor of chiropractic, to include employment or franchise contracts, agreements or equivalent.
  8. Any record of an owner, officer or director being convicted of, pleading guilty to, or pleading nolo contendere to a misdemeanor or a felony, even if the record of the conviction or plea was sealed or expunged or the conviction was set aside or forgiven, and any record of an arrest, investigation, indictment, or unconcluded charge.
  9. Any record of an owner, officer or director being refused a license to practice chiropractic or any other profession in this or any other jurisdiction, and any record of a disciplinary action taken against an owner, officer or director's license in this or any other jurisdiction.

10. The Social Security number for each owner, officer, or director.
11. A government issued photo identification confirming U.S. citizenship or legal presence in the United States for each owner, officer or director, or if those individuals reside outside of the United States, confirmation of legal authority to operate a business in the United States.
12. A copy of the written protocol required by A.R.S. § 32-934(G).
13. The name, phone number and address for a contact person.
14. A notarized signature for each owner, officer or director attesting to the truthfulness of the information provided by the applicants. A stamped signature will not be accepted for the purposes of completing the application.
- D. Within 25 business days of receiving a business entity registration application package, the Board shall notify the applicant in writing that the package is either complete or incomplete. If the package is incomplete, the notice shall specify the information that is missing.
- E. An applicant with an incomplete business entity registration application package shall supply the missing information within 30 calendar days from the date of the notice. An applicant who is unable to supply the missing information within 30 calendar days may submit a written request to the Board for an extension of time in which to provide a complete application package. The request for an extension of time shall be submitted to the Board office before the 30-day deadline for submission of a complete application package, and shall state the reason that the applicant is unable to comply with the 30-day requirement and the amount of additional time requested. The Board shall grant a request for an extension of time if the Board finds that the reason the applicant was unable to comply with the 30-day requirement was due to circumstances beyond the applicant's control and that compliance can reasonably be expected to be remedied during the extension of time.
- F. If an applicant fails to submit a complete business entity registration application package within the time permitted, the Board shall close the applicant's file and send a notice to the applicant by U.S. Mail that the application file has been closed. An applicant whose file has been closed and who later wishes to become registered shall reapply under R4-7-1401 and R4-7-1403.
- G. After timely receipt of all missing information as specified in subsection (E), the Board shall notify the applicant that the application package is complete.
- H. The Board shall render a decision no later than 120 business days after receiving a completed registration application package. The Board shall deem a registration application package to be complete on the postmarked date of the notice advising the applicant that the package is complete.
- I. The Board shall approve the registration for a business entity that meets all of the following requirements:
  1. Timely submits a complete application.
  2. The Board does not find grounds to deny the application under R4-7-1401(D).
  3. The business entity has complied with the requirements of this Chapter and A.R.S. § 32-900 et. seq.
  4. Pays the original business entity prorated renewal fee of \$17.00 per month from the first day of the month the business entity is registered through May 31 plus \$25.00 for each duplicate license issued by the Board for the purpose of compliance with R4-7-1402.
- J. An applicant shall reapply for registration if the applicant does not pay the prorated registration fee within 3 months after hav-

ing been notified by the Board that the applicant is eligible to receive an approved registration.

**K.** For the purpose of A.R.S. § 41-1073, the Board establishes the following time-frames for initial registration:

1. Administrative completeness review time-frame: 25 business days.
2. Substantive review time-frame: 120 business days.
3. Overall time-frame: 145 business days.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R. 2239, effective October 5, 2014 (Supp. 14-3).

**R4-7-1404. Business Entity Registration Renewal: Issuance, Reinstatement**

- A.** A business entity registration expires on May 31 of each year.
- B.** At least 30 days before a renewal application and renewal fee are due, the executive director of the Board shall send a business entity a renewal application and notice by first class mail to its address of record for the business entity contact person.
- C.** The business entity registration renewal application shall be returned to the Board office on a business day. The Board shall deem the business entity registration renewal application package received on the date that the Board stamps on the package as the date the package is delivered to the Board office;
- D.** To complete a registration renewal application, a business entity shall provide the following information and documentation:
  1. The name of the business entity.
  2. The current addresses, phone numbers, and fax numbers for each facility requiring registration under this Chapter.
  3. Notice of any change of owners, officers or directors, to include any additions and/or deletions with the date of the change for each individual, and notice of any change in home address, office address and phone numbers for owners, officers or directors with the date of the change for each individual.
  4. The name and license number of each doctor of chiropractic employed with, contracted with, or otherwise affiliated with the business entity according to R4-7-1401(A), to include any affiliation through a franchise.
  5. The record of any professional disciplinary investigation or action taken against an owner, officer or director in this or any other jurisdiction within the last 12 months.
  6. Any record of an owner, officer or director being convicted of, pleading guilty to, or pleading nolo contendere to a misdemeanor or a felony, even if the record of the conviction or plea was sealed or expunged or the conviction was set aside or forgiven, within the last 12 months and any record of an arrest, investigation, indictment or unconvicted charge within the last 12 months.
  7. A statement attesting that the contract or any other form of agreement with the doctors of chiropractic has not changed, or if the contract or agreement has changed, a copy of any new or amended contract or agreement.
  8. Report any change in the status of the business entity's license or permit to own and operate a business in the State of Arizona.
  9. The renewal fee of \$200.00 plus a \$25.00 fee for each duplicate Board issued renewal certificate for the purpose of compliance with R4-7-1402. A business entity applying for renewal for the first time shall pay a prorated fee according to A.R.S. § 32-934(C).
  10. The name, address, phone number, fax number and email for a contact person.
  11. The original signature of the delegated contact person attesting to the truthfulness of the information provided

by the business entity. All owners, officers or directors also remain responsible for the accuracy and truthfulness of the application. A stamped signature will not be accepted for the purpose of a complete application.

- E.** A business entity registration shall automatically expire if the business entity does not submit a completed application for renewal, the renewal fee and the fee for duplicate renewal certificates for the purpose of complying with R4-7-1402 before June 1 of each registration period. The Board shall send written notice to the business entity that its registration has expired on or before June 20. A business entity shall not use the services of a licensed doctor of chiropractic according to R4-7-1401(A) if the business entity's registration has expired.
- F.** The Board shall reinstate an expired business entity registration if the business entity pays the annual renewal fee, the additional fee for duplicate certificates for the purpose of compliance with R4-7-1402, pays an additional non-refundable late fee of \$200.00 as required by A.R.S. § 32-934(C), and submits a completed renewal application between June 1 and June 30 of the registration period for which the business entity registration renewal is made.
- G.** On or after July 1 of the registration period for which a renewal application was to be made, a business entity that wishes to have an expired registration reinstated shall apply in accordance with subsection (L).
- H.** If the business entity fails to timely submit a complete business entity reinstatement application within 6 months of the date the registration expired, the business entity's registration shall lapse. "Lapse" means that the business entity is no longer registered and cannot offer services per this Chapter.
- I.** A business entity that has had a registration lapse and that later wishes to become registered must apply as a new candidate pursuant to R4-7-1401 and R4-7-1403.
- J.** An application for reinstatement of business entity registration may be obtained from the Board office on business days or by requesting that the Board send one to an address specified by the applicant.
- K.** A completed application for reinstatement of a business entity registration shall be submitted to the Board office on a business day. The Board shall deem an application for reinstatement of a business entity registration received on the date that the Board stamps on the application as the date it is delivered to the Board office.
- L.** To complete an application for reinstatement of a registration, a business entity shall provide the following information and documentation:
  1. The business entity's name and expired registration number.
  2. The current addresses, phone numbers, and fax numbers for each facility requiring registration under this Chapter.
  3. The names, home addresses, office addresses and phone numbers for each owner, officer or director.
  4. The name and license number of each doctor of chiropractic employed with, contracted with or otherwise affiliated with the business entity according to R4-7-1401(A) and this Chapter, to include franchises.
  5. The record of any professional disciplinary investigation or action taken against an owner, officer or director in this or any other jurisdiction.
  6. Any record of an owner, officer or director being convicted of, pleading guilty to, or pleading nolo contendere to a misdemeanor or a felony, even if the record of the conviction or plea was sealed or expunged or the conviction was set aside or forgiven, within the last 12 months and any record of an arrest, investigation, indictment, or charge within the last 12 months.



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7. A statement attesting that the contract or other agreement with the doctors of chiropractic has not changed, or if the contract or agreement has changed, a copy of the new or amended contract or agreement.
  8. Report any change in the status of the business entity's license or other permit to own and operate a business in the State of Arizona.
  9. The non-refundable renewal fee of \$200.00 and a \$25.00 fee for each Board issued duplicate renewal certificate for the purpose of compliance with R4-7-1402.
  10. The non-refundable late fee of \$200.00.
  11. The name, phone number, fax number and email for a contact person.
  12. The original signature of the delegated contact attesting to the truthfulness of the information provided by the business entity. All owners, officers or directors also remain responsible for the accuracy and truthfulness of an application. A stamped signature will not be accepted for the purpose of completing an application.
- M.** The Board shall process a business entity registration reinstatement application in accordance with R4-7-1403(D) through (G).
- N.** The Board shall reinstate or renew a business entity registration if:
1. The business entity has timely submitted a complete application and paid all fees.
  2. The business entity has complied with the requirements of this Chapter and A.R.S. § 32-900 et seq.
  3. The Board does not find grounds to deny the application under R4-7-1401(D).
  4. The business holds a current business license or other permit to own and operate the business in the State of Arizona.
- O.** If the provisions of subsection (N) are satisfied, the Board shall issue a business registration renewal certificate. The renewal certificate shall serve as notice that the renewal application is complete and approved.
- P.** The Board shall make a decision no later than 70 business days after receiving all required documentation as specified in subsection (N). The Board shall deem required documentation received on the date that the Board stamps on the documentation as the date the documentation is delivered to the Board's office.
- Q.** For the purpose of A.R.S. § 41-1073, the Board establishes the following time-frames for registration renewal or reinstatement of registration:
1. Administrative completeness review time-frame: 25 business days.
  2. Substantive review time-frame: 70 business days.
  3. Overall time-frame: 95 business days.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R. 2239, effective October 5, 2014 (Supp.14-3).

**R4-7-1405. Business Entity Registration: Denial**

If the Board denies a business entity registration, the Board shall send the applicant written notice explaining:

1. The reason for denial, with citations to supporting statutes or rules;
2. The applicant's right to seek a fair hearing to challenge the denial;

3. The time periods for appealing the denial; and,
4. The right to request a settlement conference with the Board's authorized agent.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R. 2239, effective October 5, 2014 (Supp.14-3).

**R4-7-1406. Reporting; Civil Penalty**

- A.** A business entity that reports a change to any owner, officer or director pursuant to A.R.S. § 32-934(D)(2) shall include the following:
1. Any record of the new owner, officer or director being convicted of, pleading guilty to, or pleading nolo contendere to a misdemeanor or a felony, even if the record of the conviction or plea was sealed or expunged or the conviction was set aside or forgiven, and any record of an arrest, investigation, indictment, or unconcluded charge.
  2. Any record of a new owner, officer or director being refused a license to practice chiropractic or any other profession in this or any other jurisdiction, and any record of a disciplinary action taken against the new owner, officer or director's license in this or any other jurisdiction.
- B.** A business entity that fails to comply with A.R.S. § 32-934(D) shall pay to the Board a non-refundable civil penalty of \$100.00 for each violation. If the business entity fails to pay the civil penalty within 30 days, the business entity shall within 15 days pay an increased civil penalty of one \$150.00 for each violation.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R. 2239, effective October 5, 2014 (Supp.14-3).

**R4-7-1407. Licensed Doctors of Chiropractic and Business Entities, Unprofessional Conduct**

- A.** Nothing in this Section shall be construed to exempt a licensed doctor of chiropractic from complying with this Chapter.
- B.** The following are grounds for disciplinary action under A.R.S. § 32-924(A) and R4-7-902 for a licensed doctor of chiropractic who:
1. Performs any service according to R4-7-1401(A) for a business entity in the State of Arizona that is not registered per this Chapter, and/or;
  2. Enters into an agreement of any nature with a business entity to engage in any activity that violates A.R.S. § 32-924(A), R4-7-901 or R4-7-902 or any provision of this Chapter, and/or;
  3. Fails to report in writing to the Board any knowledge of a business entity that fails to register with this Board under this Chapter or a business entity that violates any provisions of this Chapter.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R. 2239, effective October 5, 2014 (Supp.14-3).

**R4-7-1408. Exemptions**

A chiropractic assistant does not hold a license and is not exempt from A.R.S. § 32-934 or this Article.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R. 2239, effective October 5, 2014 (Supp.14-3).

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# Chapter Divider Page

# Chapter Divider Page

**TITLE 4. PROFESSIONS AND OCCUPATIONS****CHAPTER 12. BOARD OF FUNERAL DIRECTORS AND EMBALMERS**

(Authority: A.R.S. § 32-1302 et seq.)

*Articles 1 through 4 consisting of Sections R4-12-101 through R4-12-405 adopted effective June 16, 1981. Section numbering not in sequence, refer to Historical Notes.*

*Article 1 through 9 consisting of Sections R4-12-01 through R4-12-03, R4-12-12 through R4-12-16, R4-12-31, R4-12-32, R4-12-42 through R4-12-44, R4-12-54, R4-12-64, R4-12-65, R4-12-75, R4-12-85, R4-12-95 repealed effective June 16, 1981.*

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*Article 5 consisting of Sections R4-12-501, R4-12-502, R4-12-521, R4-12-523, R4-12-531, R4-12-541, R4-12-545, R4-12-546, R4-12-548, R4-12-551, R4-12-552, R4-12-554, R4-12-556, R4-12-559, R4-12-561, R4-12-565 adopted effective January 1, 1985.*

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R4-12-503.	Expired
R4-12-504.	Reserved
R4-12-505.	Reserved
R4-12-506.	Reserved
R4-12-507.	Reserved
R4-12-508.	Reserved
R4-12-509.	Reserved
R4-12-510.	Reserved
R4-12-511.	Reserved
R4-12-512.	Reserved
R4-12-513.	Reserved
R4-12-514.	Reserved
R4-12-515.	Reserved
R4-12-516.	Reserved
R4-12-517.	Reserved
R4-12-518.	Reserved
R4-12-519.	Reserved

R4-12-520.	Reserved
R4-12-521.	Expired
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R4-12-525.	Reserved
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R4-12-527.	Reserved
R4-12-528.	Reserved
R4-12-529.	Reserved
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R4-12-534.	Reserved
R4-12-535.	Reserved
R4-12-536.	Reserved
R4-12-537.	Reserved
R4-12-538.	Reserved
R4-12-539.	Reserved
R4-12-540.	Reserved
R4-12-541.	Consumer disclosures
R4-12-542.	Reserved
R4-12-543.	Reserved
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R4-12-545.	Deceptive, misleading or professionally negligent practices
R4-12-546.	Description of casket
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R4-12-548.	Possession of trust account passbook
R4-12-549.	Reserved
R4-12-550.	Reserved
R4-12-551.	Certificate of entitlement
R4-12-552.	Certificate of performance
R4-12-553.	Reserved
R4-12-554.	Statement of accrued taxes
R4-12-555.	Reserved
R4-12-556.	Notice of trust account transfer
R4-12-557.	Reserved
R4-12-558.	Reserved
R4-12-559.	Purchaser cancellation requests
R4-12-560.	Reserved
R4-12-561.	Annual report format
R4-12-562.	Reserved
R4-12-563.	Reserved
R4-12-564.	Reserved
R4-12-565.	Records retention requirement
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R4-12-605.	Reserved
R4-12-606.	Reserved
R4-12-607.	Reserved
R4-12-608.	Reserved
R4-12-609.	Reserved
R4-12-610.	Reserved
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R4-12-612.	Crematory requirements
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R4-12-628.	Reserved
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#### ARTICLE 1. GENERAL PROVISIONS

##### R4-12-101. Definitions

In this Chapter:

1. "Applicant" means:
  - a. An individual requesting to take a state equivalent examination;
  - b. An individual requesting a reinstatement or an initial or renewal license or registration issued by the Board; or
  - c. One of the following if requesting an interim permit or an initial or renewal funeral establishment license, crematory license, or prearranged funeral sales establishment endorsement:
    - i. The individual, if a sole proprietorship;
    - ii. Any two of the corporation's officers, if a corporation;
    - iii. The managing partner, if a partnership or limited liability partnership; or
    - iv. The designated manager, or if no manager is designated, any two members of the limited liability company.
2. "Application packet" means the documents, forms, and additional information required by the Board for an initial or renewal application for a license, registration, endorsement, or reinstatement.
3. "Board" means the same as in A.R.S. § 32-1301.
4. "Burial" means a disposition of human remains, other than direct cremation.
5. "Cash advance item" means any service or merchandise such as pallbearers, transportation, clergy, flowers, motorcycle escorts, hair dressers, barbers, nurses, obituary notices, or death certificates, which is paid for by a funeral establishment on behalf of a purchaser and

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charged to the purchaser at the same amount as originally purchased.

6. "Continuing education" means a workshop, seminar, lecture, conference, class, or instruction related to funeral practices.
7. "Credit hour" means 60 minutes of participation in continuing education.
8. "Day" means calendar day.
9. "Direct cremation" means cremation of human remains without a formal viewing, ceremony, or visitation of the human remains except for identification purposes.
10. "Disposition-transit permit" means the document that meets the requirements in A.R.S. § 36-326 and A.A.C. R4-19-302.
11. "Endorsement" means a written authorization issued by the Board to a funeral establishment to offer or sell prearranged funeral agreements under 4 A.A.C. 12, Article 5.
12. "Fraud," "misleading," or "false" means the actions described in A.R.S. § 44-1522.
13. "Funeral establishment that provides for cremation" means a funeral establishment defined in A.R.S. § 32-1301(25) that owns a crematory on or off the funeral establishments premises or contracts with a crematory for cremation.
14. "Immediate burial" means a disposition of human remains, other than direct cremation, without a formal viewing, ceremony, or visitation except for identification purposes.
15. "Harmful" means to cause damage or impairment to an individual's body.
16. "Manager" means an individual who manages according to A.R.S. § 32-1301.
17. "Party" has the meaning in A.R.S. § 41-1001.
18. "Permanent" means everlasting and existing perpetually.
19. "Previous owner" means a person who owned 10 percent or more of a funeral establishment before the current owner.
20. "Refrigerated" means the act of maintaining human remains at or below a temperature of 38 degrees Fahrenheit.
21. "Registrant" means an individual authorized by the Board to act as an embalmer's assistant or a prearranged funeral salesperson.
22. "Unfinished wood box" means an unornamented receptacle or casket for human remains.
23. "Week" means seven consecutive days.

**Historical Note**

Adopted effective June 16, 1981 (Supp. 81-3). Amended effective January 2, 1985 (Supp. 85-1). Amended by final rulemaking at 7 A.A.R. 1441, effective March 14, 2001 (Supp. 01-1). Amended by final rulemaking at 10 A.A.R. 681, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 20 A.A.R. 2648, effective November 9, 2014 (Supp. 14-3).

**R4-12-102. Reserved****R4-12-103. Expired****Historical Note**

Adopted effective June 16, 1981 (Supp. 81-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 853, effective December 31, 2001 (Supp. 02-1).

**R4-12-104. Expired****Historical Note**

Adopted effective June 16, 1981 (Supp. 81-3). Amended effective January 2, 1985 (Supp. 85-1). Amended effective September 18, 1987 (Supp. 87-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 853, effective December 31, 2001 (Supp. 02-1).

**R4-12-105. Expired****Historical Note**

Adopted effective June 16, 1981 (Supp. 81-3). Former Section R4-12-105 repealed, new Section R4-12-105 adopted effective January 2, 1985 (Supp. 85-1). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 853, effective December 31, 2001 (Supp. 02-1).

**R4-12-106. Time-frames for Board Approval**

- A. The overall time-frame described in A.R.S. § 41-1072(2) for each type of approval granted by the Board is listed in Table 1. The applicant and the Executive Director of the Board may agree in writing to extend the overall time-frame. The substantive review time-frame may not be extended by more than 25 percent of the overall time-frame.
- B. The administrative completeness review time-frame described in A.R.S. § 41-1072(1) for each type of approval granted by the Board is listed in Table 1.
  1. The administrative completeness review time-frame begins:
    - a. For approval to take a state equivalent examination, when the Board receives an application packet required in R4-12-201;
    - b. For approval or denial of a license, when the Board receives an application packet; or
    - c. For approval or denial of an endorsement, a registration, or a permit, when the Board receives an application packet.
  2. If the application packet is incomplete, the Board shall send to the applicant a written notice specifying the missing document or incomplete information. The administrative completeness review time-frame and the overall time-frame are suspended from the postmark date of the notice until the date the Board receives a complete application packet from the applicant.
  3. If the application packet is complete, the Board shall send a written notice of administrative completeness to the applicant.
  4. If the Board grants a license, registration, endorsement, or approval during the time provided to assess administrative completeness, the Board shall not issue a separate written notice of administrative completeness.
- C. The substantive review time-frame described in A.R.S. § 41-1072(3) is listed in Table 1 and begins on the postmark date of the notice of administrative completeness.
  1. As part of the substantive review for a funeral establishment license, the Board shall conduct an inspection of the funeral establishment that may require more than one visit.
  2. During the substantive review time-frame, the Board may make one comprehensive written request for additional information or documentation. The time-frame for the Board to complete the substantive review is suspended from the postmark date of the comprehensive written request for additional information or documentation until the Board receives the additional information or documentation.

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3. The Board shall send a written notice of approval to an applicant who meets the qualifications in A.R.S. Title 32, Chapter 13 and this Chapter.
  4. The Board shall send a written notice of denial to an applicant who fails to meet the qualifications in A.R.S. Title 32, Chapter 13 and this Chapter.
- D.** The Board shall consider an application withdrawn if within 360 days from the application submission date the applicant fails to:
1. Supply the missing information under subsection (B)(2) or (C)(2); or
  2. Pass a national board, state equivalent, or state laws and rules examination, as applicable.
- E.** An applicant who does not wish an application withdrawn may request a denial in writing within 360 days from the application submission date.
- F.** If a time-frame's last day falls on a Saturday, Sunday, or official state holiday, the Board shall consider the next business day as the time-frame's last day.

**Historical Note**

New Section adopted by final rulemaking at 7 A.A.R. 1441, effective March 14, 2001 (Supp. 01-1).

**Table 1. Time-frames (in days)**

Type of Approval	Statutory Authority	Overall Time-frame	Administrative Completeness Time-frame	Substantive Review Time-frame
Approval to take a state equivalent examination R4-12-201	A.R.S. §§ 32-1309, 32-1327, 32-1329	50	20	30
Approval to take an Embalmer Assistant Practical Examination R4-12-201	A.R.S. §§ 32-1309, 32-1325.01	50	20	30
Intern, embalmer, or funeral director license R4-12-202	A.R.S. §§ 32-1309, 32-1322, 32-1323	110	20	90
Embalmer or funeral director license by an applicant who holds an out-of-state-license R4-12-202(E)	A.R.S. §§ 32-1309, 32-1335	110	20	90
Multiple funeral director license R4-12-202(F)	A.R.S. §§ 32-1309, 32-1335	110	20	90
Embalmer's assistant registration R4-12-203	A.R.S. §§ 32-1309, 32-1325.01	110	20	90
Funeral establishment license R4-12-204	A.R.S. §§ 32-1309, 32-1383	110	20	90
Prearranged funeral sales establishment endorsement R4-12-205	A.R.S. §§ 32-1309, 32-1391.12	60	20	40
Prearranged funeral salesperson registration R4-12-207	A.R.S. §§ 32-1309, 32-1391.14	110	20	90
Crematory license R4-12-207	A.R.S. §§ 32-1309, 32-1395	110	20	90
Cremationist license R4-12-210	A.R.S. § 32-1394.01	110	20	90
License, registration, or endorsement renewal R4-12-211	A.R.S. §§ 32-1331, 32-1338, 32-1386, 32-1391.12, 32-1391.14, 32-1394.02, 32-1396	60	30	30

**Historical Note**

New Table adopted by final rulemaking at 7 A.A.R. 1441, effective March 14, 2001 (Supp. 01-1). Amended by final rulemaking at 10 A.A.R. 681, effective April 3, 2004 (Supp. 04-1).

**R4-12-107. Reserved****R4-12-108. Fees**

- A.** The Board shall charge the following nonrefundable fees for filing an annual trust report under A.R.S. § 32-1391.16:

1. For each funeral establishment that has a prearranged funeral trust account and files an annual trust report in the time and manner required in A.R.S. § 32-1391.16, \$150.00.



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2. For each funeral establishment that has a prearranged funeral trust account and files an annual trust report late or incomplete, \$200.00.
- B. The Board shall charge the following fees for the duplication or copying of public records under A.R.S. § 39-121.03:
  1. Noncommercial and commercial copy, 25¢ per page;
  2. Copying requiring more than 15 minutes, \$5.00 for each 15-minutes in excess of 15 minutes;
  3. Directories for noncommercial use, 5¢ per name and address;
  4. Directories for noncommercial use printed on labels, 10¢ per name and address;
  5. Directories for commercial use, 25¢ per name and address;
  6. Directories for commercial use printed on labels, 30¢ per name and address;
  7. A directory in subsection (B)(3), (4), (5), or (6) issued on a diskette, \$5.00 and the applicable name and address fee;
- C. For the consumer information pamphlet, entitled Arizona Funerals Information, the Board shall charge a funeral establishment the Board's actual cost of publishing, distributing, and mailing the pamphlet.
- D. The Board may waive any of the fees in subsection (B) for charitable organizations or governmental entities.

**Historical Note**

Adopted effective June 16, 1981 (Supp. 81-3). Amended effective January 2, 1985 (Supp. 85-1). Amended effective Dec. 27, 1985 (Supp. 85-6). Amended effective May 25, 1989 (Supp. 89-2). Amended by final rulemaking at 7 A.A.R. 1441, effective March 14, 2001 (Supp. 01-1).

**R4-12-109. Enforcement Advisory Committee**

- A. The Board may appoint an enforcement advisory committee that consists of seven members as follows:
  1. Four members representing the funeral industry, and
  2. Three lay members that have no affiliation with a funeral establishment or cemetery.
- B. The enforcement advisory committee may:
  1. Review and evaluate investigative matters referred to it by the Board, and
  2. Make recommendations to the Board about the disposition of investigative matters.
- C. The Board may accept, reject, or modify the enforcement advisory committee's recommendations.

**Historical Note**

Adopted effective January 2, 1985 (Supp. 85-1). Amended by final rulemaking at 10 A.A.R. 681, effective April 3, 2004 (Supp. 04-1).

**R4-12-110. Reserved****R4-12-111. Reserved****R4-12-112. Reserved****R4-12-113. Reserved****R4-12-114. Reserved****R4-12-115. Reserved****R4-12-116. Reserved****R4-12-117. Reserved****R4-12-118. Reserved****R4-12-119. Reserved****R4-12-120. Inspection Procedures**

- A. The Board shall inspect a funeral establishment or crematory:
  1. Before issuing an initial license under A.R.S. § 32-1383; and
  2. Once every five years under A.R.S. § 32-1307(A)(5)(h).
- B. The Inspection shall include:
  1. Reviewing equipment and the physical plant;
  2. Interviewing personnel;
  3. For a funeral establishment, inspecting for compliance with A.R.S. Title 32, Chapter 12, Articles 2, 3, 3.1, 4, and 5, and A.A.C. Title 4, Chapter 12, Articles 3 and 5; and
  4. For a crematory, inspecting the crematory for compliance with A.R.S. Title 32, Chapter 12, Article 6 and A.A.C. Title 4, Chapter 12, Article 6.
- C. At the inspection site, the Board shall make a verbal report of findings to an applicant or licensee upon completion of an inspection.
- D. Within 15 days of the inspection, the Board shall send to the applicant or licensee a written report of its findings that includes:
  1. A statement that no deficiencies were found, or
  2. If deficiencies are found:
    - a. A list of any deficiencies identified during the inspection,
    - b. A citation to each statute or rule that has not been complied with,
    - c. A request for a written plan of correction, and
    - d. The time-frame for correcting the deficiencies.
- E. Within 15 days after receiving a request for a written plan of corrections, an applicant or licensee shall submit to the Board a written plan of correction that includes:
  1. The identified deficiency,
  2. How the applicant or licensee will correct the deficiency, and
  3. When the applicant or licensee will correct the deficiency.
- F. The Board shall accept a written plan of correction if it:
  1. Describes how each deficiency will be corrected to bring the:
    - a. Funeral establishment into substantial compliance with A.R.S. Title 32, Chapter 12, Articles 2, 3, 3.1, 4, and 5, and A.A.C. Title 4, Chapter 12, Articles 3 and 5; or
    - b. Crematory into substantial compliance with A.R.S. Title 32, Chapter 12, Article 6 and A.A.C. Title 4, Chapter 12, Article 6.
  2. Includes a date for correcting each deficiency as soon as practicable based upon the actions necessary to correct the deficiency.
- G. The Board shall provide an applicant or licensee with an opportunity to correct the deficiencies unless the Board determines the deficiencies are:
  1. Committed intentionally;
  2. Evidence a pattern of noncompliance:
    - a. For a funeral establishment, with A.R.S. Title 32, Chapter 12, Articles 2, 3, 3.1, 4, and 5, and A.A.C. Title 4, Chapter 12, Articles 3 and 5; or
    - b. For a crematory, with A.R.S. Title 32, Chapter 12, Article 6 and A.A.C. Title 4, Chapter 12, Article 6; or
  3. A risk to the public health, safety, or welfare.
- H. If an applicant or licensee does not correct the deficiencies within the time-frame approved by the Board, the Board may:
  1. If requested by the applicant or licensee, extend the time-frame for situations beyond the control of the applicant or licensee, such as:

- a. When the applicant or licensee in good faith is unable to obtain the items necessary to correct the deficiencies within the time-frame approved by the Board, or
  - b. The time needed to correct the deficiencies is longer than the time-frame approved by the Board due to the complexity, nature, or amount of deficiencies.
2. If the applicant or licensee fails to correct the deficiencies within the time-frame approved by the Board, take the disciplinary actions stated in A.R.S. § 32-1390.01 or A.R.S. § 32-1398.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 3160, effective October 1, 2005 (Supp. 05-3).

**R4-12-121. Investigation Procedures**

- A. After receiving a complaint, the Board shall send a written notice of the complaint to the licensee or registrant within 15 days of its receipt and may include a request for information or documents related to the complaint. The licensee or registrant shall provide a written response and the requested information or documents no later than 15 days from the date the Board mails the notice of the complaint.
- B. In addition to the information or documents requested by the Board under subsection (A), the Board may request that a complainant, licensee, or registrant reply to or provide the Board with additional information relating to the complaint. The complainant, licensee, or registrant shall provide the Board with additional information within 15 days from the date the Board mails the request.

**Historical Note**

Adopted effective June 16, 1981 (Supp. 81-3). Former Section R4-12-121 repealed, new Section R4-12-121 adopted effective January 2, 1985 (Supp. 85-1). Amended by final rulemaking at 10 A.A.R. 681, effective April 3, 2004 (Supp. 04-1).

**R4-12-122. Expired****Historical Note**

Adopted effective June 16, 1981 (Supp. 81-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 853, effective December 31, 2001 (Supp. 02-1).

**R4-12-123. Informal Interview**

- A. The Board shall conduct an informal interview under A.R.S. § 32-1367 as follows:
  1. The Board shall send a written notice of the informal interview to each party by personal service or certified mail, return receipt requested, at least 20 days before the informal interview. The notice shall contain:
    - a. The time, place, and date of the informal interview;
    - b. An explanation of the procedures to be followed at the informal interview;
    - c. A statement of the subject matter or issues involved;
    - d. A statement of the licensee's or registrant's right to appear with or without counsel;
    - e. A notice that if a licensee, registrant, or complainant fails to appear at the informal interview, the informal interview may be held in the licensee's, registrant's, or complainant's absence; and
    - f. A statement of the licensee's or registrant's right to a formal hearing according to A.R.S. § 32-1367 instead of attending the informal interview.
  2. During the informal interview, the Board may:
    - a. Swear in the licensee or registrant and all witnesses;

- b. Question the licensee or registrant and all witnesses; and
  - c. Deliberate.
3. After completing the informal interview the Board may dismiss the complaint or take any of the actions listed in A.R.S. § 32-1367(D):
- B. The Board shall issue written findings of fact, conclusions of law, and Board order no later than 60 days from the date the informal interview is completed.
  - C. A licensee or registrant may seek a Board rehearing or review of a Board decision or the Board may grant rehearing or review on its own motion as stated in A.R.S. § 32-1367(I).

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 681, effective April 3, 2004 (Supp. 04-1).

**R4-12-124. Expired****Historical Note**

Adopted effective June 16, 1981 (Supp. 81-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 853, effective December 31, 2001 (Supp. 02-1).

**R4-12-125. Hearing Procedures**

- A. If a formal hearing under A.R.S. § 32-1367 is to be held before an administrative law judge, the requirements in A.R.S. §§ 41-1092 through 41-1092.11 apply.
- B. If a formal hearing under A.R.S. § 32-1367 is to be held before the Board, the requirements in A.R.S. §§ 41-1092 through 41-1092.11 and the following apply:
  1. The Board shall provide a written complaint and notice of formal hearing to a licensee or registrant at the licensee's or registrant's last known address of record, by personal service or certified mail, return receipt requested at least 30 days before the date set for the formal hearing.
  2. A licensee or registrant served with a complaint and notice of hearing shall file an answer by the date specified in the notice of hearing admitting or denying the allegations in the complaint.
  3. The Board may amend a complaint and notice of hearing at any time. The Board shall send written notice of any changes in the complaint and notice of hearing to the licensee or registrant at least 20 days before the formal hearing.
  4. A licensee or registrant may appear at a formal hearing with or without the assistance of counsel. If the licensee or registrant fails to appear, the Board may hold the formal hearing in the licensee's or registrant's absence.
  5. The Board may conduct a formal hearing without adherence to the rules of procedure or rules of evidence used in civil proceedings. At the formal hearing the Board shall rule on the procedure to be followed and admissibility of evidence.
  6. The Board shall send a written decision that includes written findings of fact, conclusions of law, and order of the Board to the licensee or registrant and all parties within 60 days after the formal hearing is concluded. A licensee, registrant, or the Board may seek rehearing or review of the order according to A.R.S. § 32-1367(I).

**Historical Note**

Adopted effective January 2, 1985 (Supp. 85-1). Amended by final rulemaking at 10 A.A.R. 681, effective April 3, 2004 (Supp. 04-1).

**R4-12-126. Rehearing or Review of Board's Decision**

- A. Except as provided in subsection (G), a party who is aggrieved by a decision issued by the Board may file with the Board, no

later than 30 days after service of the decision, a written motion for rehearing or review of the decision, specifying the grounds for rehearing or review. For purposes of this Section, a decision is considered to have been served when personally delivered to the party's last known home or business address or five days after the decision is mailed by certified mail to the party or the party's attorney.

- B.** A party filing a motion for rehearing or review may amend the motion at any time before it is ruled upon by the Board. Another party may file a response within 15 days after the date the motion or amended motion for rehearing is filed. The Board may require a party to file supplemental memoranda explaining the issues raised in the motion or response and may permit oral argument.
- C.** The Board may grant a rehearing or review of the decision for any of the following reasons materially affecting the moving party's rights:
  1. Irregularity in the Board's or administrative law judge's administrative proceedings or any order or abuse of discretion that deprived the party of a fair hearing;
  2. Misconduct of the Board, 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 original hearing;
  5. Excessive or insufficient penalties or disciplinary action;
  6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing; or
  7. That the decision is not supported by the evidence or is contrary to law.
- D.** The Board may affirm or modify the decision or grant a rehearing or review on all or part of the issues for any of the reasons in subsection (C). An order granting a rehearing or review shall specify each ground for the rehearing or review.
- E.** No later than 30 days after a decision is issued by the Board, the Board may, on its own initiative, grant a rehearing or review of its decision for any reason in subsection (C). An order granting a rehearing or review shall specify the grounds for the rehearing or review.
- F.** If a motion for rehearing or review is based upon affidavits, a party shall serve the affidavits with the motion. An opposing party may, within 10 days after service, serve opposing affidavits. The Board may extend the time for serving opposing affidavits for no more than 20 days for good cause or by written stipulation of the parties. The Board may permit reply affidavits.
- G.** If the Board makes specific findings that the immediate effectiveness of a decision is necessary to preserve the public health and safety and determines that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the Board may issue the decision as a final decision without an opportunity for rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing or review, an aggrieved party who wishes to seek judicial review shall make an application for judicial review of the decision within the time limits permitted for judicial review of the Board's final decision at A.R.S. § 12-904.

#### Historical Note

Adopted effective June 16, 1981 (Supp. 81-3). Amended by final rulemaking at 10 A.A.R. 681, effective April 3, 2004 (Supp. 04-1).

## ARTICLE 2. LICENSING PROVISIONS

### R4-12-201. Application for a State Equivalent Examination or Embalmer Assistant Practical Examination

An applicant for a state equivalent examination or embalmer assistant practical examination shall submit an application packet to the Board that contains the following:

1. An application form provided by the Board, signed and dated by the applicant, and notarized that contains:
  - a. The applicant's name, mailing address, telephone number, and social security number;
  - b. Any prior name or alias of the applicant;
  - c. The applicant's date and place of birth; and
  - d. The applicant's height, weight, hair color, and eye color;
2. A photocopy of the applicant's high school diploma or general educational diploma issued in any state;
3. If applying to take a state equivalent examination, a photocopy of the diploma issued to the applicant upon graduation from an accredited or provisionally accredited school of mortuary science;
4. Two passport photographs of the applicant, no larger than 1 1/2 x 2 inches, taken not more than 60 days before the date of the application; and
5. The fee required by the Board.

#### Historical Note

Former Rule, Section 1, Article III; Former Section R4-12-26 renumbered as Section R4-12-201 effective June 16, 1981 (Supp. 81-3). Former Section R4-12-201 repealed and a new Section R4-12-201 adopted effective September 18, 1987 (Supp. 87-3). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 1441, effective March 14, 2001 (Supp. 01-1).

### R4-12-202. Application for an Intern, an Embalmer, or a Funeral Director License

- A.** An applicant for an intern, an embalmer, or a funeral director license shall submit an application packet to the Board that contains the information required in A.R.S. § 32-1323, and the following:
  1. An application form provided by the Board, signed and dated by the applicant, and notarized that contains:
    - a. The applicant's name, mailing address, telephone number, and social security number;
    - b. The applicant's date and place of birth;
    - c. Any prior name or alias of the applicant;
    - d. The name and address of the high school from which the applicant graduated and the graduation date or date applicant received a general equivalency diploma;
    - e. The name and address of the mortuary school from which the applicant graduated and graduation date;
    - f. The name, address, and telephone number of the funeral establishment employing the applicant;
    - g. Whether the applicant has ever been convicted of or entered into a plea of no contest to a class 1 or 2 felony, including the information in subsection (A)(1)(h)(i) through (A)(1)(h)(vi);
    - h. Whether the applicant, within five years from the date of the application, has been convicted of or entered into a plea of no contest to a felony or to a misdemeanor that is reasonably related to the applicant's proposed area of licensure including the:
      - i. Charged felony or misdemeanor;
      - ii. Date of conviction;

- iii. Court having jurisdiction over the felony or misdemeanor;
    - iv. Probation officer's name, address, and telephone number, if applicable;
    - v. A copy of the notice of expungement, if applicable; and
    - vi. A copy of the notice of restoration of civil rights, if applicable;
  - i. Whether the applicant, within five years from the date of the application, has committed any act involving dishonesty, fraud, misrepresentation, breach of fiduciary duty, gross negligence, or incompetence reasonably related to the applicant's proposed area of licensure;
  - j. Whether the applicant is currently incarcerated or on community supervision after a period of imprisonment in a local, state, or federal penal institution or on criminal probation;
  - k. Whether the applicant, within five years from the date of the application, has had an application for a license, registration, certificate, or endorsement denied or rejected by any state funeral licensing authority including the:
    - i. Reason for the denial or rejection,
    - ii. Date of the denial or rejection, and
    - iii. Name and address of the agency that denied or rejected the application;
  - l. Whether the applicant has, within five years from the date of the application, had a license, registration, certificate, or endorsement suspended or revoked by any state funeral licensing authority including the:
    - i. Reason for the suspension or revocation,
    - ii. Date of the suspension or revocation, and
    - iii. Name and address of the state licensing authority that suspended or revoked the license;
  - m. Whether the applicant has ever surrendered a license, registration, certificate, or endorsement to the Board or any state funeral licensing authority;
  - n. The dates the applicant served as an apprentice embalmer or intern, location of apprenticeship or internship, and the number of human bodies embalmed, if applicable;
  - o. A statement of whether the applicant has passed a national board examination or state equivalent examination, if applicable; and
  - p. A notarized statement by the applicant verifying the information on the application is true and correct;
2. A copy of the applicant's high school or general equivalency diploma;
  3. A copy of the transcript from each mortuary college attended by the applicant and, if applicable, each diploma issued to the applicant; and
  4. The fee required by the Board.
- B.** In addition to the requirements in subsection (A), an applicant for an intern license shall submit on the application form the name and license number of the embalmer who will supervise the applicant.
- C.** In addition to the requirements in subsection (A), an applicant for an embalmer license shall submit to the Board:
1. On the application form:
    - a. Whether the applicant has embalmed 25 or more human bodies;
    - b. Apprenticeship or internship information including:
      - i. Beginning and ending dates,
      - ii. The state in which the apprenticeship or internship was served,
  2. The state in which the apprenticeship or internship was served,
  3. The applicant's state registration number and date of issuance, and
  4. The number of human bodies embalmed by the applicant during the apprenticeship or internship;
- c.** The following information:
- i. The name of each state in which the applicant has been licensed or registered as an embalmer or funeral director,
  - ii. The date of issuance of each funeral director or embalmer license or registration, and
  - iii. The license or registration number in each state in which the applicant is or has been licensed or registered as an embalmer or funeral director;
- d.** The name of each mortuary at which the applicant practiced as an embalmer or funeral director for five years immediately before the application date, beginning and ending dates of the practice, and a description of the practice, if applicable;
- e.** A notarized statement from a funeral director licensed or registered in any state that contains the funeral director's:
- i. State in which licensed;
  - ii. License number and issuance date;
  - iii. Statement of length of time that the funeral director has known the applicant;
  - iv. Statement attesting to the applicant's good character, reputation, and professional ability; and
  - v. Recommendation for the Board's approval of the applicant; and
2. A report of apprenticeship or internship containing:
    - a. The applicant's name,
    - b. The name of the funeral establishment in which the apprenticeship or internship was served,
    - c. The name of the embalmer supervising the applicant,
    - d. The beginning and ending dates covered in the report,
    - e. The number of hours worked each month during the apprenticeship or internship,
    - f. The number of human bodies embalmed each month during the apprenticeship or internship, and
    - g. For each human body embalmed:
      - i. The name of the deceased,
      - ii. The date of death,
      - iii. A statement of whether an autopsy was performed, and
      - iv. The supervising embalmer's signature and license number,
- D.** In addition to the requirements in subsection (A), an applicant for a funeral director license shall submit to the Board a report containing:
1. The applicant's name;
  2. The name of the funeral establishment in which one year of funeral directing experience was obtained;
  3. The name of the responsible funeral director;
  4. The beginning and ending dates covered in the report; and
  5. For each burial, immediate burial, or direct cremation conducted by the applicant:
    - a. The name of the deceased;
    - b. The date of the burial, immediate burial, or direct cremation;

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- c. A statement of whether the applicant conducted a burial, immediate burial, or direct cremation; and
  - d. The supervising funeral director's signature and license number.
- E.** In addition to the requirements in subsection (A), an applicant for an embalmer or funeral director license who holds an out-of-state embalmer or funeral director license shall:
- 1. Submit on the application form, the name of each state in which the applicant is licensed or registered as an embalmer or funeral director; and
  - 2. Arrange for the out-of-state licensing authority to complete the following on the application form to be submitted with the application packet:
    - a. Certification of current licensure of the applicant;
    - b. Type of license, license number, and date license was issued;
    - c. A statement of whether the applicant qualified by examination or by being licensed by another state;
    - d. A statement of whether the licensing authority has ever suspended, revoked, or taken any other action against the applicant's license; and
    - e. Notarized signature and title of agency official;
- F.** An applicant for a multiple funeral director license shall submit an application form that is signed and dated by the applicant, and notarized that includes the information in subsections (A)(1)(a) through (A)(1)(c) and:
- 1. The name and address of the funeral establishment for which the applicant:
    - a. Currently acts as the responsible funeral director, and
    - b. Is applying to act as the responsible funeral director;
  - 2. The distance, stated in miles, between the current funeral establishment and the funeral establishment for which application is being made;
  - 3. For the funeral establishment for which application is being made and for 12 months immediately preceding the application, the number of:
    - a. Funerals and cremations conducted at the funeral establishment, and
    - b. Transportations of human remains arranged through the funeral establishment;
  - 4. The fee required by the Board; and
  - 5. Other information required by the Board.

**Historical Note**

Adopted effective September 18, 1987 (Supp. 87-3).

Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 1441, effective March 14, 2001 (Supp. 01-1).

**R4-12-203. Application for an Embalmer's Assistant Registration**

An applicant for an embalmer's assistant registration shall submit to the Board an application packet that contains the following:

- 1. An application form that contains:
    - a. The applicant's name, mailing address, telephone number, and social security number;
    - b. The applicant's date and place of birth;
    - c. Any prior name or alias of the applicant;
    - d. The name and address of the high school from which the applicant graduated and the graduation date or date applicant received a general equivalency diploma;
    - e. The name and address of each mortuary college attended by the applicant;
    - f. The name and address of the mortuary college from which the applicant graduated and graduation date;
  - g. The name, address, and telephone number of the funeral establishment employing the applicant;
  - h. Whether the applicant, within five years from the date of the application, has had an application for a license, registration, certificate, or endorsement denied or rejected by any state funeral licensing authority including the:
    - i. Reason for the denial or rejection,
    - ii. Date of the denial or rejection, and
    - iii. Name and address of the agency that denied or rejected the application;
  - i. Whether the applicant, within five years from the date of the application, has had a license, registration, certificate, or endorsement suspended or revoked by any state funeral licensing authority including the:
    - i. Reason for the suspension or revocation,
    - ii. Date of the suspension or revocation, and
    - iii. Name and address of the state licensing authority that suspended or revoked the license;
  - j. Whether the applicant, within five years from the date of the application, has surrendered a license, registration, certificate, or endorsement to the Board or any state funeral licensing authority;
  - k. The name of the applicant's current supervising embalmer;
  - l. If applicable, the beginning and ending dates the applicant served as an apprentice embalmer, the applicant's registration number and date of issuance, and the number of human bodies embalmed and date of each embalming; and
  - m. A notarized statement by the applicant verifying the information on the application is true and correct;
- 2. A copy of the applicant's high school or general equivalency diploma;
  - 3. A copy of the transcript and diploma from the mortuary college from which the applicant graduated;
  - 4. A report of apprenticeship containing:
    - a. The applicant's name,
    - b. The name of the funeral establishment in which the apprenticeship was completed,
    - c. The name of the supervising embalmer,
    - d. The beginning and ending dates covered in the report,
    - e. The number of hours worked each month during the two most recent consecutive years of apprenticeship,
    - f. The number of human bodies embalmed by the applicant or in which the applicant assisted in the embalming for each month of the apprenticeship,
    - g. For each human body embalmed by the applicant or in which the applicant assisted in embalming for the two most recent consecutive years of the apprenticeship:
      - i. The name of the deceased,
      - ii. The date of death,
      - iii. A statement of whether an autopsy was performed,
      - iv. The supervising embalmer's signature and license number, and
      - v. The applicant's signature.
  - 5. A completed and legible fingerprint card; and
  - 6. The fee required by the Board.

**Historical Note**

Former Rule, Section 3, Article III; Former Section R4-12-27 amended and renumbered as Section R4-12-203 effective June 16, 1981 (Supp. 81-3). Former Section R4-

12-203 repealed and a new Section R4-12-203 adopted effective September 18, 1987 (Supp. 87-3). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 1441, effective March 14, 2001 (Supp. 01-1).

**R4-12-204. Application for a Funeral Establishment License or Interim Funeral Establishment Permit**

- A.** An applicant for a funeral establishment license shall submit an application packet to the Board that contains the fee required by the Board, information required in A.R.S. § 32-1383, and an application form that contains:
1. The funeral establishment's current and previous name, if any;
  2. The address of the physical location and telephone number of the funeral establishment;
  3. The responsible funeral director's name and license number;
  4. The name of the funeral establishment's current and previous owner;
  5. Whether the funeral establishment is a proprietorship, a corporation, a partnership, a limited liability company, or a subsidiary of a corporation, a partnership, or a limited liability company;
  6. If the previous owner was a corporation, the name of the corporation;
  7. The name and address of each person owning 10 percent or more of the establishment or corporation common stock;
  8. If a corporation, partnership, or limited liability company:
    - a. The state and date of incorporation or formation;
    - b. The name and address of the Arizona statutory agent or agent appointed to receive process; and
    - c. The name, address, and title of each officer, director, general partner, or member;
  9. Whether the applicant has ever been convicted of or entered into a plea of no contest to a class 1 or 2 felony, including the information in subsections (A)(10)(a) through (A)(10)(f);
  10. Whether the applicant, within five years from the date of the application, has been convicted of or entered into a plea of no contest to a felony or to a misdemeanor that is reasonably related to the applicant's proposed area of licensure including the:
    - a. Charged felony or misdemeanor;
    - b. Date of conviction;
    - c. Court having jurisdiction over the felony or misdemeanor;
    - d. Probation officer's name, address, and telephone number, if applicable;
    - e. A copy of the notice of expungement, if applicable; and
    - f. A copy of the notice of restoration of civil rights, if applicable;
  11. Whether the applicant, within five years from the date of the application, has committed any act involving dishonesty, fraud, misrepresentation, breach of fiduciary duty, gross negligence, or incompetence reasonably related to the applicant's proposed area of licensure;
  12. Whether the applicant is currently incarcerated or on community supervision after a period of imprisonment in a local, state, or federal penal institution or on criminal probation;
  13. Whether the applicant, within five years from the date of the application, has had an application for a license, registration, certificate, or endorsement denied or rejected by any state funeral licensing authority including the:
    - a. Reason for the denial or rejection,

- b. Date of the denial or rejection, and
  - c. Name and address of the agency that denied or rejected the application;
14. Whether the applicant has, within five years from the date of the application, had a license, registration, certificate, or endorsement suspended or revoked by any state funeral licensing authority including the:
    - a. Reason for the suspension or revocation,
    - b. Date of the suspension or revocation, and
    - c. Name and address of the state licensing authority that suspended or revoked the license;
  15. Whether the applicant has ever surrendered a license, registration, certificate, or endorsement to the Board or any state funeral licensing authority;
  16. A statement, signed by the responsible funeral director and notarized, affirming licensure in Arizona and confirming responsibility for the funeral establishment's compliance with Arizona state laws and rules; and
  17. The applicant's signature.
- B.** An applicant for an interim funeral establishment permit shall submit an application packet to the Board that contains the information required in A.R.S. § 32-1388 and an application form that contains:
1. The funeral establishment's current and previous name, if any;
  2. The address of the physical location and telephone number of the funeral establishment;
  3. The name of the funeral establishment's current and previous owner;
  4. The responsible funeral director's name and license number;
  5. Whether the funeral establishment is a proprietorship, a corporation, a partnership, a limited liability company, or a subsidiary of a corporation, a partnership, or a limited liability company;
  6. If the previous owner was a corporation, the name of the corporation;
  7. The name and address of each person owning 10 percent or more of the establishment or corporation common stock;
  8. If a corporation, partnership, or limited liability company:
    - a. The state and date of incorporation or formation;
    - b. The name and address of the Arizona statutory agent or agent appointed to receive process; and
    - c. The name, address, and title of each officer, director, general partner, or member;
  9. The name of the previous licensed owner;
  10. A statement, signed by the responsible funeral director and notarized, affirming licensure in Arizona and confirming responsibility for the funeral establishment's compliance with Arizona state laws and rules; and
  11. The applicant's signature.

**Historical Note**

Former Rule, Section 5, Article III; Former Section R4-12-28 amended and renumbered as Section R4-12-204 effective June 16, 1981 (Supp. 81-3). Former Section R4-12-204 repealed, new Section R4-12-204 adopted effective September 18, 1987 (Supp. 87-3). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 1441, effective March 14, 2001 (Supp. 01-1).

**R4-12-205. Application for a Prearranged Funeral Sales Endorsement**

An owner and the owner's responsible funeral director applying for a prearranged funeral sales endorsement for a funeral establishment shall submit an application packet to the Board that contains the fee

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required by the Board, information required in A.R.S. § 32-1391.12, and an application form that contains:

1. The funeral establishment's name, mailing address, and telephone number;
2. The funeral establishment's designated funeral director's, manager's, corporate officers', owner's, trustee's, or any controlling person's:
  - a. Current name and any prior name or alias;
  - b. Current address, telephone number, and social security number;
  - c. Date and place of birth; and
  - d. Former addresses, including dates of residence, for seven years immediately preceding the date of the application;
3. The total amount of trust funds, including accrued interest, for 12 months immediately preceding the application date;
4. The total number of currently existing prearranged funeral agreements entered into before January 1, 1985;
5. The total number of prearranged funeral agreements sold by the funeral establishment for the calendar year immediately preceding the date of the application;
6. Whether the designated funeral director, a manager, a corporate officer, a trustee, or an owner, within seven years preceding the date of application, in any state or federal jurisdiction, has:
  - a. Been convicted of or entered into a plea of no contest to a felony or to a misdemeanor involving dishonesty, fraud, deception, misrepresentation, embezzlement, or breach of fiduciary duty; or
  - b. Been issued a judgment or consent order for consumer fraud, securities violation, or civil racketeering;
7. The name, address, alias, and telephone number of each individual named in subsection (6) and the following:
  - a. The charged felony or misdemeanor;
  - b. Date of conviction or judgment;
  - c. Court having jurisdiction over the felony or misdemeanor;
  - d. Probation officer's name, address, and telephone number, if applicable; and
  - e. A copy of the notice of expungement, if applicable; and
  - f. A copy of the notice of restoration of civil rights, if applicable; and
8. A notarized statement signed by the owner and designated funeral director verifying the information on the application is true and correct;

**Historical Note**

Former Section R4-12-29 amended and renumbered as Section R4-12-205 effective June 16, 1981 (Supp. 81-3).

Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 1441, effective March 14, 2001 (Supp. 01-1).

**R4-12-206. Application for a Prearranged Funeral Salesperson Registration**

An applicant for a prearranged funeral salesperson registration shall submit an application packet to the Board that contains the fee required by the Board, information required in A.R.S. § 32-1391.14, and an application form that contains:

1. The applicant's telephone number and social security number;
2. A statement of whether the applicant is a funeral director or embalmer licensed in Arizona;

3. Whether the applicant has ever been convicted of or entered into a plea of no contest to a felony or to a misdemeanor involving dishonesty, fraud, deception, misrepresentation, embezzlement, or breach of fiduciary duty in any state or federal court within seven years preceding the date of application including the:
  - a. Charged felony or misdemeanor;
  - b. Date of conviction;
  - c. Court having jurisdiction over the felony or misdemeanor;
  - d. Probation officer's name, address, and telephone number, if applicable;
  - e. A copy of the notice of expungement, if applicable; and
  - f. A copy of the notice of restoration of civil rights, if applicable.
4. Whether the applicant, within seven years preceding the date of the application, has had an application for a license, registration, endorsement, or certificate denied or rejected by any state funeral licensing authority including the:
  - a. Reason for the denial or rejection,
  - b. Date of the denial or rejection, and
  - c. Name and address of the agency that denied or rejected the application;
5. Whether the applicant, within seven years preceding the date of the application, has had a license, certificate, endorsement, or registration suspended or revoked by any state funeral licensing authority including the:
  - a. Reason for the suspension or revocation,
  - b. Date of the suspension or revocation, and
  - c. Name and address of the agency that suspended or revoked the license;
6. A notarized statement signed by the applicant verifying the information on the application is true and correct; and
7. A notarized statement signed by the responsible funeral director verifying the applicant will be employed by the responsible funeral director upon issuance of the registration by the Board.

**Historical Note**

Former Rule, Section 9, Article 111; Former Section R4-12-30 renumbered as Section R4-12-206 effective June 16, 1981 (Supp. 81-3). Former Section R4-12-206 repealed and a new Section R4-12-206 adopted effective September 18, 1987 (Supp. 87-3). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 1441, effective March 14, 2001 (Supp. 01-1).

**R4-12-207. Application for a Crematory License**

An applicant for a crematory license shall submit an application packet to the Board that contains the fee required by the Board, information required in A.R.S. § 32-1395, and the following:

1. An application form that contains:
  - a. The name of the crematory;
  - b. The address of the physical location and telephone number of the crematory;
  - c. Whether the crematory is a proprietorship, a corporation, a partnership, a limited liability company, or a subsidiary of a corporation, a partnership, or a limited liability company;
  - d. The name and license number of the responsible funeral director or cremationist;
  - e. The name and address of each person owning 10 percent or more of the establishment or corporation common stock;

- f. A statement, signed by the responsible funeral director or cremationist and notarized, affirming licensure in Arizona and confirming responsibility for the crematory's compliance with Arizona state laws and rules;
- g. If a corporation, partnership, or limited liability company:
  - i. The state and date of incorporation or formation;
  - ii. The name and address of the Arizona statutory agent or agent appointed to receive process; and
  - iii. The name, address, and title of each officer, director, general partner, or member;
- h. Whether the applicant has ever been convicted of or entered into a plea of no contest to a class 1 or 2 felony, including the information in subsection (1)(i)(i) through (1)(i)(vi);
- i. Whether the applicant, within five years from the date of the application, has been convicted of or entered into a plea of no contest to a felony or to a misdemeanor that is reasonably related to the applicant's proposed area of licensure including the:
  - i. Charged felony or misdemeanor;
  - ii. Date of conviction;
  - iii. Court having jurisdiction over the felony or misdemeanor;
  - iv. Probation officer's name, address, and telephone number, if applicable;
  - v. A copy of the notice of expungement; if applicable; and
  - vi. A copy of the notice of restoration of civil rights, if applicable;
- j. Whether the applicant, within five years from the date of the application, has committed any act involving dishonesty, fraud, misrepresentation, breach of fiduciary duty, gross negligence, or incompetence reasonably related to the applicant's proposed area of licensure;
- k. Whether the applicant is currently incarcerated or on community supervision after a period of imprisonment in a local, state, or federal penal institution or on criminal probation;
- l. Whether the applicant, within five years from the date of the application, has had an application for a license, registration, certificate, or endorsement denied or rejected by any state funeral licensing authority including the:
  - i. Reason for the denial or rejection,
  - ii. Date of the denial or rejection, and
  - iii. Name and address of the agency that denied or rejected the application;
- m. Whether the applicant has, within five years from the date of the application, had a license, registration, certificate, or endorsement suspended or revoked by any state funeral licensing authority including the:
  - i. Reason for the suspension or revocation,
  - ii. Date of the suspension or revocation, and
  - iii. Name and address of the state licensing authority that suspended or revoked the license;
- n. Whether the applicant has ever surrendered a license, registration, certificate, or endorsement to the Board or any state funeral licensing authority; and
- o. The applicant's signature;

- 2. A copy of a funeral establishment license or crematory authority certificate issued by the Arizona Department of Real Estate to a cemetery that operates a crematory.

#### Historical Note

Adopted effective January 2, 1985 (Supp. &5-1).  
Amended by adding subsections (F) and (G) effective September 18, 1987 (Supp. 87-3). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 1441, effective March 14, 2001 (Supp. 01-1).

#### R4-12-208. Annual Intern, Apprentice Embalmer, or Embalmer's Assistant Report

- A. To meet the requirements in A.R.S. §§ 32-1322(A), 32-1324, or 32-1325.01(B)(2), an intern, apprentice embalmer, or embalmer's assistant shall work a minimum of 40 hours each week and a minimum of 160 hours each month during an internship or apprenticeship.
- B. As required in A.R.S. § 32-1330, an intern, an apprentice embalmer, or an embalmer's assistant shall submit the following on a form provided by the Board:
  - 1. The name of the intern, apprentice embalmer, or embalmer's assistant;
  - 2. The name of the funeral establishment employing the intern, apprentice embalmer, or embalmer's assistant;
  - 3. The supervising embalmer's name and license number;
  - 4. The beginning and ending dates being covered by the report;
  - 5. The number of hours worked each week at the employing funeral establishment;
  - 6. For each human body embalmed:
    - a. The name of the deceased;
    - b. The date of death;
    - c. A statement of whether an autopsy was performed; and
    - d. The supervising embalmer's signature and license number;
  - 7. A statement signed by the intern, apprentice embalmer, or embalmer's assistant verifying the information on the report is true and correct;
  - 8. A statement signed by the responsible funeral director verifying the intern, apprentice embalmer, or embalmer's assistant has been employed by the responsible funeral director; and
  - 9. A statement signed by the supervising embalmer verifying supervision of the intern, apprentice embalmer, or embalmer's assistant.

#### Historical Note

Adopted effective January 2, 1985 (Supp. 85-1). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 1441, effective March 14, 2001 (Supp. 01-1).

#### R4-12-209. State Equivalent Examination

- A. The funeral service science section of the state equivalent examination shall consist of no fewer than 70 written questions covering the following subjects:
  - 1. Embalming practices and procedures;
  - 2. Methods of determining whether proper embalming practices and procedures are being or have been followed for the preservation of the human body and prevention of the spread of disease;
  - 3. Laws and regulations and approved practices governing the preparation, burial, and disposal of human bodies; and
  - 4. Methods of shipping human bodies when the cause of death is an infectious or contagious disease.



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**B.** The funeral services arts section of the state equivalent examination shall consist of no fewer than 70 written questions covering the following subjects:

1. Funeral directing,
2. Funeral service law,
3. Funeral merchandising,
4. Business law,
5. Accounting,
6. Sociology,
7. Accounting, and
8. Psychology.

**Historical Note**

New Section adopted by final rulemaking at 7 A.A.R. 1441, effective March 14, 2001 (Supp. 01-1).

**R4-12-210. Application for a Cremationist License**

An applicant for a cremationist license shall submit an application packet to the Board that contains all of the following:

1. An application form provided by the Board, signed and dated by the applicant that contains:
  - a. The applicant's name, mailing address, telephone number, and social security number;
  - b. The applicant's date and place of birth;
  - c. Any prior name or alias of the applicant;
  - d. The name, address, and telephone number of the crematory or funeral establishment employing the applicant, if applicable;
  - e. Whether the applicant has ever been convicted of or entered into a plea of no contest to a class 1 or 2 felony, including the information in subsections (1)(f)(i) through (1)(f)(vi) for each felony;
  - f. Whether the applicant, within the five years before the date of the application, has been convicted of or entered into a plea of no contest to a felony or to a misdemeanor that is reasonably related to the applicant's proposed area of licensure and the:
    - i. Charged felony or misdemeanor;
    - ii. Date of conviction;
    - iii. Court that has jurisdiction over the felony or misdemeanor;
    - iv. Probation officer's name, address, and telephone number, if applicable;
    - v. A copy of the notice of expungement, if applicable; and
    - vi. A copy of the notice of restoration of civil rights, if applicable;
  - g. Whether the applicant, within five years from the date of the application, has committed any act involving dishonesty, fraud, misrepresentation, breach of fiduciary duty, gross negligence, or incompetence reasonably related to the applicant's proposed area of licensure;
  - h. Whether the applicant is currently incarcerated, on community supervision after a period of incarceration in a local, state, or federal penal institution, or on criminal probation;
  - i. Whether the applicant, within five years from the date of the application, has had an application for a license, registration, certificate, or endorsement denied or rejected by any state funeral licensing authority and the:
    - i. Reason for the denial or rejection,
    - ii. Date of the denial or rejection, and
    - iii. Name and address of the agency that denied or rejected the application;

j. Whether the applicant has, within five years from the date of the application, had a license, registration, certificate, or endorsement suspended or revoked by any state funeral licensing authority and the:

- i. Reason for the suspension or revocation,
- ii. Date of the suspension or revocation, and
- iii. Name and address of the state licensing authority that suspended or revoked the license;

k. Whether the applicant has ever surrendered a license, registration, certificate, or endorsement to the Board or any other state funeral licensing authority; and

l. A notarized statement by the applicant verifying that the information on the application is true and correct.

2. A copy of a certificate of completion of a crematory certification program issued by:

- a. The manufacturer of a retort, or
- b. An accredited organization that provides instruction for crematory operation;

3. A completed and legible fingerprint card; and

4. The fee required by the Board under A.R.S. § 32-1309.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 681, effective April 3, 2004 (Supp. 04-1).

**R4-12-211. Renewal**

**A.** An applicant for a renewal of a license, registration, or endorsement shall file a renewal application so the Board receives it on or before the following dates:

1. July 1 for an intern, embalmer, funeral director, funeral establishment, cremationist, or crematory license;
2. July 1 for an embalmer's assistant registration; or
3. July 31 for a prearranged funeral sales establishment endorsement or prearranged funeral salesperson registration.

**B.** An applicant for a renewal license, registration, or endorsement shall submit to the Board:

1. A renewal form, provided by the Board, that is signed and dated by the applicant and contains the applicant's:
  - a. Name,
  - b. Social security number,
  - c. Residence and practice addresses, and
  - d. Telephone number; and
2. The fee required by the Board under A.R.S. § 32-1309.

**C.** In addition to the requirements in subsection (B), an applicant renewing an intern, embalmer, or funeral director license or an embalmer's assistant registration shall submit to the Board a list of continuing education completed by the licensee or registrant or a continuing education waiver statement that meets the requirements in Article 4 of this Chapter.

**Historical Note**

Adopted effective June 16, 1981 (Supp. 81-3). Former Section R4-12-211 repealed and a new Section R4-12-211 adopted effective September 18, 1987 (Supp. 87-3). Section repealed by final rulemaking at 7 A.A.R. 1441, effective March 14, 2001 (Supp. 01-1). New Section made by final rulemaking at 10 A.A.R. 681, effective April 3, 2004 (Supp. 04-1).

**R4-12-212. Reinstatement**

**A.** An applicant requesting reinstatement under A.R.S. §§ 32-1331, 32-1391.12(C), or 32-1391.14(C) shall submit to the Board:

1. An application form that contains the applicant's:

- a. Name,
  - b. Social security number,
  - c. Residence and practice addresses,
  - d. Telephone number, and
  - e. Signature, and
2. The renewal and reinstatement fees required by the Board under A.R.S. § 32-1309.
- B.** In addition to the requirements in subsection (A), an applicant requesting reinstatement of a prearranged funeral sales endorsement shall submit to the Board the information required in A.R.S. § 32-1391.12 (C).
- C.** The Board shall send written notice of approval or denial of reinstatement within seven days of receiving the fees and application for reinstatement.

#### Historical Note

Adopted effective June 16, 1981 (Supp. 81-3). Repealed effective September 18, 1987 (Supp. 87-3). New Section made by final rulemaking at 10 A.A.R. 681, effective April 3, 2004 (Supp. 04-1).

### ARTICLE 3. REGULATORY PROVISIONS

#### R4-12-301. General funeral services requirements

- A.** Any funeral director, embalmer, funeral establishment or other person licensed by the Board shall comply with the following general funeral service requirements:
1. Licensees shall deal with funeral services consumers in an honest and truthful manner, and shall be responsive and sensitive to particular requirements or needs concerning funeral arrangements. Licensees shall not engage in any conduct which causes or results in disrespect for the deceased person, disruption of the funeral services or any injury to the decedent's family, contrary to the prevailing standards and practices of the profession in this state.
  2. Licensees shall perform their respective responsibilities concerning the care, handling, transportation and disposition of human remains and concerning all transactions with funeral services consumers in a careful and competent manner in accordance with the prevailing standards and practices of the profession in this state.
  3. Licensees shall comply with all laws and regulations pertaining to their activities in the care, handling, transportation and disposition of human remains including, without limitation, the provisions of the Funeral Directors Act (A.R.S. § 32-1301 et seq.), the Prearranged Funeral Plan Act (A.R.S. § 44-1721 et seq.), and these rules. Licensees shall comply with all health laws and regulations which pertain to the embalming and preparation of human remains. The following health laws and rules should be reviewed and followed to the extent applicable:

Subject	Law or Rule
Vital statistics	A.R.S. § 36-301 et seq.
Health menaces	A.R.S. § 36-601 et seq.
Disposition of bodies	A.R.S. § 36-801 et seq.
Communicable diseases (Arizona Department of Health Services rules)	A.A.C. R9-6-110 et seq.
Vital statistics (Arizona Department of Health Services rules)	A.A.C. R9-19-301 et seq.

4. Licensees should also make reasonable efforts to cooperate with the customs of all religions and creeds according to the desires of the decedent or his family.

5. Licensees shall not make statements nor engage in activities which foreseeably could result in needless infliction of emotional distress on members of the decedent's family or result in exposing the remains to unnecessary indignity, including without limitation:
  - a. Making statements to members of the family designed to offend their sensibilities during grief, including unsolicited comments concerning graphic details of the embalming, or of the condition, decomposition or decay of the remains, except that statements which are necessary under the circumstances to adequately inform the family concerning the advisability of viewing the remains or having an open-casket funeral ceremony are not prohibited by this subsection.
  - b. Permitting the remains to be exposed or displayed to members of the family or the public in a manner not consistent with public health.
  - c. Permitting the remains to be exposed or displayed to members of the family or the public in a manner designed to offend their sensibilities during grief, including exposing or displaying the remains:
    - i. During the embalming or preparation process;
    - ii. Without clothing or suitable covering of the trunk and limbs of the remains;
    - iii. For any promotional or commercial purpose;
    - iv. For photographs, videotape or other reproductive process without clothing or suitable covering or during the embalming or preparation process.

This subsection does not apply where public officials in the discharge of their duties view or examine the remains.

6. Licensees shall not disclose or divulge any privacy, secrecy, confidence or secret of the domestic or private life of any deceased or the family thereof or of any home or circle learned as a result of professional employment, unless such disclosure is required by law, or is necessary to conduct the legitimate business of the funeral establishment in accordance with law. Licensees shall not discuss facts concerning the cause of death, expenditures for the funeral, the source of funds, or other matters of a personal nature except with the members of the family or their authorized representatives. Such information may be released to the Board during an investigation or inspection if a release or other permission is obtained or received from a family member or if pursuant to a subpoena or other court or administrative directive.
  7. Licensees shall not pay or cause to be paid to any person including without limitation a nurse, attendant, doctor, ambulance personnel, hospital personnel, health care facility personnel, clergy or law enforcement officers, money or other valuable consideration to secure business from or through such person.
- B.** Failure to substantially comply with the provisions of this Section shall be deemed to be evidence of gross negligence, repeated or continuing negligence or other professional incompetence.

#### Historical Note

Adopted effective June 16, 1981 (Supp. 81-3).

#### R4-12-302. Deceptive practices prohibited

- A.** In selling or offering to sell funeral goods or funeral services to funeral services consumers, it is a deceptive act or practice for a funeral establishment, funeral director, embalmer, or agents or employees of a funeral establishment:

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1. To advertise for or solicit business through the use of deceptive, misleading or inaccurate statements or other information.
  2. To display or represent funeral merchandise or services in a deceptive or misleading manner. Failure to display to or show funeral services consumers inexpensive caskets and containers regularly offered for sale and stocked by the funeral establishment is deemed to be a misleading display practice. Display of inexpensive caskets or containers, or photos or facsimiles thereof, under less favorable conditions or circumstances, including poor lighting, merchandise damage or defacement or conditions inhibiting the consumer's free choice of merchandise is also deemed to be a misleading display practice.
  3. To embalm a deceased human body unless:
    - a. State or local law or regulation requires embalming in the particular circumstances regardless of any funeral choice which the family might make; or
    - b. Prior approval for embalming (expressly so described) has been obtained from a family member or other authorized person; or
    - c. The funeral establishment is unable to contact a family member or other authorized person after exercising due diligence, has no reason to believe the family does not want embalming performed, and obtains subsequent approval for embalming already performed (expressly so described). In seeking approval, the funeral establishment shall disclose that a fee will be charged if the family selects a funeral which requires embalming, such as a funeral with viewing, and that no fee will be charged if the family selects a service which does not require embalming, such as direct cremation or immediate burial.
  4. To fail to promptly release upon request, deceased human remains to a family member, representative of the family or other person authorized by the family to take possession of the remains.
  5. To make any false, misleading or unsubstantiated statements or claims, or in any manner imply that natural decomposition or decay of human remains can be prevented by embalming, or certain caskets, vaults or other burial containers, or to otherwise make any false, misleading or unsubstantiated statements or claims of watertightness or airtightness of caskets, vaults or other burial containers.
  6. To reuse a casket or container previously purchased by or delivered to another decedent's family and intended for or used in connection with the burial, cremation or other final disposition of the previous decedent. This provision does not apply to the rental of caskets, containers, casket shells or other devices used in connection with the funeral services if the funeral services consumer is informed of the rental arrangement.
  7. To bill or otherwise charge a purchaser for merchandise or services not actually provided by or arranged through the funeral establishment.
  8. To represent that the price charged for a cash advance item is the same as the cost to the funeral establishment for the item when such is not the case, or to fail to disclose to purchasers that the price being charged for a cash advance item is not the same as the cost to the funeral establishment for the item when such is the case.
  9. To make disparaging statements concerning the quality, utility, suitability or durability of inexpensive caskets or containers without basis in fact.
  10. To make false or misleading statements concerning or otherwise engage in deceptive, misleading or fraudulent practices in connection with the advertising, solicitation or sale of prearranged funeral plans.
  11. To make any misrepresentations or omissions of material fact concerning funeral services, prices or the merchandise and services included in a stated price.
  12. To represent or insinuate that a direct cremation, immediate burial, inexpensive funeral arrangements or inexpensive casket, container or unfinished wood box would be disrespectful or inconsiderate to the decedent or family members, or friends, neighbors or associates of the decedent or family.
  13. To disrupt the funeral arrangement process or funeral service, intimidate, harass or coerce a family member, with the intent to prevent such family member from exercising existing contractual or legal rights.
- B.** Failure to substantially comply with the provisions of this Section shall be deemed to be evidence of gross negligence, repeated or continuous negligence or other professional incompetence.

**Historical Note**

Adopted effective June 16, 1981 (Supp. 81-3). Amended effective January 2, 1985 (Supp. 85-1).

**R4-12-303. Misrepresentation of legal or cemetery requirements**

- A.** In selling or offering to sell funeral goods or funeral services to funeral services consumers, it is a deceptive act or practice for a funeral establishment, funeral director, embalmer, or agents or employees of a funeral establishment to:
1. Represent that state or local law requires that a deceased person be embalmed when such is not the case, or fail to disclose that embalming is not required by law except where burial or cremation will not occur within 24 hours or where the body is not refrigerated immediately after death.
  2. Represent that state or local law requires a casket for direct cremation, or represent that a casket (other than an unfinished wood box) is required for direct cremations.
  3. Represent that state or local laws or regulations, or particular cemeteries require burial vaults, grave boxes or grave liners when such is not the case, or fail to disclose to persons arranging funerals that state law does not require the purchase of an outside receptacle.
  4. Represent that federal, state or local laws, or particular cemeteries or crematories require the purchase of any funeral goods or funeral services when such is not the case.
- B.** Failure to substantially comply with the provisions of this Section shall be deemed to be evidence of gross negligence, repeated or continuous negligence or other professional incompetence.

**Historical Note**

Adopted effective June 16, 1981 (Supp. 81-3). Former Section R4-12-303 repealed, new Section R4-12-303 adopted effective January 2, 1985 (Supp. 85-1).

**R4-12-304. Telephone price disclosures requirement**

- A.** Each funeral establishment shall tell persons who contact the establishment by telephone and ask about terms, conditions or prices of funeral goods or funeral services offered that price information is available over the telephone. The funeral establishment shall provide accurate information from the funeral price list required by R4-12-305 which reasonably answers the question and any other information which reasonably answers

the question about the retail prices of funeral goods or funeral services readily available for sale to the caller.

- B.** If the caller requests a funeral price list, the funeral establishment shall mail its funeral price list required by R4-12-305 to the caller. If a funeral establishment mails a funeral price list to a caller, it may charge a reasonable postage and handling fee not to exceed two dollars. The establishment shall mail the price list to the caller within five days after receipt of the handling charge, or if the establishment does not require a handling charge, within seven days after the caller's price list request.

#### Historical Note

Adopted effective January 2, 1985 (Supp. 85- 1).

#### R4-12-305. Price lists requirement

- A.** Each funeral establishment, funeral director or embalmer shall provide a casket price list, an outside receptacle price list and a general price list in the form and in the manner required by Federal Trade Commission rules 16 CFR 453.2(b)(2), (3) and (4) issued pursuant to the Federal Trade Commission Act as amended and in effect on June 1, 1984. The items required by the Federal rules shall be included before additional items.
- B.** A copy of Federal Trade Commission rule 16 CFR 453.2(b) is on file with the Secretary of State and is incorporated by reference.

#### Historical Note

Adopted effective January 2, 1985 (Supp. 85-1).

#### R4-12-306. Merchandise price card requirement

Each funeral establishment shall place a price card on each casket, container and outside receptacle the establishment makes available for sale to funeral services consumers. Each price card shall be placed on or attached to each item of merchandise in a conspicuous manner which permits a potential purchaser to see the information on the price card when standing near the casket or other item of merchandise. Each price card shall conspicuously disclose the separate retail price of the merchandise item available for sale. Price cards on caskets or outside receptacles shall also disclose the construction or type, manufacturer or assembler, and model number or popular name of the casket or outside receptacle. Price cards on containers shall also disclose the construction or type and manufacturer or assembler of the container. Photographs or accurate pictures of merchandise items may be used if conspicuously displayed with the price card information required by this Section.

#### Historical Note

Adopted effective January 2, 1985 (Supp. 85-1).

#### R4-12-307. Funeral goods and services memorandum

- A.** Each funeral establishment, funeral director or embalmer shall give an itemized written or printed memorandum of funeral goods and services ("statement") for retention to each potential purchaser of funeral goods or services at the conclusion of the discussion of any funeral arrangements and before the establishment enters into a contract with a purchaser of funeral goods or services. The itemized statement shall list at least the following information:
1. The name and address of the funeral establishment;
  2. A caption entitled "Statement of Funeral Goods and Services Selected";
  3. The funeral goods and services selected by that person and the prices to be paid for each item, specifically itemized cash advance items, the total cost of the goods and services selected and other information contained in or indicated by the "Statement of Funeral Goods and Ser-

vices Selected" format in Appendices B or C (following R4-12-565) to these rules.

- B.** The information required by this Section may be included on any contract, statement or other document which the funeral establishment would otherwise provide at the conclusion of discussion of arrangements. The itemized disclosures required by this Section shall be made in a clear and conspicuous manner. The establishment shall indicate immediately adjacent to the appropriate items under the "funeral arrangements" and "automotive equipment" categories the funeral services, facilities and automotive equipment items selected by the purchaser. A funeral establishment may include additional itemized disclosures on the statement concerning goods and services selected. If certain charges required to be itemized on the statement are not known or reasonably ascertainable at the time the contract is signed, a good faith estimate of the charges shall be given on the statement and the establishment shall provide a written description of the actual charges to the purchaser within fifteen (15) days after the information becomes available to the establishment.
- C.** If an establishment uses the "statement of funeral goods and services selected" as a final bill, the following disclosures must be added to the statement, as shown in Appendix C to these rules:

"If you elected a funeral which requires embalming, such as a funeral with a viewing, you may have to pay for the embalming. You do not have to pay for embalming you did not approve if you selected arrangements such as a direct cremation or immediate burial. If we charged for embalming, we will explain why in writing."

If an establishment does not use the "statement of funeral goods and services selected" as a final bill, the disclosures concerning embalming required by this subsection must be added to the final bill, contract or other written evidence of the agreement or obligation given to the purchaser, and the establishment may use the "statement of funeral goods and services selected" format as shown in Appendix B. The establishment shall disclose in writing to the purchaser on the statement any legal, cemetery or crematory requirement which mandates that the consumer purchase a specific funeral good or service. The establishment also shall disclose on the statement the "Notice to Purchaser" concerning casket and container legal requirements required by A.R.S. § 32-1373(B).

#### Historical Note

Adopted effective January 2, 1985 (Supp. 85-1).

#### R4-12-308. Expired

#### Historical Note

Adopted effective July 1, 1985 (Supp. 85-1). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 853, effective December 31, 2001 (Supp. 02-1).

#### R4-12-309. Expired

#### Historical Note

Adopted effective January 2, 1985 (Supp. 85-1). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 853, effective December 31, 2001 (Supp. 02-1).

#### R4-12-310. Expired

#### Historical Note

Adopted effective January 1, 1985 (Supp. 85-1). Amended effective September 18, 1987 (Supp. 87-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 853, effective December 31, 2001 (Supp. 02-1).

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**R4-12-311. Minimum embalming requirements**

- A.** Embalmers and apprentice embalmers shall comply with the following minimum embalming procedures when embalming human remains:
1. All persons participating in the embalming procedure shall be either a licensed embalmer or a registered apprentice embalmer. Apprentice embalmers shall be under the direct supervision of a licensed embalmer during the embalming. "Direct supervision," as used in this subsection, means that the licensed embalmer shall at all times be immediately available on the funeral establishment premises to supervise the apprentice embalmer, except that if the apprentice embalmer has embalmed at least ten adult human remains and has been registered with the Board for a minimum of six months, the supervision requirement is deemed to have been met if the apprentice has immediate access to and is performing according to the directions of a licensed embalmer.
  2. Regulations of the Arizona Department of Health Services and of county health departments pertaining to sewage, sanitation and public health requirements shall be observed.
  3. All persons engaged in the embalming process shall wear a clean smock or gown and wear impervious rubber gloves.
  4. All clothing shall be removed from the remains and a visual inspection of the condition of the remains shall be conducted.
  5. To the extent feasible under the circumstances, the entire remains, including all extremities (legs, arms, feet, hands and head) shall be washed with an antiseptic or detergent solution.
  6. To the extent feasible under the circumstances, the arterial injection technique shall be used in the embalming process. If the arterial circulation of any portion of the remains is materially incomplete or impaired due to advanced decomposition or autopsy, then the embalming may be done by hypodermically injecting those areas.
  7. Embalming solution shall be injected into the entire remains, including extremities (legs, arms, feet, hands and head), and shall be injected in such dilutions and pressures as warranted by the condition of the remains in accordance with prevailing professional practice.
  8. The abdominal and thoracic cavities of the remains shall be injected with a concentrated cavity chemical after liquids and materials have been substantially removed through a trocar. The cavity chemical shall be injected into and thoroughly distributed in such cavities in accordance with prevailing professional practice.
  9. If the body is to be viewed at a funeral service, cosmetic procedures should be employed in accordance with the wishes of the family and prevailing professional practice.
  10. Within 24 hours after the embalming procedure, an embalming case report shall be prepared describing the elapsed time since death, condition of the remains before and after embalming, and embalming procedures used.
  11. After embalming procedures have been completed, the remains shall be covered and diligent effort shall be made to maintain the privacy of the remains.
- B.** The care and preparation for burial or other disposition of human remains shall be strictly private and no one shall be allowed in the embalming room while a dead human body is being embalmed, except licensees or other authorized employees of the establishment, instructors of the science of embalming and their students, public officials in the discharge of their duties or other persons having the legal right to be present.

- C.** Each funeral establishment and responsible funeral director shall adopt and implement adequate procedures concerning the supervision of embalming personnel to assure compliance with this rule.
- D.** Failure to substantially comply with the minimum embalming standards contained in this rule shall be deemed to be evidence of gross negligence, repeated or continuing negligence or other professional incompetence.

**Historical Note**

Adopted effective June 16, 1981 (Supp. 81-3).

**R4-12-312. Equipment and sanitation requirements**

- A.** The Board recommends that the following instruments, equipment and supplies be maintained in the preparation room of a funeral establishment:
1. 1 set metal or rubber drain tubes (large, medium, small)
  2. 1 set metal injection tubes (large, medium, small)
  3. 1 grooved director or equal
  4. 1 aneurysm needle
  5. 1 large trocar
  6. 1 small trocar
  7. 1 scalpel
  8. 1 pair scissors
  9. 6 hemostats
  10. 2 forceps
  11. 1 hypodermic syringe
  12. hypodermic needles (assorted)
  13. aspirator
  14. suture needles
  15. suture thread
  16. disinfectant
  17. 1 set of cream or liquid cosmetics
  18. 1 powder brush
  19. 1 application brush
  20. wax for restorative work
  21. soap
  22. cotton
  23. head rest
  24. hardening compound
  25. arterial embalming fluid
  26. cavity embalming fluid
  27. embalming machine or percolator gravity injector and bulb syringe if latter used
  28. sheets or covers for remains.
- B.** All funeral establishments shall be kept and maintained in a clean and sanitary condition and all embalming tables, hoppers, sinks, receptacles, instruments and other appliances used in embalming human remains shall be thoroughly cleansed and disinfected with a 1% solution of chlorinated soda, or other suitable and effective disinfectant immediately after the embalming of each remains.
- C.** Every preparation room shall be equipped with a sanitary embalming table, and such table should be provided with running water.
- D.** Every preparation room should be provided with proper and convenient receptacles for refuse, bandages, cotton and other waste materials and supplies, and all such waste materials shall be properly disposed of.
- E.** At no time shall the operation of the establishment constitute or create a health nuisance or hazard.

**Historical Note**

Adopted effective June 16, 1981 (Supp. 81-3).

**ARTICLE 4. CONTINUING EDUCATION**

**R4-12-401. Reserved**

**R4-12-402. Reserved****R4-12-403. Reserved****R4-12-404. Reserved****R4-12-405. Expired****Historical Note**

Adopted effective June 16, 1981 (Supp. 81-3). Former Section R4-12-405 repealed, a new Section R4-12405 adopted effective September 18, 1987 (Supp. 87-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 853, effective December 31, 2001 (Supp. 02-1).

**R4-12-406. Reserved****R4-12-407. Reserved****R4-12-408. Reserved****R4-12-409. Reserved****R4-12-410. Reserved****R4-12-411. Reserved****R4-12-412. Reserved****R4-12-413. Continuing Education Hours Required**

- A.** Unless a funeral director or embalmer obtains a waiver under R4-12-414, the funeral director or embalmer shall complete 12 credit hours or more of continuing education every calendar year as follows:
1. At least three credit hours in mortuary sciences;
  2. At least three credit hours in ethical considerations in business practices and state and federal laws; and
  3. At least six other credit hours intended to enhance professional development or competence.
- B.** Unless an embalmer's assistant obtains a waiver under R4-12-414, the embalmer's assistant shall complete six credit hours or more of continuing education every calendar year as follows:
1. At least three credit hours in mortuary sciences, and
  2. At least three credit hours covering compliance with state and federal laws.
- C.** A licensee who has been licensed for less than 12 months during a calendar year shall complete one credit hour of continuing education for each month of licensure.
- D.** A registrant who has been registered for less than 12 months during a calendar year shall complete one credit hour of continuing education for every two months of registration.

**Historical Note**

Adopted effective February 8, 1991 (Supp. 91-1).  
Amended by final rulemaking at 10 A.A.R. 681, effective April 3, 2004 (Supp. 04-1).

**R4-12-414. Waiver of Continuing Education**

- A.** The Board shall waive the continuing education requirements in R4-12-413 for a funeral director or an embalmer whose license or registration has been placed on inactive status or who was serving in the United States Armed Forces in time of war.
- B.** The Board may waive the continuing education requirements in R4-12-413 upon request and for good cause, which includes:
1. For an embalmer's assistant, that the embalmer's assistant:

- a. Was serving in the United States Armed Forces in time of war, or
  - b. Has not practiced as an embalmer's assistant during the year in which continuing education is required;
2. That the funeral director, embalmer, or embalmer's assistant was prevented from completing continuing education due to extreme hardship, a disability, or a mental or physical illness; or
3. That the funeral director, embalmer, or embalmer's assistant was prevented from completing continuing education because of absence from the United States.
- C.** A funeral director, embalmer, or embalmer's assistant who is unable to complete the continuing education required in R4-12-413 may submit, before a renewal application is due or with a renewal application, a written request to the Board for a waiver from the continuing education required in R4-12-413 that contains:
1. The name, address, and telephone number of the licensee or registrant,
  2. An explanation of why the licensee was unable to meet the Board's continuing education requirements that includes one of the reasons in subsection (A) or (B);
  3. Any documents that support the explanation; and
  4. The signature of the licensee or registrant.
- D.** The Board shall send written notice of approval or denial of the request for waiver within seven days of receipt of the request.

**Historical Note**

Adopted effective February 8, 1991 (Supp. 91-1).  
Amended by final rulemaking at 10 A.A.R. 681, effective April 3, 2004 (Supp. 04-1).

**R4-12-415. Continuing Education Determinations**

- A.** To obtain a Board determination that continuing education satisfies the requirements of A.R.S. § 32-1338 and R4-12-413, a licensee or registrant shall submit a written request to the Board before submission of a renewal application.
- B.** A request under subsection (A) shall contain:
1. A brief summary of the continuing education;
  2. The date and place where the continuing education was provided;
  3. The number of credit hours of the continuing education;
  4. The name of the individual providing the continuing education, if available; and
  5. The name of the organization providing the continuing education, if applicable.
- C.** In making the continuing education determination, the Board shall consider whether the continuing education:
1. Is designed to provide current developments, skills, and procedures related to funeral practices;
  2. Is developed and provided by an individual with knowledge and experience in the subject area; and
  3. Contributes directly to the professional competence of the licensee or registrant.

**Historical Note**

Adopted effective February 8, 1991 (Supp. 91-1).  
Amended by final rulemaking at 10 A.A.R. 681, effective April 3, 2004 (Supp. 04-1).

**R4-12-416. Documentation of Continuing Education**

- A licensee or registrant shall submit a written document of completed continuing education with a renewal application that includes:
1. The name of the licensee or registrant;
  2. The title of each continuing education;

## Board of Funeral Directors and Embalmers

3. A brief summary of the content of each continuing education;
4. The date of completion of each continuing education;
5. The number of credit hours of each continuing education; and
6. A statement, signed and dated by the licensee or registrant, verifying that the information in the document is true and correct.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 681, effective April 3, 2004 (Supp. 04-1).

**ARTICLE 5. PREARRANGED FUNERAL AGREEMENTS****R4-12-501. Expired****Historical Note**

Adopted effective January 1, 1985 (Supp. 85-1). Amended by adding a new paragraph (4) effective June 18, 1987 (Supp. 87-2). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 853, effective December 31, 2001 (Supp. 02-1).

**R4-12-502. Expired****Historical Note**

Adopted effective January 1, 1985 (Supp. 85-1). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 853, effective December 31, 2001 (Supp. 02-1).

**R4-12-503. Expired****Historical Note**

Adopted effective June 18, 1987 (Supp. 87-2). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 853, effective December 31, 2001 (Supp. 02-1).

**R4-12-504. Reserved****R4-12-505. Reserved****R4-12-506. Reserved****R4-12-507. Reserved****R4-12-508. Reserved****R4-12-509. Reserved****R4-12-510. Reserved****R4-12-511. Reserved****R4-12-512. Reserved****R4-12-513. Reserved****R4-12-514. Reserved****R4-12-515. Reserved****R4-12-516. Reserved****R4-12-517. Reserved****R4-12-518. Reserved****R4-12-519. Reserved****R4-12-520. Reserved****R4-12-521. Expired****Historical Note**

Adopted effective January 1, 1985 (Supp. 85-1). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 853, effective December 31, 2001 (Supp. 02-1).

**R4-12-522. Reserved****R4-12-523. Surety bond requirements**

A. A funeral establishment applying for a prearranged funeral sales endorsement shall provide the Board with the number of prearranged funeral agreements sold during the immediately preceding calendar year and provide the applicable surety bond as follows:

1. \$15,000 if the establishment sold fewer than 100 prearranged funeral agreements during the immediately preceding calendar year;
2. \$30,000 if the establishment sold 100 or more, but fewer than 250 prearranged funeral agreements during the immediately preceding calendar year; or
3. \$50,000 if the establishment sold 250 or more prearranged funeral agreements during the immediately preceding calendar year.

The amount of the surety bond shall be increased by \$5,000 for each salesperson currently registered by the Board for the establishment.

B. The corporate surety bond provided to the Board shall contain the language specified by Appendix D (following R4-12-565).

**Historical Note**

Adopted effective January 1, 1985 (Supp. 85-1).

**R4-12-524. Reserved****R4-12-525. Reserved****R4-12-526. Reserved****R4-12-527. Reserved****R4-12-528. Reserved****R4-12-529. Reserved****R4-12-530. Reserved****R4-12-531. Repealed****Historical Note**

Adopted effective January 1, 1985 (Supp. 85-1). Section repealed by final rulemaking at 7 A.A.R. 1441, effective March 14, 2001 (Supp. 01-1).

**R4-12-532. Reserved****R4-12-533. Reserved****R4-12-534. Reserved****R4-12-535. Reserved****R4-12-536. Reserved****R4-12-537. Reserved****R4-12-538. Reserved****R4-12-539. Reserved****R4-12-540. Reserved**

**R4-12-541. Consumer disclosures**

- A. The consumer notice required by A.R.S. § 32-1391.08(A) and (C) shall be conspicuously printed on either the first or signature page of the prearranged funeral agreement.
- B. At the time the purchaser signs the agreement the funeral establishment shall provide a copy of the prearranged funeral agreement for retention by the purchaser.
- C. At the time of the inquiry or solicitation the funeral establishment shall provide a copy of its current price list for retention by the person who inquires about or is personally solicited regarding a prearranged funeral agreement.
- D. Pursuant to A.R.S. § 32-1373, each contract for prearranged funeral services also shall contain one of the following notices, as appropriate, conspicuously printed near the top of the first page:
  1. THIS FUNERAL CONTRACT IS FUNDED BY INSURANCE.
  2. THIS FUNERAL CONTRACT IS FUNDED BY A PRE-ARRANGED FUNERAL TRUST ACCOUNT.

**Historical Note**

Adopted effective January 1, 1985 (Supp. 85-1).  
 Amended by adding a new subsection (D) effective June 18, 1987 (Supp. 87-2).

**R4-12-542. Reserved****R4-12-543. Reserved****R4-12-544. Reserved****R4-12-545. Deceptive, misleading or professionally negligent practices**

In selling or offering to sell prearranged funerals, or in handling the trust funds or accounts of a prearranged funeral consumer, it is a deceptive, misleading or professionally negligent practice for anyone licensed under Title 32, Chapter 12, A.R.S. or his agent:

1. To misstate or omit to state any material fact upon which a prearranged funeral consumer detrimentally relies concerning the transaction or the prearranged funeral.
2. To represent or imply that the prices of funeral goods and services to be provided pursuant to a fixed price prearranged funeral agreement are guaranteed, frozen or otherwise an absolute economic certainty.
3. To guarantee or promise that the funeral establishment will be in business at any indefinite time in the future.
4. To fail to disclose to the purchaser or beneficiary within ten business days after a request, the most currently available information concerning the purchaser's principal payments, all earned interest on the principal and total service fees charged concerning that purchase.
5. To intentionally mislead or deceive by entering into a contract with a prearranged funeral purchaser, while any blank in the contract other than for the account number has not been completed.
6. To enter into a prearranged funeral agreement to provide funeral goods and services not regularly sold by the funeral establishment at the time of execution of the agreement.

**Historical Note**

Adopted effective January 1, 1985 (Supp. 85-1).

**R4-12-546. Description of casket**

A prearranged funeral agreement shall be deemed misleading unless it describes the following information concerning any casket to be provided under the agreement:

1. Specific construction and type.
2. Interior fabric.

3. Manufacturer and model number or popular name.
4. Special features, if any.
5. Casket retail price.

**Historical Note**

Adopted effective January 1, 1985 (Supp. 85-1).

**R4-12-547. Reserved****R4-12-548. Possession of trust account passbook**

With respect to individual trust accounts, the funeral establishment shall offer a prearranged funeral purchaser the option of either obtaining a copy of the financial institution passbook, certificate of deposit, or other similar documentation of the prearranged funeral trust account for his personal possession, or authorizing the funeral establishment to maintain such documentation on behalf of the purchaser. This Section does not apply to common trust accounts.

**Historical Note**

Adopted effective January 1, 1985 (Supp. 85-1).

**R4-12-549. Reserved****R4-12-550. Reserved****R4-12-551. Certificate of entitlement**

The certificate of entitlement which a funeral establishment delivers to the financial institution servicing a prearranged funeral trust account or accounts shall contain the following information:

1. Name of the funeral establishment.
2. Name and location of financial institution.
3. Prearranged funeral trust account number(s).
4. The amount of trust funds to be withdrawn as the annual service fee.
5. Certification by the funeral establishment that it is contractually entitled to an annual service fee for the preceding calendar year pursuant to the terms of the prearranged funeral agreement(s).

The certificate shall be signed and dated by the owner or responsible funeral director of the establishment and sworn to before a notary public. On receipt of an appropriately completed certificate of entitlement, the financial institution shall release a portion of the trust funds equal to the annual service fee to the funeral establishment. The portion of trust funds released to the establishment shall not exceed 10 percent of the interest which has accrued on the trust funds during the preceding calendar year.

**Historical Note**

Adopted effective January 1, 1985 (Supp. 85-1).

**R4-12-552. Certificate of performance**

A. The certificate of performance which a funeral establishment delivers to the financial institution servicing a prearranged funeral trust account after the death of the beneficiary of a prearranged funeral agreement shall contain the following information:

1. Name of the funeral establishment.
2. Name and location of financial institution and trust account number
3. Name of deceased beneficiary.
4. Certification of the total charges for the funeral goods and services provided in the funeral arrangements.
5. Certification that it provided the funeral goods and services pursuant to the prearranged funeral agreement.

B. If the certificate of performance concerns a fixed price prearranged funeral agreement, it shall contain the following additional information:

1. Certification that the establishment agreed in the prearranged funeral agreement to fix the prices of the funeral



goods and services provided under the agreement at the price levels in effect at the time of the execution of the agreement by the purchaser.

- C. The certificate shall be signed and dated by the owner or responsible funeral director of the establishment and sworn to before a notary public. The certified death certificate of the deceased beneficiary shall accompany the certificate of performance when it is delivered to the financial institution. On receipt of the certified death certificate and appropriately completed certificate of performance, the financial institution shall release a portion of the trust funds equal to the establishment's charges for funeral goods and services for the beneficiary's funeral arrangements. If the certificate of performance concerns a fixed price prearranged funeral agreement, the financial institution may release an additional portion of the trust funds to the establishment equal to that portion of the total accrued interest on principal payments deposited in the trust account during the term of the prearranged funeral agreement which the purchaser agreed to convey to the establishment.

#### Historical Note

Adopted effective January 1, 1985 (Supp. 85-1).

#### R4-12-553. Reserved

#### R4-12-554. Statement of accrued taxes

The statement of accrued taxes which a funeral establishment delivers to the financial institution servicing a prearranged funeral trust account or accounts shall contain the following information:

1. Name of the funeral establishment.
2. Name and location of financial institution.
3. Prearranged funeral trust account number(s).
4. Statement identifying the person by whom taxes are due and payable concerning income earned from funds deposited in the trust account(s). The statement shall describe the taxing authority to which the taxes are due, the amount of taxes due and payable concerning each trust account and the fiscal period the taxes concern. The statement shall be signed and dated by the owner or responsible funeral director and one other employee of the establishment. On receipt of an appropriately completed statement of accrued taxes, the financial institution shall release a portion of the trust funds equal to the accrued taxes, payable to the taxing authority, to the funeral establishment.

#### Historical Note

Adopted effective January 1, 1985 (Supp. 85-1).

#### R4-12-555. Reserved

#### R4-12-556. Notice of trust account transfer

- A. If a funeral establishment directs a financial institution to transfer a common prearranged funeral trust account pursuant to A.R.S. § 32-1391.04(C), it shall provide written notice by first class mail to the last known address of each participant not less than ten business days before transfer of the account. The notice shall advise each participant that the account is being transferred and give the name and location of the new financial institution and trust account number. The notice also shall contain a conspicuous statement that the establishment will provide specific information concerning the trust account status upon request.
- B. If a funeral establishment is sold, or its name or location is changed or the prearranged funeral trust account is in any way transferred to another entity, the funeral establishment shall notify the Board of the disposition of the trust account within ten business days after the change in the status of the trust

account. The funeral establishment also shall provide written notice by certified mail to the last known address of each participant in the prearranged funeral trust account within thirty business days after the change in the status of the trust account. The notice shall advise each participant of the change of status of the trust account and shall contain a conspicuous statement that the establishment, or its successor in interest, will provide specific information concerning the trust account status upon request.

#### Historical Note

Adopted effective January 1, 1985 (Supp. 85-1).

Amended by adding a new subsection (B) effective June 18, 1987 (Supp. 87-2).

#### R4-12-557. Reserved

#### R4-12-558. Reserved

#### R4-12-559. Purchaser cancellation requests

The written request from a purchaser of a prearranged funeral agreement or designated person to terminate the agreement and refund the trust funds shall contain the following information:

1. Name of funeral establishment.
2. Full name of the prearranged funeral purchaser or designated person making the request.
3. Statement of purchaser or designated or legally responsible person requesting refund of the trust funds.

The cancellation request shall be signed by the purchaser, designated or legally responsible person. Within five days following receipt of a properly signed cancellation request, the financial institution shall release the trust funds, payable to the person making the cancellation request, to the establishment for refund to the requesting person.

#### Historical Note

Adopted effective January 1, 1985 (Supp. 85-1).

#### R4-12-560. Reserved

#### R4-12-561. Annual report format

- A. The annual report concerning prearranged funeral sales and trust account activities filed by funeral establishments pursuant to A.R.S. § 32-1391.15 shall contain the information indicated by the annual report format in Appendix E (following R4-12-565). If a funeral establishment does not offer or sell prearranged funerals on or after January 1, 1985, it shall annually provide to the Board the information required by Appendix E concerning:

1. Each prearranged funeral trust account established before the effective date of this Article and in existence during any portion of the preceding calendar year and;
2. Trust account deposits, withdrawals and service fees during the preceding calendar year.

- B. If a funeral establishment offers or sells prearranged funeral agreements on or after January 1, 1985, it shall annually provide to the Board the information required by Appendix E concerning:

1. Each prearranged funeral trust account established before the effective date of this Article and in existence during any portion of the preceding calendar year;
2. Each prearranged funeral agreement sold after January 1, 1985 and in existence during any portion of the preceding calendar year, and;
3. Trust account deposits, withdrawals and service fees during the preceding calendar year.

#### Historical Note

Adopted effective January 1, 1985 (Supp. 85-1).

**R4-12-562. Reserved**

**R4-12-563. Reserved**

**R4-12-564. Reserved**

**R4-12-565. Records retention requirement**

Each funeral establishment shall retain and make available for inspection by Board representatives true and accurate copies of the following records during the term of the prearranged funeral agreement and for three years following the death of the beneficiary or the termination of the agreement:

1. The prearranged funeral agreement.
2. Each notice of the transfer of the trust account to another financial institution, together with a record of the names and last known addresses of the purchasers and the dates on which the notice was mailed.

3. The certificate of performance from the funeral establishment stating that it provided the requested funeral goods and services which is delivered to a financial institution.
4. Each certificate from the funeral establishment concerning entitlement to service fees concerning the trust account.
5. Each statement of accrued taxes from the funeral establishment concerning the trust account.
6. Each cancellation or termination request from a purchaser.
7. Detailed financial institution statements and accounting records concerning the trust account.

**Historical Note**

Adopted effective January 1, 1985 (Supp. 85-1).

Board of Funeral Directors and Embalmers

**Appendix B. Statement of Funeral Goods and Services Selected**

STATEMENT OF FUNERAL GOODS AND SERVICES SELECTED

The charges are only for those items that are used. If we are required by law to use any items, we will explain the reasons in writing.

*FUNERAL OF* \_\_\_\_\_

*FORWARDING OF REMAINS TO ANOTHER FUNERAL HOME* \$ \_\_\_\_\_  
This charge includes removal of body, services of staff, necessary authorizations, embalming, and local transportation (but not shipping charges.)

*RECEIVING OF REMAINS FROM ANOTHER FUNERAL HOME* \$ \_\_\_\_\_  
This charge includes services of staff, care of remains, and transportation to cemetery or crematory.

*DIRECT CREMATION* (As selected) \$ \_\_\_\_\_  
This charge includes removal of body, necessary authorizations, services of staff, transportation to crematory, and cremation of body.

*TRANSFER OF REMAINS TO FUNERAL HOME* ( \_\_\_\_\_ miles transported) \$ \_\_\_\_\_

*IMMEDIATE BURIAL* (As selected) \$ \_\_\_\_\_  
This charge includes removal of body, services of staff, necessary authorizations, and local transportation to cemetery.

*FUNERAL ARRANGEMENTS* (Indicated services and facilities selected) \$ \_\_\_\_\_

Funeral Director and Staff Services \_\_\_\_\_  
Embalming \_\_\_\_\_  
Other preparation of body \_\_\_\_\_  
Use of facilities for viewing \_\_\_\_\_  
Use of facilities for funeral \_\_\_\_\_  
Other use of facilities \_\_\_\_\_

*AUTOMOTIVE EQUIPMENT* (Indicated items selected) \$ \_\_\_\_\_

Hearse \_\_\_\_\_  
Limousine \_\_\_\_\_  
Other automobiles \_\_\_\_\_

*ACKNOWLEDGMENT CARDS* \$ \_\_\_\_\_

*CASKET SELECTED* \$ \_\_\_\_\_

*VAULT OR LINER* \$ \_\_\_\_\_

*OTHER ITEMS* (describe) \_\_\_\_\_ \$ \_\_\_\_\_  
\_\_\_\_\_ \$ \_\_\_\_\_

*CASH ADVANCE ITEMS*

Organist and/or other music \$ \_\_\_\_\_  
Hairdresser or barber \$ \_\_\_\_\_  
Flowers \$ \_\_\_\_\_  
Pallbearers \$ \_\_\_\_\_  
Motorcycle escorts \$ \_\_\_\_\_  
Clergy Honoraria \$ \_\_\_\_\_  
Obituary Notice \$ \_\_\_\_\_  
Death Certificate(s) \$ \_\_\_\_\_  
Gratuities \$ \_\_\_\_\_  
Other (describe) \$ \_\_\_\_\_

Total \$ \_\_\_\_\_

*TOTAL COST FOR ARRANGEMENTS SELECTED* \$ \_\_\_\_\_

FOR FUNERAL HOME \_\_\_\_\_ Date \_\_\_\_\_

Arranged by \_\_\_\_\_ Date \_\_\_\_\_

NOTICE TO PURCHASER

**You may choose to purchase a casket or container for the funeral services and final disposition. However, except under certain public health circumstances pursuant to A.R.S. § 36-136, state law does not require the purchase or use of caskets or containers.**

METHOD OF PAYMENT AND INTEREST CHARGES [describe the method of payment required by the funeral establishment for the funeral services and any interest charges.

[Statement not used as final bill]

**Historical Note**

Adopted effective January 1, 1985 (Supp. 85-1).

**Appendix C. Expired**

**Historical Note**

Adopted effective January 1, 1985 (Supp. 85-1).

Appendix expired under A.R.S. § 41-1056(E) at 18

A.A.R. 607, effective December 29, 2011 (Supp. 12-1).

**Appendix D. Prearranged Funeral Endorsement Bond**

The corporate surety bond delivered to the Board with a prearranged funeral sales endorsement application shall contain the following language:

**“PREARRANGED FUNERAL ENDORSEMENT BOND**

KNOW ALL MEN BY THESE PRESENTS, that we \_\_\_\_\_ of \_\_\_\_\_ as principal and \_\_\_\_\_, a surety company organized and existing under the laws of the State of \_\_\_\_\_ and authorized to do business under the laws of the State of Arizona as surety, are held and firmly bound unto the State of Arizona for the use and benefit of persons injured by violations of Title 32, Chapter 12, Article 5, Arizona Revised Statutes, in the penal sum of \_\_\_\_\_ (\_\_\_\_\_) lawful money of the United States of America, to be paid to the State of Arizona for the use and benefit aforesaid, for which sum, well and truly to be paid, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally by these presents.

The Condition of the above obligation is such that:

WHEREAS the above named principal has applied for an endorsement to its funeral establishment license in the State of Arizona to sell prearranged funeral agreements in conformance with Title 32, Chapter 12, Article 5, Arizona Revised Statutes, and is required by the provisions of such statutes to furnish a

bond in the sum above-named, conditioned as herein set forth.

Now, therefore, if the principal shall during the term of this bond strictly, honestly and faithfully comply with the provisions of Title 32, Chapter 12, Article 5, Arizona Revised Statutes during the term of this bond and shall pay all damages, attorneys fees and other expenses suffered by any person by reason of the violation of any of the provisions of such statutes which concern (1) providing contract information and consumer disclosures, (2) receiving and placing purchaser funds in appropriate trust accounts, (3) maintaining the security and integrity of the trust funds until lawfully disbursed, (4) misrepresentation or deceptive conduct in the advertising, solicitation or sale of prearranged funeral agreements, and (5) criminal misconduct by employees or agents of the funeral establishment concerning the prearranged funeral agreements or trust funds, then this obligation shall be void.

The State of Arizona may proceed against the Bond for the benefit of any person injured by a violation of Title 32, Chapter 12, Article 5, or the person so injured may directly proceed against the Bond in case of default by the principal.

This bond shall become effective on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_, and shall remain in force until cancelled by the surety. The surety may cancel this bond and be relieved of further liability hereunder by giving thirty days written notice to the principal and to the Board of Funeral

**Appendix D. (cont.)**

Directors and Embalmers of the State of Arizona. The liability of the surety for the aggregate of any and all claims which may arise hereunder shall in no event exceed the amount of the penal sum of this bond.

Loss is covered under this bond only if a claim is made hereunder not later than two years after the cancellation or termination of the bond. If the coverage of this bond is substituted for any prior bond provided by the principal, which prior bond is terminated or cancelled as of the time of such substitution, the surety agrees that this bond applies to loss which is discovered and which would have been recoverable under such prior bond except for the fact that the time within which to discover loss thereunder had expired, provided:

(1) Such loss would have been covered under this bond had this bond with its agreements, limitations and conditions as of the time of such substitution been in force when the acts or defaults causing such loss were committed; and

(2) Recovery under this bond on account of such loss shall in no event exceed that amount which would have been recoverable under this bond in the amount for which it is written as of the time of such substitution, had this bond been in force when such acts or defaults were committed, or the amount which would have been recoverable under such prior bond or policy had such prior bond or policy continued in force until the discovery of such loss, if the latter amount be smaller.

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IN WITNESS WHEREOF, the principal and surety have hereunto set their hands and seals this \_\_\_\_ day of \_\_\_\_\_, 1984.

PRINCIPAL

By: \_\_\_\_\_

SURETY COMPANY

Countersigned:

By: \_\_\_\_\_ By: \_\_\_\_\_

5724A18

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**Historical Note**

Adopted effective January 1, 1985 (Supp. 85-1).

**Appendix E. Annual Report**

## ANNUAL REPORT

For Calendar Year Ending \_\_\_\_\_

Name of Establishment \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_ Zip \_\_\_\_\_

Owners (owning a 10 percent or greater interest in the Establishment):

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Funeral Establishment License No. \_\_\_\_\_ Issued \_\_\_\_\_

## AFFIDAVIT

State of \_\_\_\_\_

County \_\_\_\_\_

\_\_\_\_\_, being first duly sworn and upon [my] [our] oath, depose and state:

[I am] [We are] the owner(s) of (\_\_\_\_ establishment \_\_\_\_\_) on behalf of which [I] [we] make this affidavit, being hereunto duly authorized. The funeral establishment herein named has complied with title 32, Chapter 12, Article 5 of the Arizona Revised Statutes and the rules adopted pursuant to said Article. This Annual Report includes all prearranged funeral agreements sold or administered by this establishment. [I] [We] have read this Annual Report and accompanying Schedules A, B, C, D and E and know the contents thereof, and the matters and things therein stated are true and correct.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

## Board of Funeral Directors and Embalmers

## Appendix E. (cont.)

SCHEDULE A  
Page \_\_\_\_\_PREARRANGED FUNERAL SALES DURING  
CALENDAR YEAR ENDING \_\_\_\_\_Financial Institution Name \_\_\_\_\_  
Address \_\_\_\_\_  
Trust Account No.(s)\* \_\_\_\_\_

PURCHASER NAME AND ADDRESS	SALE DATE	SALES PERSON	BENEFI- CIARY	TOTAL CONTRACT AMOUNT	INITIAL SERVICE FEE	INITIAL SERVICE FEE PAID	TOTAL MON- IES PAID BY PURCHASER	TOTAL MON- IES TO TRUST ACCOUNT	TOTAL REFUNDS MADE	BANK SERVICE CHARGES	OTHER WITH- DRAWALS (EXPLAIN)**	12/31 TRUST ACCOUNT BALANCE
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Page Totals

TOTALS

\* If this schedule concerns a number of trust accounts, provide names and addresses of financial institutions and list account numbers on separate sheet.

\*\* If other withdrawals have occurred, explain in detail on separate sheet.

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## Appendix E. (cont.)

SCHEDULE B  
Page \_\_\_\_\_EXISTING PREARRANGED FUNERAL  
AGREEMENTS SOLD BEFORE CALENDAR  
YEAR ENDING \_\_\_\_\_

Financial Institution Name \_\_\_\_\_

Address \_\_\_\_\_

Trust Account No.(s)\* \_\_\_\_\_

PURCHASER NAME AND SALE DATE	TOTAL CONTRACT AMOUNT	INITIAL SERVICE FEE	INITIAL SERVICE FEE PAID	TOTAL MON- IES PAID BY PURCHASER THIS YEAR	TOTAL MON- IES PAID BY PURCHASER	TOTAL MON- IES TO TRUST ACCOUNT	TOTAL REFUNDS PAID	ANNUAL SERVICE FEE	TAXES PAID	BANK SERVICE CHARGES	OTHER WITH- DRAWALS (EXPLAIN)**	12/31 TRUST ACCOUNT BALANCE
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Page Totals

TOTALS

\* If this schedule concerns a number of trust accounts, provide names and addresses of financial institutions and list account numbers on separate sheet.

\*\* If other withdrawals have occurred, explain in detail on separate sheet.

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## Board of Funeral Directors and Embalmers

## Appendix E. (cont.)

SCHEDULE C

Page \_\_\_\_\_

Financial Institution Name \_\_\_\_\_

Address \_\_\_\_\_

Trust Account No.(s)\* \_\_\_\_\_

SUMMARY OF TRUST ACCOUNT  
TRANSACTIONS FOR CALENDAR  
YEAR ENDING \_\_\_\_\_

Total trust funds in account(s) on December 31 of previous calendar year. \$ \_\_\_\_\_ \$ \_\_\_\_\_

Total funds received and deposited in trust account(s) during this calendar year. \$ \_\_\_\_\_

Total funds withdrawn from trust account(s) during this calendar year:

1) Funeral arrangements \$ \_\_\_\_\_

2) Annual service fees \$ \_\_\_\_\_

3) Tax payments \$ \_\_\_\_\_

4) Financial institution service charges \$ \_\_\_\_\_

5) Refunds to purchasers \$ \_\_\_\_\_

6) Other withdrawals\*\* \$ \_\_\_\_\_

TOTAL WITHDRAWALS \$ \_\_\_\_\_

Total interest paid to trust account(s) during this calendar year. \$ \_\_\_\_\_

Total trust funds in account(s) on December 31 of this calendar year. \$ \_\_\_\_\_

Total funds received for trust but not deposited in trust account(s) as of December 31 of this calendar year. \$ \_\_\_\_\_

\* If this schedule concerns a number of trust accounts, provide names and addresses of financial institutions and list account numbers on separate sheet.

\*\* If other withdrawals have occurred, explain in detail on separate sheet.

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## Appendix E. (cont.)

SCHEDULE D  
SALESPERSONS EMPLOYED OR  
ENGAGED DURING CALENDAR  
YEAR

Name	Address	Registration No.

SCHEDULE E  
SALESPERSONS TERMINATED  
DURING CALENDAR YEAR

Name	Registration No.

**Historical Note**

Adopted effective January 1, 1985 (Supp. 85-1).

## ARTICLE 6. CREMATORY AND CREMATION REGULATION

### R4-12-601. Repealed

#### Historical Note

Adopted effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 7 A.A.R. 1441, effective March 14, 2001 (Supp. 01-1).

### R4-12-602. Repealed

#### Historical Note

Adopted effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 20 A.A.R. 2648, effective November 9, 2014 (Supp. 14-3).

### R4-12-603. Reserved

### R4-12-604. Reserved

### R4-12-605. Reserved

### R4-12-606. Reserved

### R4-12-607. Reserved

### R4-12-608. Reserved

### R4-12-609. Reserved

### R4-12-610. Reserved

### R4-12-611. Repealed

#### Historical Note

Adopted effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 7 A.A.R. 1441, effective March 14, 2001 (Supp. 01-1).

### R4-12-612. Crematory requirements

In addition to the requirements in A.R.S. § 32-1394, the responsible cremationist of a crematory shall ensure:

1. The crematory is maintained free from dirt and debris,
2. Equipment and supplies maintained in the crematory do not impede passage through the crematory, and
3. Human remains that are not embalmed are held in a refrigerated holding facility at the crematory or sent to a funeral establishment or another crematory for refrigeration.

#### Historical Note

Adopted effective July 3, 1991 (Supp. 91-3). Amended by final rulemaking at 20 A.A.R. 2648, effective November 9, 2014 (Supp. 14-3).

### R4-12-613. Requirements for a funeral establishment that provides for cremation

- A. A funeral establishment that owns a crematory on or off the funeral establishment's premises shall designate a responsible cremationist.
- B. The responsible funeral director of a funeral establishment that provides for cremation shall ensure that:
  1. The cost of cremation is included on its general price list required by A.R.S. § 32-1371;
  2. A price card for cremation is placed as required by A.R.S. § 32-1372;
  3. If the funeral establishment contracts with a licensed crematory to perform the cremation; the information required in A.R.S. § 32-1373(A) and (B) is provided to the purchaser of the cremation;

4. A consumer who chooses cremation is informed that human remains may be cremated in a cremation container capable of being entirely consumed or reduced to fine residue during the cremation process, such as a casket, unfinished wood box, or fiberboard container; and
5. Caskets or containers constructed of metal or of a substance that may emit harmful fumes when subjected to the cremation process are not sold or used for cremation.

#### Historical Note

Adopted effective July 3, 1991 (Supp. 91-3). Amended by final rulemaking at 20 A.A.R. 2648, effective November 9, 2014 (Supp. 14-3).

### R4-12-614. Reserved

### R4-12-615. Reserved

### R4-12-616. Reserved

### R4-12-617. Reserved

### R4-12-618. Reserved

### R4-12-619. Reserved

### R4-12-620. Reserved

### R4-12-621. Repealed

#### Historical Note

Adopted effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 20 A.A.R. 2648, effective November 9, 2014 (Supp. 14-3).

### R4-12-622. Expired

#### Historical Note

Adopted effective July 3, 1991 (Supp. 91-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 853, effective December 31, 2001 (Supp. 02-1).

### R4-12-623. Reserved

### R4-12-624. Reserved

### R4-12-625. Reserved

### R4-12-626. Reserved

### R4-12-627. Reserved

### R4-12-628. Reserved

### R4-12-629. Reserved

### R4-12-630. Reserved

### R4-12-631. Records requirements for crematories and funeral establishments that provide for cremation

- A. The responsible cremationist of a crematory or funeral establishment that provides for cremation shall ensure for each cremation performed that the following records are established and maintained for five years from the date of the cremation:
  1. The name of the decedent and date of death;
  2. The authorization document required by A.R.S. § 32-1365.01, if applicable or a record of the oral or written consent of the authorizing agent that meets the requirements in A.R.S. § 32-1365.02; and
  3. A copy of the completed disposition-transit permit that meets the requirements in A.R.S. § 36-326 and A.A.C. R9-19-302.

**B.** The responsible cremationist of a crematory or funeral establishment that provides for cremation shall establish and maintain a written permanent chronological log of cremations that includes the identification number and identification information required in A.R.S. § 32-1399(1) and the following for each cremation performed:

1. The day, month, and year the human remains were received at the crematory or funeral establishment that provides for cremation;
2. Name of the decedent;
3. The name of the responsible cremationist;
4. The type of receptacle in which the human remains were received at the crematory, such as a wooden casket or a cardboard, fiberboard, or wooden container;
5. A check list showing receipt of the following:
  - a. The authorization document required in R4-12-631(A)(2); and
  - b. The disposition-transit permit;
6. The time, day, month, and year of the cremation;
7. The printed name and signature of the cremationist who performed the cremation;
8. The following information regarding the cremated remains:
  - a. The time, day, month, and year the cremated remains were disposed of according to the authority set forth in A.R.S. § 32-1365.01 or 32-1365.02;
  - b. The name of the crematory, funeral establishment, or authorizing agent authorized according to A.R.S. § 32-1365.01 or 32-1365.02 to dispose of cremated remains; and
  - c. The place and manner of disposal according to A.R.S. § 32-1399(7).

**C.** If the uncremated human remains are returned to a funeral establishment, the responsible cremationist shall ensure that the time, day, month, and year the human remains were picked up and the name of the individual who picked up the human remains are recorded on the written chronological log required in subsection (B).

**D.** If a funeral establishment returns human remains that have been sent back according to subsection (C), the responsible cremationist shall ensure that a new entry that meets the requirements of subsection (B) is made.

#### **Historical Note**

Adopted effective July 3, 1991 (Supp. 91-3). Amended by final rulemaking at 20 A.A.R. 2648, effective November 9, 2014 (Supp. 14-3).

#### **R4-12-632. Repealed**

#### **Historical Note**

Adopted effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 20 A.A.R. 2648, effective November 9, 2014 (Supp. 14-3).

#### **R4-12-633. Disposition of records**

**A.** If the crematory of a funeral establishment that provides for cremation or a crematory changes ownership, the responsible funeral director or responsible cremationist shall ensure the records described in R4-12-631 are provided to the new responsible funeral director of the funeral establishment or responsible cremationist of the crematory.

**B.** If a funeral establishment that provides for cremation or a crematory ceases operations, within 20 days from the date of cessation, the responsible funeral director of the funeral establishment that provides for cremation or responsible cremationist of a crematory shall ensure that the records required in R4-12-631 are:

1. Provided to the Board office in person or by certified delivery mail; or
2. Provided to another funeral establishment or crematory and the location of the records is provided to the Board.

#### **Historical Note**

Adopted effective July 3, 1991 (Supp. 91-3). Amended by final rulemaking at 20 A.A.R. 2648, effective November 9, 2014 (Supp. 14-3).

#### **R4-12-634. Repealed**

#### **Historical Note**

Adopted effective July 3, 1991 (Supp. 91-3). Section repealed by final rulemaking at 20 A.A.R. 2648, effective November 9, 2014 (Supp. 14-3).

#### **R4-12-635. Reserved**

#### **R4-12-636. Reserved**

#### **R4-12-637. Reserved**

#### **R4-12-638. Reserved**

#### **R4-12-639. Reserved**

#### **R4-12-640. Reserved**

#### **R4-12-641. Expired**

#### **Historical Note**

Adopted effective July 3, 1991 (Supp. 91-3). Section expired under A.R.S. § 41-1056(E) at 12 A.A.R. 4742, effective September 30, 2006 (Supp. 06-4).

# Chapter Divider Page

# Chapter Divider Page

## TITLE 4. PROFESSIONS AND OCCUPATIONS

### CHAPTER 15. BOARD OF MASSAGE THERAPY

*Editor's Note: 4 A.A.C. 15 made by final rulemaking at 10 A.A.R. 2668, effective June 8, 2004 (Supp. 04-2). This Chapter formerly contained the rules for the Department of Liquor Licenses and Control before being recodified to 19 A.A.C. 1 in 1995 (Supp. 04-2).*

#### ARTICLE 1. GENERAL PROVISIONS

*Article 1, consisting of R4-15-101 and R4-15-102, made by final rulemaking at 10 A.A.R. 2668, effective June 8, 2004 (Supp. 04-2).*

##### Section

R4-15-101.	Definitions
R4-15-102.	Fees
R4-15-103.	Ethical Standards

#### ARTICLE 2. LICENSING

*Article 2, consisting of R4-15-201 through R4-15-207, made by final rulemaking at 10 A.A.R. 2668, effective June 8, 2004 (Supp. 04-2).*

##### Section

R4-15-201.	Qualifications; Application for a Regular License
R4-15-202.	Expired
R4-15-203.	Application for a License by Reciprocity
R4-15-204.	Board-recognized School
R4-15-205.	Application for Renewal of a License
R4-15-206.	Reserved
R4-15-207.	Licensing Time-frames
Table 1.	Time-frames (in Days)

#### ARTICLE 3. CONTINUING EDUCATION

*Article 3, consisting of R4-15-301 through R4-15-303, made by final rulemaking at 12 A.A.R. 2759, effective September 9, 2006 (Supp. 06-3).*

##### Section

R4-15-301.	Required Continuing Education Hours
R4-15-302.	Approval of Continuing Education
R4-15-303.	Documentation of Completion of Continuing Education

#### ARTICLE 4. REGULATORY PROVISIONS

*Article 4, consisting of R4-15-401, made by final rulemaking at 12 A.A.R. 2759, effective September 9, 2006 (Supp. 06-3).*

##### Section

R4-15-401.	Rehearing or Review of Board's Decision
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#### ARTICLE 1. GENERAL PROVISIONS

*Article 1, consisting of R4-15-101 and R4-15-102, made by final rulemaking at 10 A.A.R. 2668, effective June 8, 2004 (Supp. 04-2).*

##### **R4-15-101. Definitions**

In addition to the definitions in A.R.S. § 32-4201, in this Chapter:

1. "Accredited" means approved by the:
  - a. New England Association of Schools and Colleges,
  - b. Middle States Association of Colleges and Secondary Schools,
  - c. North Central Association of Colleges and Schools,
  - d. Northwest Association of Schools and Colleges,
  - e. Southern Association of Colleges and Schools,
  - f. Western Association of Schools and Colleges,
  - g. National Commission for Certifying Agencies, or
  - h. Commission on Massage Therapy Accreditation.
2. "Applicant" means an individual requesting a regular, renewal, or reciprocity license from the Board or recognition as an out-of-state school as required by A.R.S. § 32-4228.

3. "Application packet" means the documents, forms, fees, and additional information required by the Board of an applicant.
4. "Classroom instruction" means the physical or distance learning format environment in which massage therapy didactic teaching or lecturing takes place.
5. "Client" means an individual receiving massage therapy.
6. "Clinical instruction" means the hands-on application of massage therapy.
7. "Continuing education" means a workshop, seminar, lecture, conference, class, or instruction related to massage therapy.
8. "Day" means calendar day.
9. "Distance learning" means the instructor of a continuing education and the individual receiving the continuing education are not located in the same room in which the continuing education is being provided.
10. "FSMTB" means Federation of State Massage Therapy Boards, the body that administers a massage and bodywork licensing examination.
11. "Health care practitioner" means "practitioner" defined in A.R.S. § 32-3101.
12. "Hour" or "classroom hour" means 50 to 60 minutes of participation.
13. "High school equivalency diploma" means:
  - a. A document issued by the Arizona Department of Education under A.R.S. § 15-702 to an individual who passes a high school equivalency test or meets the requirements of A.R.S. § 15-702(B),
  - b. A document issued by a state other than this state to an individual who passes a high school equivalency test or meets the requirements of a state statute equivalent to A.R.S. § 15-702(B), or
  - c. A document issued by a country other than the United States to an individual who has completed that country's equivalent of a 12th grade education as determined by the Board based upon information obtained from American or foreign consulates or embassies or other governmental entities.
14. "Good moral character" means an applicant:
  - a. Has not been convicted of a felony or an offense involving moral turpitude or prostitution, solicitation, or other related offense;
  - b. Has not been convicted of an act involving dishonesty, fraud, misrepresentation, or gross negligence;
  - c. Is not currently incarcerated in a local, state, or federal penal institution or is not on community supervision;
  - d. Has not had a professional license revoked or suspended by this state, a political subdivision of this state, or a regulatory board in another jurisdiction in the United States, or voluntarily surrendered a professional license in lieu of disciplinary action; or
  - e. Has not had a massage therapy certification revoked or suspended by a national massage therapy certifying agency.
11. "License" means written authorization issued by the Board to engage in the practice of massage therapy in Arizona.

16. "Massage therapy student" means an individual receiving instruction in massage therapy or bodywork therapy at a Board-recognized school.
17. "NCBTMB" means National Certification Board for Therapeutic Massage and Bodywork, the body that is accredited by the National Commission for Certifying Agencies and provides examinations of and certifies individuals in massage therapy and bodywork.
18. "Regular license" means an approval issued by the Board to an applicant who meets the requirements in A.R.S. § 32-4222(A) and (B), and this Chapter.
19. "Practice of massage therapy" means the same as "massage therapy" as defined in A.R.S. § 32-4201.
20. "Supervised instruction" means a licensee responsible for a massage therapy student at a Board-recognized school:
  - a. For clinical instruction:
    - i. Is present at the location where the massage therapy student is performing massage therapy as part of the massage therapy student's education,
    - ii. Is immediately available for consultation, and
    - iii. Evaluates the performance of the massage therapy student.
  - b. For classroom instruction:
    - i. Is immediately available for consultation, and
    - ii. Evaluates the performance of the massage therapy student.
21. "TOEFL" means Test of English as a Foreign Language.
22. "TOEIC" means Test of English for International Communications.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 2668, effective June 8, 2004 (Supp. 04-2). Amended by final rulemaking at 12 A.A.R. 2759, effective September 9, 2006 (Supp. 06-3). Amended by final rulemaking at 20 A.A.R. 2246, effective August 5, 2014 (Supp. 14-3).

**R4-15-102. Fees**

- A. The Board shall charge the following fees that are nonrefundable, unless A.R.S. § 41-1077 applies:
  1. Application for a license, \$195;
  2. Reinstatement of a license, \$125;
  3. Duplicate license, \$25;
  4. License renewal, \$95; and
  5. Delinquent renewal of a license, \$40.
- B. The Board shall charge 25 cents per page for copying records, documents, letters, minutes, applications, and files.
- C. If an applicant submits a paper application, the applicant shall pay any of the fees listed in subsection (A) by cashier's check or money order. If an applicant submits an electronic application, the applicant shall pay by credit card.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 2668, effective June 8, 2004 (Supp. 04-2). Amended by final rulemaking at 12 A.A.R. 2759, effective September 9, 2006 (Supp. 06-3). Amended by final rulemaking at 15 A.A.R. 1562, effective September 1, 2009 (Supp. 09-3). Amended by final rulemaking at 20 A.A.R. 2246, effective August 5, 2014 (Supp. 14-3).

**R4-15-103. Ethical Standards**

Pursuant to A.R.S. § 32-4203(A)(6), the Board is adopting the following ethical standards, which a licensee is required to meet:

1. When a licensee agrees to provide massage therapy to a client, the licensee shall:
  - a. Inform the client and other health care practitioners, if applicable, of the licensee's qualifications, education, and experience;
  - b. Provide only those massage therapies that are within the licensee's qualifications, education, and experience;
  - c. Provide massage therapy only when the licensee believes that it will be advantageous to the client;
  - d. Refer the client to other health care practitioners after evaluating the client for any contraindications and the referral is within the best interests of the client;
  - e. Provide draping that ensures the safety, comfort, and privacy of the client;
  - f. Respect the client's right to refuse, modify, or terminate treatment;
  - g. Safeguard the confidentiality of all client information unless disclosure is requested by the client in writing, medically necessary, required by law, or necessary for the protection of the public; and
  - h. Refrain from engaging in sexual activity with the client even if the client attempts to sexualize the relationship.

2. A licensee shall not advertise that the licensee offers sensual or erotic massage that constitutes sexual activity as stated in A.R.S. § 32-4253 or for the purposes of sexual gratification.
3. A licensee shall not discriminate against a client on the basis of race, sex, age, religion, disability, or national origin.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R. 2246, effective August 5, 2014 (Supp. 14-3).

**ARTICLE 2. LICENSING**

*Article 2, consisting of R4-15-201 through R4-15-207, made by final rulemaking at 10 A.A.R. 2668, effective June 8, 2004 (Supp. 04-2).*

**R4-15-201. Qualifications; Application for a Regular License**

- A. To meet the requirements in A.R.S. § 32-4222(B), an applicant who submits an application:
  1. Before January 1, 2008 shall complete 500 classroom and clinical hours of supervised instruction at a Board-recognized school, and
  2. On and after January 1, 2008 shall complete 700 classroom and clinical hours of supervised instruction at a Board-recognized school.
- B. An applicant for a regular license shall meet the requirements in A.R.S. § 32-4222(A) and (B) before submitting an application packet that contains:
  1. An application form that includes:
    - a. The applicant's name, date of birth, place of birth, social security number, email address, residence and business addresses, residence and business telephone numbers, and mailing address, if applicable;
    - b. The applicant's race, gender, height, weight, and eye color;
    - c. Each name or alias previously or currently being used by the applicant;
    - d. The applicant's name as it will appear on the license;
    - e. To satisfy the requirements in A.R.S. § 32-4222(A)(5):
      - i. If the applicant graduated from a high school, the date of graduation and name of the high school;



Board of Massage Therapy

- ii. If the applicant received a high school equivalency diploma, the date the high school equivalency diploma was awarded; or
  - iii. If the applicant passed an ability to benefit examination recognized by the United States Department of Education, written documentation of passage;
  - f. One passport quality photograph of the applicant's head and shoulders no larger than 2 1/2 by 3 inches taken no more than 60 days before the date of the application;
  - g. The name and address of each Board-recognized school attended by the applicant, dates of attendance, and date of completion of the course of study;
  - h. The number of hours of classroom and clinical instruction completed by the applicant at a Board-recognized school;
  - i. Whether the applicant has passed the examination administered by the NCBTMB or FSTMB and if so, the name of the entity and date the examination was taken;
  - j. Whether the applicant has been convicted of a felony or an offense involving moral turpitude or prostitution, solicitation, or a related offense or entered into a plea of no contest and, if so:
    - i. Charged felony or offense;
    - ii. Date of conviction;
    - iii. Court having jurisdiction over the felony or offense;
    - iv. Probation officer's name, address, and telephone number, if applicable;
    - v. A copy of the notice of expungement, if applicable; and
    - vi. A copy of the notice of restoration of civil rights, if applicable;
  - k. Whether the applicant currently holds or has held a massage therapy license issued by another state and if so, the name of each state;
  - l. Whether the applicant has ever voluntarily surrendered a license under A.R.S. § 32-4254 or had a license to practice massage therapy or another related license revoked by a political subdivision of this state or a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that would be subject to discipline pursuant to this Chapter;
  - m. Whether the applicant is currently under investigation, suspension, or restriction by a political subdivision of this state or a regulatory board in another jurisdiction in the United States for an act that occurred in that jurisdiction that would be subject to discipline pursuant to this Chapter;
  - n. Whether the applicant has committed any of the actions or been subject to any of the actions listed in the definition of good moral character in R4-15-101;
  - o. Whether English is the applicant's native language and, if not:
    - i. What the applicant's native language is, and
    - ii. Whether the applicant has met the requirements in subsection (C); and
  - p. A notarized statement, signed by the applicant, stating: the information on the application form is true and correct;
2. Documentation of citizenship or alien status that meets the requirements in A.R.S. § 41-1080;
  3. A completed and legible fingerprint card; and
  4. The fee required in R4-15-102.
- C. If English is not the native language of the applicant, to meet the requirements in A.R.S. § 32-4222(E), the applicant shall take and pass, no more than twenty four months before the date of the application, either of the following examinations:
1. The internet-based TOEFL with the following minimum scores:
    - a. For the writing section, 25;
    - b. For the speaking section, 25;
    - c. For the reading section, 25; and
    - d. For the listening section, 25; or
  2. The TOEIC with the following minimum scores:
    - a. For the speaking section, 150;
    - b. For the writing section, 150;
    - c. For the listening section, 300;
    - d. For the reading section, 350.
- D. In addition to the requirements in subsections (A), (B), and (C), an applicant shall arrange to have directly submitted to the Board from the issuing entity:
1. Written verification of a passing score on the NCBTMB or FSTMB examination;
  2. To show proof of completion of the classroom hours of supervised instruction at a Board-recognized school required in subsection (A), academic transcripts from the Board-recognized school from which the applicant graduated; and
  3. The score earned on the examination in subsection (C).
- Historical Note**
- New Section made by final rulemaking at 10 A.A.R. 2668, effective June 8, 2004 (Supp. 04-2). Amended by final rulemaking at 12 A.A.R. 2759, effective September 9, 2006 (Supp. 06-3). Amended by final rulemaking at 20 A.A.R. 2246, effective August 5, 2014 (Supp. 14-3).
- R4-15-202. Expired**
- Historical Note**
- New Section made by final rulemaking at 10 A.A.R. 2668, effective June 8, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(E) at 15 A.A.R. 1941, effective October 31, 2009 (Supp. 09-4).
- R4-15-203. Application for a License by Reciprocity**
- An applicant for a license by reciprocity shall meet the requirements in A.R.S. § 32-4223 and:
1. Submit an application packet that contains the information in R4-15-201 (B)(1)(a), (b), (c), (d), (e), (i), (j), (k), (m), (n), (B)(2), and photograph required by R4-15-201(B)(1)(f) and:
    - a. If the applicant wishes to demonstrate that the applicant meets the requirements in A.R.S. § 32-4223(A)(1), the name of the state where the applicant was licensed continuously for five years immediately before the date of the application;
    - b. If the applicant wishes to demonstrate that the applicant meets the requirements in A.R.S. § 32-4223(A)(2), whether the applicant holds a current certification from the NCBTMB or another agency that meets the standards of the National Commission for Certifying Agencies; and
    - c. A notarized statement, signed by the applicant, stating that the information on the application form is true and correct;
  2. If the applicant wishes to demonstrate that the applicant meets the requirements in A.R.S. § 32-4223(A)(1), arrange to have verification of the license or certificate in

the jurisdiction in the other state sent directly to the Board from the jurisdiction including:

- a. The license or certificate number issued to the applicant by the jurisdiction,
  - b. Whether the jurisdiction has instituted disciplinary proceedings against the applicant or has unresolved complaints pending against the applicant, and
  - c. Whether the license or certificate is in good standing.
3. If the applicant wishes to demonstrate that the applicant meets the requirements in A.R.S. § 32-4223(A)(2), arrange to have:
    - a. A verification of certification as a massage therapist sent directly to the Board from the NCBTMB or other agency that meets the standards of the National Commission for Certifying Agencies; and
    - b. Academic transcripts from the Board-recognized school from which the applicant completed the course of study;
  4. Submit a completed and legible fingerprint card; and
  5. Submit the fee required in R4-15-102.

#### Historical Note

New Section made by final rulemaking at 10 A.A.R. 2668, effective June 8, 2004 (Supp. 04-2). Amended by final rulemaking at 20 A.A.R. 2246, effective August 5, 2014 (Supp. 14-3).

#### R4-15-204. Board-recognized School

- A. A massage therapy school or bodywork therapy school in this state that is offered by a community college or approved by the Arizona State Board for Private Postsecondary Education is a Board-recognized school.
- B. A massage therapy school or bodywork therapy school in another state that is approved by an agency similar to the Board for Private Postsecondary Education and that wishes to be a Board-recognized school shall:
  1. Have a program that meets requirements that are substantially equivalent to those imposed by the Board for Private Postsecondary Education in A.R.S. Title 32, Chapter 30 and 4 A.A.C. 39; and
  2. Submit an application packet to the Board that includes:
    - a. The name, address, and telephone number of the massage therapy school or bodywork therapy school;
    - b. The same information required by the Board for Private Postsecondary Education in R4-39-103(B); and
    - c. Documentation from the agency similar to the Board for Private Postsecondary Education that states the applicant meets the requirements of the agency.

#### Historical Note

New Section made by final rulemaking at 10 A.A.R. 2668, effective June 8, 2004 (Supp. 04-2). Amended by final rulemaking at 20 A.A.R. 2246, effective August 5, 2014 (Supp. 14-3).

#### R4-15-205. Application for Renewal of a License

An applicant for a renewal license shall submit:

1. An application form that contains the licensee's:
  - a. Name;
  - b. Massage therapy license number;
  - c. Massage therapy license expiration date;
  - d. Birthdate;
  - e. Residence and practice addresses;
  - f. Residence and practice telephone numbers;
  - g. Mailing address;
  - h. E-mail address;

- i. Alien status declaration if the licensee is not a citizen or national of the United States;
- j. Declaration of whether the licensee has been charged with or convicted of a felony or an offense involving moral turpitude or prostitution, solicitation, or a related offense or entered into a plea of no contest during the two-year period immediately preceding the renewal application date and, if so, the licensee shall provide the following information:
  - i. The charged felony or offense;
  - ii. The date of conviction;
  - iii. The court having jurisdiction over the felony or offense;
  - iv. The probation officer's name, address, and telephone number, if applicable;
  - v. A copy of the notice of expungement, if applicable; and
  - vi. A copy of the restoration of civil rights, if applicable;
- k. Declaration that the licensee has completed the continuing education required by A.R.S. § 32-4225(E) during the two-year period immediately preceding the renewal application date or if audited, the documentation required in R4-15-303(B); and
  - l. Signature and date of submission; and
2. The fee required in R4-15-102(A).

#### Historical Note

New Section made by final rulemaking at 12 A.A.R. 2759, effective September 9, 2006 (Supp. 06-3). Amended by final rulemaking at 20 A.A.R. 2246, effective August 5, 2014 (Supp. 14-3).

#### R4-15-206. Reserved

#### R4-15-207. Licensing Time-frames

- A. The overall time-frame described in A.R.S. § 41-1072(2) for each type of approval granted by the Board is listed in Table 1. The applicant and the Executive Director of the Board may agree in writing to extend the overall time-frame. The substantive review time-frame shall not be extended by more than 25 percent of the overall time-frame.
- B. The administrative completeness review time-frame described in A.R.S. § 41-1072(1) for each type of approval granted by the Board is set forth in Table 1 and begins when the Board receives an application.
  1. If the application packet is not complete, the Board shall send to the applicant a written notice specifying the missing document or incomplete information. The administrative completeness review time-frame and the overall time-frame are suspended from the postmark date of the notice until the date the Board receives a complete application packet from the applicant.
  2. If an application is complete, the Board shall send a written notice of administrative completeness to the applicant.
  3. If the Board grants the license during the time provided to assess administrative completeness, the Board shall not issue a separate written notice of administrative completeness.
- C. The substantive review time-frame described in A.R.S. § 41-1072(3) is set forth in Table 1 and begins on the postmark date of the notice of administrative completeness.
  1. During the substantive review time-frame, the Board may make one comprehensive written request for additional information or documentation. The time-frame for the Board to complete the substantive review is suspended from the postmark date of the comprehensive written

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request for additional information or documentation until the Board receives the additional information or documentation.

2. The Board shall send a written notice of approval to an applicant who meets the qualifications and requirements in A.R.S. Title 32, Chapter 42 and this Chapter.
3. The Board shall send a written notice of denial to an applicant who fails to meet the qualifications and requirements in A.R.S. Title 32, Chapter 42 and this Chapter.
- D. The Board shall consider an application withdrawn if within 365 days from the application submission date the applicant fails to supply the missing information under subsection (B)(1) or (C)(1).
- E. An applicant who does not wish an application withdrawn may request a denial in writing within 365 days from the application submission date.
- F. If a time-frame's last day falls on a Saturday, Sunday, or an official state holiday, the Board considers the next business day the time-frame's last day.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 2668, effective June 8, 2004 (Supp. 04-2). Amended by final rulemaking at 20 A.A.R. 2246, effective August 5, 2014 (Supp. 14-3).

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

Type of Approval	Statutory Authority	Overall Time-frame	Administrative Completeness Time-frame	Substantive Review Time-frame
Regular license R4-15-201	A.R.S. § 32-4222	120	60	60
License by Reciprocity R4-15-203	A.R.S. § 32-4223	120	60	60
Board-recognized school R4-15-204	A.R.S. § 32-4228	120	60	60
Renewal License	A.R.S. § 32-4225	60	30	30

**Historical Note**

New Table 1 made by final rulemaking at 10 A.A.R. 2668, effective June 8, 2004 (Supp. 04-2). Amended by final rulemaking at 12 A.A.R. 2759, effective September 9, 2006 (Supp. 06-3). Amended by final rulemaking at 20 A.A.R. 2246, effective August 5, 2014 (Supp. 14-3).

**ARTICLE 3. CONTINUING EDUCATION****R4-15-301. Required Continuing Education Hours**

- A. During the two-year period immediately preceding license expiration, a licensee applying for a renewal license shall complete 24 hours or more of continuing education.
- B. A licensee may complete a maximum of 12 continuing education hours from a distance learning format to satisfy the requirement in subsection (A).
- C. A licensee shall not carry over hours from one renewal period to another renewal period.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 2759, effective September 9, 2006 (Supp. 06-3). Amended by final rulemaking at 20 A.A.R. 2246, effective August 5, 2014 (Supp. 14-3).

**R4-15-302. Approval of Continuing Education**

The following continuing education is approved by the Board:

1. Continuing education that is taught by an association, corporation, or organization:
  - a. Accredited by the National Commission for Certifying Agencies, or
  - b. Approved by the NCBTMB.
2. Continuing education sponsored by a massage therapy school or bodywork therapy school that is:
  - a. Affiliated with a community college located in this state, or
  - b. Approved by the Arizona State Board for Private Postsecondary Education;
3. Continuing education offered by a regionally or nationally accredited post-secondary institution in a state other than Arizona;
4. Continuing education offered by an institution approved by a post-secondary educational entity as a massage therapy or bodywork therapy school in a state other than Arizona.
5. For each renewal period no more than four hours of CPR or four hours of First Aid for a combination of no more than eight hours that is taught by an instructor who has been certified in CPR or First Aid instruction by the American Red Cross, American Heart Association, American Safety and Health Institute, or National Safety Council and has a current card issued by the American Red Cross, American Heart Association, or American Safety and Health Institute, or National Safety Council that contains:
  - a. The instructor's name,
  - b. A statement by the certifying entity that authorizes the instructor to teach CPR or first aid, and
  - c. A certification expiration date;
6. For each renewal period no more than three hours for attendance at a Board meeting, if the licensee obtains a document that states the licensee attended a minimum of three hours at a Board meeting, the date of the Board meeting, and the signature of the Board's chair or executive director. The licensee may claim only the actual number of hours attended by the licensee for a maximum of three hours; or
7. For each renewal period one hour for each eight hours serving as an instructor of a massage therapy class at a Board-recognized school for a maximum of 10 hours and the licensee documents:
  - a. The name of the Board-recognized school,
  - b. The title of the massage therapy class,
  - c. The subject matter of the massage therapy class,
  - d. The dates of the instruction,
  - e. The location of the massage therapy class, and
  - f. A confirmation of number of hours that is on official school letterhead and signed by the owner of the Board-recognized school or designee.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 2759, effective September 9, 2006 (Supp. 06-3). Amended by final rulemaking at 20 A.A.R. 2246, effective August 5, 2014 (Supp. 14-3).

**R4-15-303. Documentation of Completion of Continuing Education**

- A. When renewing a license, a licensee shall submit on a renewal application an affirmation of completion of 24 hours of continuing education.

- B.** The Board may annually and randomly select a minimum of 10% of active licenses for an audit of continuing education and require the following information:
1. The name of the licensee,
  2. The title of the continuing education,
  3. The subject matter of the continuing education,
  4. The date of the continuing education,
  5. The hours completed,
  6. The location where the continuing education took place, and
  7. The name of the instructor providing the continuing education.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 2759, effective September 9, 2006 (Supp. 06-3).

Amended by final rulemaking at 20 A.A.R. 2246, effective August 5, 2014 (Supp. 14-3).

**ARTICLE 4. REGULATORY PROVISIONS**

**R4-15-401. Rehearing or Review of Board's Decision**

- A.** Except as provided in subsection (F), a party who is aggrieved by a decision issued by the Board may file with the Board, not later than 30 days after service of the decision, a written motion for rehearing or review of the decision specifying the grounds for rehearing or review. For purposes of this Section and except as provided in A.R.S. § 41-1092.09(C), a decision is considered served when personally delivered to the party's last known address or mailed by certified mail to the party at the party's last known address or the party's attorney.
- B.** A party filing a motion for rehearing or review under this Section may amend the motion at any time before it is ruled upon by the Board. Other parties may file a response within 15 days after the date the motion for rehearing or review is filed. The Board may require that the parties file supplemental memoranda explaining the issues raised in the motion and may permit oral argument.
- C.** The Board may grant a rehearing or review of the decision for any of the following causes materially affecting the party's rights:

1. Irregularity in the proceedings of the Board, administrative law judge, or any abuse of discretion that deprived the party of a fair hearing;
  2. Misconduct of the Board or administrative law judge;
  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 or insufficient penalties;
  6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing; or
  7. That the findings of fact or decision are not supported by the evidence or are contrary to law.
- D.** The Board may affirm or modify its decision or grant a rehearing or review to all or any of the parties on all or part of the issues for the reasons specified in subsection (C). An order modifying a decision or granting a rehearing or review shall specify the grounds for the rehearing or review and the rehearing or review shall cover only those matters specified.
- E.** No later than 30 days after a decision is issued by the Board, the Board may, on its own initiative, grant a rehearing or review of its decision for any reasons in subsection (C). An order granting a rehearing or review shall specify the grounds for the rehearing or review.
- F.** If the Board makes specific findings that the immediate effectiveness of the decision is necessary for the preservation of the public health and safety and determines that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the Board may issue the decision as a final decision without an opportunity for a rehearing or review. If the Board issues the decision as a final decision without an opportunity for a rehearing or review, the aggrieved party may make an application for judicial review within the time limits permitted for an application for judicial review of the Board's final decision under A.R.S. § 12-904.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 2759, effective September 9, 2006 (Supp. 06-3).

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**TITLE 4. PROFESSIONS AND OCCUPATIONS****CHAPTER 16. ARIZONA MEDICAL BOARD**

(Authority: A.R.S. § 32-1401 et seq.)

*Editor's Note: The name of the Allopathic Board of Medical Examiners was changed to the Arizona Medical Board by Laws 2002, Ch. 254, § 9, effective August 22, 2002 (Supp. 03-2).*

**ARTICLE 1. GENERAL PROVISIONS**

*Article 1, consisting of Sections R4-16-101 through R4-16-106, adopted effective June 1, 1984.*

*Former Article 1, consisting of Sections R4-16-01 through R4-16-16, repealed effective June 1, 1984 (Supp. 84-3).*

## Section

R4-16-101.	Definitions
R4-16-102.	Continuing Medical Education
R4-16-103.	Rehearing or Review of Board Decision
R4-16-104.	Recodified
R4-16-105.	Recodified
R4-16-106.	Recodified
R4-16-107.	Recodified
R4-16-108.	Recodified
Table 1.	Recodified
R4-16-109.	Recodified

**ARTICLE 2. LICENSURE**

*Article 2 heading, recodified to Article 3 heading, at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).*

*Article 2, consisting of Sections R4-16-201 through R4-16-205, adopted effective September 22, 1995 (Supp. 95-3).*

## Section

R4-16-201.	Application for Licensure
R4-16-202.	Application for Pro Bono Registration
R4-16-203.	Application for Locum Tenens Registration
R4-16-204.	Licensure by Endorsement
R4-16-205.	Fees
R4-16-206.	Time-frames for Licenses, Permits, and Registrations
R4-16-207.	Time-frames for License Renewal; Expiration
Table 1.	Time-frames

**ARTICLE 3. DISPENSING OF DRUGS**

*Article 3 heading, recodified from Article 2 heading, at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).*

*Article 3, consisting of Sections R4-16-301 through R4-16-303, adopted effective February 2, 2000 (Supp. 00-1).*

## Section

R4-16-301.	Registration and Renewal
R4-16-302.	Packaging and Inventory; Exception
R4-16-303.	Prescribing and Dispensing Requirements
R4-16-304.	Recordkeeping and Reporting Shortages
R4-16-305.	Inspections; Denial and Revocation

**ARTICLE 4. MEDICAL ASSISTANTS**

## Section

R4-16-401.	Medical Assistant Training Requirements
R4-16-402.	Authorized Procedures for Medical Assistants
R4-16-403.	Renumbered
R4-16-404.	Recodified
R4-16-405.	Recodified
R4-16-406.	Recodified
R4-16-407.	Recodified
R4-16-408.	Recodified
R4-16-409.	Recodified

R4-16-410. Recodified

**ARTICLE 5. EXECUTIVE DIRECTOR DUTIES**

*Article 5, consisting of Sections R4-16-501 through R4-16-505, renumbered by exempt rulemaking at 11 A.A.R. 1056, effective February 18, 2005 (Supp. 05-1).*

*Article 5, consisting of Sections R4-16-501 through R4-16-505, made by exempt rulemaking at 9 A.A.R. 2274, effective August 12, 2003 (Supp. 03-2).*

## Section

R4-16-501.	Interim Evaluation and Investigational Interview
R4-16-502.	Direct Referral to Formal Interview
R4-16-503.	Request for Inactive Status and License Cancellation
R4-16-504.	Interim Consent Agreement
R4-16-505.	Mediated Case
R4-16-506.	Referral to Formal Hearing
R4-16-507.	Dismissal of Complaint
R4-16-508.	Denial of License
R4-16-509.	Non-disciplinary Consent Agreement
R4-16-510.	Appealing Executive Director Actions

**ARTICLE 6. DISCIPLINARY ACTIONS**

R4-16-601.	Expired
R4-16-602.	Expired
R4-16-603.	Expired
R4-16-604.	Aggravating Factors Considered in Disciplinary Actions
R4-16-605.	Mitigating Factors Considered in Disciplinary Actions

**ARTICLE 7. OFFICE-BASED SURGERY USING SEDATION**

*Article 7, consisting of Sections R4-16-701 through R4-16-707, made by final rulemaking at 14 A.A.R. 380, effective January 8, 2008 (Supp. 08-1).*

## Section

R4-16-701.	Health Care Institution License
R4-16-702.	Administrative Provisions
R4-16-703.	Procedure and Patient Selection
R4-16-704.	Sedation Monitoring Standards
R4-16-705.	Perioperative Period; Patient Discharge
R4-16-706.	Emergency Drugs; Equipment and Space Used for Office-Based Surgery Using Sedation
R4-16-707.	Emergency and Transfer Provisions

**ARTICLE 1. GENERAL PROVISIONS****R4-16-101. Definitions**

Unless the context otherwise requires, definitions prescribed under A.R.S. § 32-1401 and the following apply to this Chapter:

1. "ACLS" means advanced cardiac life support performed according to certification standards of the American Heart Association.
2. "Agent" means an item or element that causes an effect.
3. "Approved medical assistant training program" means a program accredited by any of the following:
  - a. The Commission on Accreditation of Allied Health Education Programs;
  - b. The Accrediting Bureau of Health Education Schools;

- c. A medical assisting program accredited by any accrediting agency recognized by the United States Department of Education; or
- d. A training program:
  - i. Designed and offered by a licensed allopathic physician;
  - ii. That meets or exceeds any of the prescribed accrediting programs in subsection (a), (b), or (c); and
  - iii. That verifies the entry-level competencies of a medical assistant prescribed under R4-16-402(A).
- 4. "Auscultation" means the act of listening to sounds within the human body either directly or through use of a stethoscope or other means.
- 5. "BLS" means basic life support performed according to certification standards of the American Heart Association.
- 6. "Capnography" means monitoring the concentration of exhaled carbon dioxide of a sedated patient to determine the adequacy of the patient's ventilatory function.
- 7. "Deep sedation" means a drug-induced depression of consciousness during which a patient:
  - a. Cannot be easily aroused, but
  - b. Responds purposefully following repeated or painful stimulation, and
  - c. May partially lose the ability to maintain ventilatory function.
- 8. "Discharge" means a written or electronic documented termination of office-based surgery to a patient.
- 9. "Drug" means the same as in A.R.S. § 32-1901.
- 10. "Emergency" means an immediate threat to the life or health of a patient.
- 11. "Emergency drug" means a drug that is administered to a patient in an emergency.
- 12. "General Anesthesia" means a drug-induced loss of consciousness during which a patient:
  - a. Is unarousable even with painful stimulus; and
  - b. May partially or completely lose the ability to maintain ventilatory, neuromuscular, or cardiovascular function or airway.
- 13. "Health care professional" means a registered nurse defined in A.R.S. § 32-1601, registered nurse practitioner defined in A.R.S. § 32-1601, physician assistant defined in A.R.S. § 32-2501, and any individual authorized to perform surgery according to A.R.S. Title 32 who participates in office-based surgery using sedation at a physician's office.
- 14. "Informed consent" means advising a patient of the:
  - a. Purpose for and alternatives to the office-based surgery using sedation,
  - b. Associated risks of office-based surgery using sedation, and
  - c. Possible benefits and complications from the office-based surgery using sedation.
- 15. "Inpatient" has the same meaning as in A.A.C. R9-10-201.
- 16. "Malignant hyperthermia" means a life-threatening condition in an individual who has a genetic sensitivity to inhalant anesthetics and depolarizing neuromuscular blocking drugs that occurs during or after the administration of an inhalant anesthetic or depolarizing neuromuscular blocking drug.
- 17. "Minimal Sedation" means a drug-induced state during which:
  - a. A patient responds to verbal commands,
  - b. Cognitive function and coordination may be impaired, and
  - c. A patient's ventilatory and cardiovascular functions are unaffected.
- 18. "Moderate Sedation" means a drug-induced depression of consciousness during which:
  - a. A patient responds to verbal commands or light tactile stimulation, and
  - b. No interventions are required to maintain ventilatory or cardiovascular function.
- 19. "Monitor" means to assess the condition of a patient.
- 20. "Office-based surgery" means a medical procedure conducted in a physician's office or other outpatient setting that is not part of a licensed hospital or licensed ambulatory surgical center. (A.R.S. § 32-1401(20)).
- 21. "PALS" means pediatric life support performed according to certification standards of the American Academy of Pediatrics or the American Heart Association.
- 22. "Patient" means an individual receiving office-based surgery using sedation.
- 23. "Physician" has the same meaning as doctor of medicine as defined in A.R.S. § 32-1401.
- 24. "Rescue" means to correct adverse physiologic consequences of deeper than intended level of sedation and return the patient to the intended level of sedation.
- 25. "Sedation" means minimum sedation, moderate sedation, or deep sedation.
- 26. "Staff member" means an individual who:
  - a. Is not a health care professional, and
  - b. Assists with office-based surgery using sedation under the supervision of the physician performing the office-based surgery using sedation.
- 27. "Transfer" means a physical relocation of a patient from a physician's office to a licensed health care institution.

#### Historical Note

Former Rule 12. Former Section R4-16-01 repealed, new Section R4-16-101 adopted effective June 1, 1984 (Supp. 84-3). Section repealed, new Section renumbered from R4-16-103 effective September 22, 1995 (Supp. 95-3). Amended by final rulemaking at 8 A.A.R. 830, February 7, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 4270, effective November 18, 2002 (Supp. 02-3). Former Section R4-16-101 recodified to R4-16-102 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). New Section made by final rulemaking at 12 A.A.R. 823, effective February 23, 2006 (Supp. 06-1). Amended by final rulemaking at 14 A.A.R. 380, effective January 8, 2008 (Supp. 08-1).

#### R4-16-102. Continuing Medical Education

- A. A physician holding an active license to practice medicine in this state shall complete 40 credit hours of the continuing medical education required by A.R.S. § 32-1434 during the two calendar years preceding biennial registration. A physician may not carry excess hours over to another two-year cycle. One hour of credit is allowed for each clock hour of participation in continuing medical education activities, unless otherwise designated in subsection (B).
- B. A physician may claim continuing medical education for the following:
  - 1. Participating in an internship, residency, or fellowship at a teaching institution approved by the American Medical Association, the Association of American Medical Colleges, or the American Osteopathic Association. A physician may claim one credit hour of continuing medical education for each one day of training in a full-time



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- approved program, or for a less than full-time training on a pro rata basis. In this subsection teaching institutions define "full-time."
2. Participating in an education program for an advanced degree in a medical or medically-related field in a teaching institution approved by the American Medical Association, the Association of American Medical Colleges, or the American Osteopathic Association. A physician may claim one credit hour of continuing medical education for each one day of full-time study or less than a full-time study on a pro rata basis. In this subsection teaching institutions define "full-time".
  3. Participating in full-time research in a teaching institution approved by the American Medical Association, the Association of American Medical Colleges, or the American Osteopathic Association. A physician may claim one credit hour of continuing medical education for each one day of full-time research, or less than full-time research on a pro rata basis. In this subsection teaching institutions define "full-time".
  4. Participating in an education program certified as Category 1 by an organization accredited by the Accreditation Council for Continuing Medical Education, 515 North State Street, Suite 2150, Chicago, Illinois 60610.
  5. Participating in a medical education program designed to provide understanding of current developments, skills, procedures, or treatments related to the practice of medicine, that is provided by an organization or institution accredited by the Accreditation Council for Continuing Medical Education.
  6. Serving as an instructor of medical students, house staff, other physicians, or allied health professionals from a hospital or other health care institution with a formal training program, if the instructional activities provide the instructor with understanding of current developments, skills, procedures, or treatments related to the practice of allopathic medicine.
  7. Publishing or presenting a paper, report, or book that deals with current developments, skills, procedures, or treatments related to the practice of allopathic medicine. The physician may claim one credit hour for each hour preparing, writing, and presenting materials:
    - a. Actually published or presented; and
    - b. After the date of publication or presentation.
  8. A credit hour may be earned for any of the following activities that provide an understanding of current developments, skills, procedures, or treatments related to the practice of allopathic medicine:
    - a. Completing a medical education program based on self-instruction that uses videotapes, audiotapes, films, filmstrips, slides, radio broadcasts, or computers;
    - b. Reading scientific journals and books;
    - c. Preparing for specialty board certification or recertification examinations;
    - d. Participating on a staff or quality of care committee, or utilization review committee in a hospital, health care institution, or government agency.
- C. If a physician holding an active license to practice medicine in this state fails to meet the continuing medical education requirements under subsection (A) because of illness, military service, medical or religious missionary activity, or residence in a foreign country, upon written application, shall grant an extension of time to complete the continuing medical education.
- D. The Board shall mail to each physician a license renewal form that includes a section regarding continuing medical education compliance. The physician shall sign and return the form certified under penalty of perjury that the continuing medical education requirements under subsection (A) are satisfied for the two-calendar-year period preceding biennial renewal. Failure to receive the license renewal form under subsection (A) shall not relieve the physician of the requirements of subsection (A). The Board may randomly audit a physician to verify compliance with the continuing medical education requirements under subsection (A).

**Historical Note**

Former Rule 16. Former Section R4-16-02 repealed, new Section R4-16-102 adopted effective June 1, 1984 (Supp. 84-3). Section repealed, new Section renumbered from R4-16-106 effective September 22, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 1881, effective May 3, 2000 (Supp. 00-2). Former Section R4-16-102 recodified to R4-16-103; New Section R4-16-102 recodified from R4-16-101 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

**R4-16-103. Rehearing or Review of Board Decision**

- A. A motion for rehearing or review shall be filed as follows:
1. Except as provided in subsection (B), any party in a contested case may file a written motion for rehearing or review of the Board's decision, specifying generally the grounds upon which the motion is based.
  2. A motion for rehearing or review shall be filed with the Board and served no later than 30 days after the decision of the Board.
  3. For purposes of this Section, "service" has the same meaning as in A.R.S. § 41-1092.09.
  4. For purposes of this Section, a document is deemed filed when the Board receives the document.
  5. For purposes of the Section, the terms "contested case" and "party" shall have the same meaning as in A.R.S. § 41-1001.
- B. If the Board makes a specific finding that it is necessary for a particular decision to take immediate effect to protect the public health and safety, or that a rehearing or review of the Board's decision is impracticable or contrary to the public interest, the decision shall be issued as a final decision without opportunity for rehearing or review and shall be a final administrative decision for purposes of judicial review.
- C. A written response to a motion for rehearing or review may be filed and served within 15 days after service of the motion for rehearing or review. The Board may require the filing of written briefs upon any issues raised in the motion and may provide for oral argument.
- D. A rehearing or review of a decision may be granted for any of the following reasons materially affecting a party's rights:
1. Irregularity in the administrative proceedings by the Board, its hearing officer, or the prevailing party, or any ruling or abuse of discretion, that deprives the moving party of a fair hearing;
  2. Misconduct of the Board, its hearing officer, or the prevailing party;
  3. Accident or surprise that could have not been prevented by ordinary prudence;
  4. Material evidence, newly discovered, which with reasonable diligence could not 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 that occurred at the hearing;

7. The decision is the result of a passion or prejudice; or
  8. The decision of findings of fact or decision is not justified by the evidence or is contrary to law.
- E.** A rehearing or review may be granted to all or any of the parties and on all or part of the issues for any of the reasons in subsection (D). The Board may take additional testimony, amend findings of fact and conclusions of law, or make new findings and conclusions, and affirm, modify, or reverse the original decision.
- F.** A rehearing or review, if granted, shall be a rehearing or review only of the question upon which the decision is found erroneous. An order granting a rehearing or review shall specify with particularity the grounds for the order.
- G.** Not later than 15 days after a decision is issued, the Board of its own initiative may order a rehearing or review for any reason that it might have granted a rehearing or review on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the Board may grant a timely-served motion for a rehearing or review, for a reason not stated in the motion. In either case, the Board shall specify in the order the grounds for the rehearing or review.
- H.** If a motion for rehearing or review is based upon affidavits, they shall be served with the motion. The opposing party may, within 15 days after service, serve opposing affidavits. The Board may extend this period for a maximum of 20 days either by the Board for good cause, or by the parties by written stipulation. The Board may permit reply affidavits.

**Historical Note**

Former Rule 17; Amended effective August 19, 1977 (Supp. 77-4). Former Section R4-16-03 repealed, new Section R4-16-103 adopted effective June 1, 1984 (Supp. 84-3). Section R4-16-103 renumbered to R4-16-101 effective September 22, 1995 (Supp. 95-3). New Section adopted effective May 20, 1997 (Supp. 97-2). Amended by final rulemaking at 8 A.A.R. 830, February 7, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 4270, effective November 18, 2002 (Supp. 02-3). Former Section R4-16-103 recodified to R4-16-204; new Section R4-16-103 recodified from R4-16-102 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

**R4-16-104. Recodified****Historical Note**

Former Rule 18. Former Section R4-16-04 repealed, new Section R4-16-104 adopted effective June 1, 1984 (Supp. 84-3). Section repealed effective September 22, 1995 (Supp. 95-3). New Section adopted effective January 20, 1998 (Supp. 98-1). Section recodified to R4-16-206 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

**R4-16-105. Recodified****Historical Note**

Former Rule 19. Former Section R4-16-05 repealed, new Section R4-16-105 adopted effective June 1, 1984 (Supp. 84-3). Section repealed effective September 22, 1995 (Supp. 95-3). New Section adopted effective January 20, 1998 (Supp. 98-1). Section recodified to R4-16-207 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

**R4-16-106. Recodified****Historical Note**

Former Rule 21. Former Section R4-16-06 repealed, new Section R4-16-106 adopted effective June 1, 1984 (Supp. 84-3). Section R4-16-106 renumbered to R4-16-102 effective September 22, 1995 (Supp. 95-3). New Section adopted by final rulemaking at 6 A.A.R. 1881, effective

May 3, 2000 (Supp. 00-2). Section recodified to R4-16-201 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

**R4-16-107. Recodified****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 1881, effective May 3, 2000 (Supp. 00-2). Section recodified to R4-16-202 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

**R4-16-108. Recodified****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 1881, effective May 3, 2000 (Supp. 00-2). Section recodified to R4-16-203 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

**Table 1. Recodified****Historical Note**

Table 1 adopted effective January 20, 1998 (Supp. 98-1). Table 1 recodified to the end of Article 2 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

**R4-16-109. Recodified****Historical Note**

New Section made by final rulemaking at 8 A.A.R. 830, February 7, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 4270, effective November 18, 2002 (Supp. 02-3). Section recodified to R4-16-205 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

**ARTICLE 2. LICENSURE****R4-16-201. Application for Licensure**

- A.** For purposes of this Article, unless otherwise specified:
1. "ECFMG" means Educational Commission for Foreign Medical Graduates.
  2. "FLEX" means Federation Licensing Examination.
  3. "LMCC" means Licentiate of the Medical Council of Canada.
  4. "Medical Condition" means the following physiological, mental, or psychological conditions or disorders: (a) chronic and uncorrected orthopedic, visual, speech, or hearing impairments; (b) cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, HIV disease, or tuberculosis; or (c) specific learning disabilities, dementia, Alzheimer's, bipolar disorder, schizophrenia, paranoia, or any psychotic disorder.
  5. "SPEX" means Special Purposes Examination.
  6. "USMLE" means United States Medical Licensing Examination.
- B.** An applicant for licensure to practice medicine by endorsement, Step 3 of the USMLE, or by endorsement with the SPEX shall submit the following information on an application form provided by the Board:
1. Applicant's full name, social security number, business and home addresses, business and home telephone numbers, and date and place of birth;
  2. Names of the states or provinces in which the applicant has applied for or has been granted a license or registration to practice medicine, including license number, date issued, and current status of the license;
  3. Whether the applicant has had an application for medical licensure denied or rejected by another state or province licensing board, and if so, an explanation;

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4. Whether any disciplinary or rehabilitative action has ever been taken against the applicant by another licensing board, including other health professions, and if so, an explanation;
  5. Whether any disciplinary actions, restrictions, or limitations have been taken against the applicant while participating in any type of training program or by any health care provider, and if so, an explanation;
  6. Whether the applicant has been found in violation of a statute, rule, or regulation of any domestic or foreign governmental agency, and if so, an explanation;
  7. Whether the applicant is currently under investigation by any medical board or peer review body, and if so, an explanation;
  8. Whether the applicant has ever had a medical license disciplined resulting in a revocation, suspension, limitation, restriction, probation, voluntarily surrender, cancellation during an investigation or entered into a consent agreement or stipulation, and if so, an explanation;
  9. Whether the applicant has had hospital privileges revoked, denied, suspended, or restricted, and if so, an explanation;
  10. Whether the applicant has been named as a defendant in a malpractice matter currently pending or that resulted in a settlement or judgment against the applicant, and if so, an explanation;
  11. Whether the applicant has been subjected to any regulatory disciplinary action, including censure, practice restriction, suspension, sanction, or removal from practice, imposed by any agency of the federal or state government, and if so, an explanation;
  12. Whether the applicant has had the authority to prescribe, dispense, or administer medications limited, restricted, modified, denied, surrendered, or revoked by a federal or state agency, and if so, an explanation;
  13. Whether the applicant, within the last five years, has or had a medical condition that impairs or limits the applicant's ability to safely practice medicine, and if so, an explanation;
  14. Whether the applicant engages in the illegal use of any controlled substance, habit-forming drug, or prescription medication, and if so, an explanation;
  15. Whether the applicant has consumed intoxicating beverages resulting in the applicant's present ability to exercise the judgment and skills of a medical professional, being impaired or limited, and if so, an explanation;
  16. Whether the applicant has been found guilty or entered into a plea of no contest to a felony, or misdemeanor involving moral turpitude in any state, and if so, an explanation;
  17. A complete list of the applicant's internship, residency, and fellowship training;
  18. Whether the applicant is currently certified by any of the American Board of Medical Specialties;
  19. The applicant's intended specialty;
  20. Consistent with the Board's statutory authority, other information the Board may deem necessary to fully evaluate the applicant;
  21. A photograph of passport quality no larger than 2 1/2 x 3 inches taken not more than 60 days before the date of application; and
  22. A notarized statement, signed by the applicant, verifying the truthfulness of the information provided, and that the applicant has not engaged in any acts prohibited by Arizona law or Board rules, and authorizing release of any required records or documents to complete application review.
- C.** In addition to the application form, an applicant for licensure to practice medicine by endorsement, Step 3 of the USMLE, or endorsement with the SPEX shall submit the following:
1. Certified copy of the applicant's birth certificate or passport;
  2. Certified evidence of legal name change if the applicant's legal name is different from that shown on the document submitted under subsection (B)(1);
  3. Complete list of all hospital affiliations and employment for the past five years;
  4. Verification of any medical malpractice matter currently pending or resulting in a settlement or judgment against the applicant, including a copy of the complaint and either the agreed terms of settlement or the judgment. The verification must contain the name and address of each defendant, the name and address of each plaintiff, the date and location of the occurrence which created the claim and a statement specifying the nature of the occurrence resulting in the medical malpractice action; and
  5. The fee required in A.R.S. § 32-1436.
- D.** In addition to the requirements of subsections (A) and (B), an applicant for licensure to practice medicine by endorsement, by Step 3 of the USMLE, or by endorsement with the SPEX shall have the following completed by persons other than the applicant and directly submitted to the Board, electronically or by hard copy, from the entity that is responsible for the initial issuance of the document, the federation credentials verification service, veridoc, or ECFMG:
1. The following certifications:
    - a. Medical College Certification,
    - b. Postgraduate Training Certification,
    - c. Clinical Instructor Certification, and
    - d. ECFMG certification if applicant is an international graduate;
  2. Federation of State Medical Boards Disciplinary Search;
  3. American Medical Association Physician Profile;
  4. The following verifications:
    - a. Verification of American Board of Medical Specialty Certification, if applicable;
    - b. Verification of LMCC exam score, state written exam score, or national board exam score;
    - c. Verification of licensure from every state in which the applicant has ever held a medical license; and
    - d. Verification of all hospital affiliations and employment for the past five years, submitted by the verifying entity on its official letterhead; and
  5. Examination and Board History Report scores for USMLE, FLEX, and SPEX.
- E.** The Board may grant a waiver of any requirement set forth in subsection (D) under the following circumstances:
1. The applicant has filed a waiver request of one or more of the specific requirements under subsection (D) that were set forth in the deficiency notice required by R4-16-206(B)(1) that includes the following information:
    - a. The applicant's name,
    - b. The date of the request,
    - c. The specific requirement for which a waiver is requested,
    - d. A detailed description of the efforts that the applicant has made to ensure that the document was provided to the board as required by subsection (D), and
    - e. The reasons the applicant is unable to comply with the specific requirement of subsection (D) due to no fault of the applicant.

2. The board shall consider a waiver request and any documents submitted pursuant to subsections (1) and (2) at:
  - a. Its next regularly scheduled meeting if received at least 30 days before that meeting date, or
  - b. At any subsequent meeting following its next regularly scheduled meeting if the information is received less than 30 days before its next regularly scheduled meeting date.
3. In determining whether to grant or deny the waiver request, the board shall consider the following:
  - a. Whether the applicant has made appropriate and sufficient efforts to satisfy the specific requirement of subsection (D); and
  - b. Whether the applicant has satisfactorily demonstrated that compliance with the specific requirement of subsection (D) is not possible because:
    - i. The entity responsible for issuing the required documentation no longer exists,
    - ii. The original of the required documentation was destroyed by accident or natural disaster,
    - iii. The entity responsible for issuing the required documentation is unable to provide it because armed conflict or internal political strife make it impossible for the entity to provide the required document, or
    - iv. Any other valid reason beyond the applicant's control that prevents compliance with the specific requirement of subsection (D).
4. In reviewing such a request, the board will consider whether it is possible for the board to directly obtain the required document from another valid source, such as another state's regulatory board, ECFMG, the federation credential verification service, or veridoc.
5. If, after considering the request, the board determines that additional information is necessary before it can determine whether to grant or deny the waiver request, it may require the applicant to obtain and provide additional information.
6. In order to obtain the waiver, the applicant must satisfy the board that the applicant is unable to comply with the requirements of subsection (D) despite the applicant's best efforts and for reasons beyond the applicant's control. The decision whether to grant the waiver lies within the sole discretion of the board and is not subject to review.
7. If the board grants the waiver, it shall notify the applicant in writing and include the written decision in its official record for that applicant.

#### Historical Note

Adopted effective September 22, 1995 (Supp. 95-3). Amended by final rulemaking at 8 A.A.R. 2319, effective May 9, 2002 (Supp. 02-2). Former Section R4-16-201 recodified to R4-16-301; New Section R4-16-201 recodified from R4-16-106 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). Amended by exempt rulemaking at 20 A.A.R. 1995, effective July 11, 2014 (Supp. 14-3).

#### R4-16-202. Application for Pro Bono Registration

- A. An applicant for a pro bono registration to practice medicine shall submit an application on a form provided by the Board that provides the information required by R4-16-106(B).
- B. In addition to the application, an applicant for a pro bono registration to practice medicine shall submit the following:
  1. Certified copy of the applicant's medical degree diploma;
  2. Certified copies of internship, residency, or fellowship certificates;

3. Photocopy of any current license to practice medicine in another state, territory, or possession of the United States or the District of Columbia, along with a letter from the medical board issuing the license, certifying that the license is current and in good standing;
4. Certified copy of ECFMG certificate, if applicable;
5. The fee required in A.R.S. § 32-1436.
- C. In addition to the requirements of subsections (A) and (B), an applicant for pro bono registration shall have the following directly submitted to the Board:
  1. American Medical Association physician profile;
  2. Federation of State Medical Boards disciplinary search; and
  3. Verification of licensure from every state in which the applicant has ever held a license.

#### Historical Note

Adopted effective September 22, 1995 (Supp. 95-3). Amended by final rulemaking at 8 A.A.R. 2319, effective May 9, 2002 (Supp. 02-2). Former Section R4-16-202 recodified to R4-16-302; New Section R4-16-202 recodified from R4-16-107 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

#### R4-16-203. Application for Locum Tenens Registration

- A. An applicant for a locum tenens registration to practice medicine shall submit an application on a form provided by the Board that provides the information required by R4-16-107(A).
- B. In addition to the application, an applicant for a locum tenens registration to practice medicine shall submit the following:
  1. Certified copy of the applicant's medical degree diploma;
  2. Certified copies of internship, residency, or fellowship certificates;
  3. A statement completed by the sponsoring Arizona-licensed physician giving the reason for the request for issuance of the registration; and
  4. Certified copy of ECFMG certificate, if applicable.
- C. In addition to the requirements of subsections (A) and (B), an applicant for locum tenens registration shall have the following directly submitted to the Board:
  1. American Medical Association physician profile;
  2. Federation of State Medical Boards disciplinary search; and
  3. Verification of licensure from every state in which the applicant has ever held a license.

#### Historical Note

Adopted effective September 22, 1995 (Supp. 95-3). Amended by final rulemaking at 8 A.A.R. 2319, effective May 9, 2002 (Supp. 02-2). Former Section R4-16-203 recodified to R4-16-303; New Section R4-16-203 recodified from R4-16-108 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

#### R4-16-204. Licensure by Endorsement

- A. An applicant for licensure by endorsement may make a written request of the Board, for an extension of the seven-year period provided by A.R.S. § 32-1426(B)(4) to pass one of the combinations of specified examinations. The applicant shall submit the written request to the Board with evidence that:
  1. The applicant meets all requirements for licensure and for taking the United States Medical Licensing Examination,
  2. The combination of examinations cannot be passed in the time required by law, and
  3. The applicant is:
    - a. A full-time student in an approved school of medicine, as defined in A.R.S. § 32-1401(5);

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- b. A participant in an approved hospital internship, residency, or clinical fellowship program, as defined in A.R.S. § 32-1401(4); or
  - c. A full-time student in a recognized medical degree program, as defined in subsection (E), concurrently or consecutively with medical school or postgraduate training.
- B.** If the Board determines that the applicant satisfies the requirements of subsection (A), the Board shall grant the extension.
- C.** An extension shall not exceed 10 years from the date on which the applicant successfully completes the first part of the combination of examinations.
- D.** If the Board denies the request for extension, the applicant may request a hearing by filing a written notice with the Board no later than 30 days after receipt of notice of the Board's action. A hearing shall be conducted according to A.R.S. Title 41, Chapter 6, Article 10.
- E.** In this Section, a "recognized degree program" means an education program offered by a college or university approved by the New England Association of Schools and Colleges, Middle States Association of Colleges and Secondary Schools, North Central Association of Colleges and Schools, Northwest Association of Schools and Colleges, Southern Association of Colleges and Schools, or Western Association of Schools and Colleges or accredited by the United States Department of Education, Council on Postsecondary Accreditation, Association of American Medical Colleges, the Association of Canadian Medical Colleges, or the American Medical Association.
- F.** An applicant for licensure by endorsement under A.R.S. § 32-1426(C) who provides proof of passing an examination specified in A.R.S. § 32-1426(A) more than ten years before the date of filing shall:
- 1. Hold a current certification in an American Board of Medical Specialty ("ABMS"), or
  - 2. Take and pass the Special Purposes Examination (SPEX).
- 9. Annual registration of an approved internship, residency, clinical fellowship program, or short-term residency program, \$50;
  - 10. Annual teaching license at an approved school of medicine or at an approved hospital internship, residency, or clinical fellowship program, \$250;
  - 11. Five-day teaching permit at an approved school of medicine or at an approved hospital internship, residency, or clinical fellowship program, \$100;
  - 12. Copy of the annual allopathic medical directory, \$30;
  - 13. Initial registration to dispense drugs and devices, \$200;
  - 14. Annual renewal to dispense drugs and devices, \$150;
  - 15. Penalty fee for late renewal of an active license, \$350;
  - 16. Verifying a license, \$10 per request;
  - 17. Copies of records, documents, letters, minutes, applications, and files, \$1 for the first three pages and 25¢ for each additional page; and
  - 18. Data disk containing public information about licensed physicians, \$100..

**Historical Note**

Adopted effective September 22, 1995 (Supp. 95-3).  
 Amended by final rulemaking at 8 A.A.R. 2319, effective May 9, 2002 (Supp. 02-2). Former Section R4-16-205 recodified to R4-16-305; New Section R4-16-205 recodified from R4-16-109 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). Amended by final rulemaking 19 A.A.R. 1300, effective July 6, 2013 (Supp. 13-2).  
 Amended by exempt rulemaking at 20 A.A.R. 2569, effective September 2, 2014 (Supp. 14-3).

**R4-16-206. Time-frames for Licenses, Permits, and Registrations**

- A.** For each type of license, permit, or registration issued by the Board, the overall time-frame under A.R.S. § 41-1072(2) is shown on Table 1.
- B.** For each type of license, permit, or registration issued by the Board, the administrative completeness review time-frame under A.R.S. § 41-1072(1) is shown on Table 1 and begins on the date the Board receives an application and all required documentation and information.
- 1. If the required application is not administratively complete, the Board shall send a written deficiency notice to the applicant.
    - a. In the deficiency notice, the Board shall state each deficiency and the information required to complete the application or supporting documentation. In the deficiency notice, the Board shall include a written notice that the application is withdrawn if the applicant does not submit the additional information within the time provided for response.
    - b. Within the time provided in Table 1 for response to a deficiency notice, the applicant shall submit to the Board the requested documentation or information specified in the notice. The time-frame for the Board to finish the administrative completeness review is suspended from the date of the notice until the date the Board receives the requested documentation or information from the applicant.
  - 2. Within 30 days after receipt of a deficiency notice, an applicant may submit a written hearing request to the Board.
  - 3. The Board shall schedule and conduct the applicant's deficiency hearing according to provisions prescribed under A.R.S. § 32-1427(E).

**Historical Note**

Adopted effective September 22, 1995 (Supp. 95-3).  
 Amended by final rulemaking at 8 A.A.R. 2319, effective May 9, 2002 (Supp. 02-2). Former Section R4-16-204 recodified to R4-16-304; New Section R4-16-204 recodified from R4-16-103 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

**R4-16-205. Fees**

The Board charges the following fees, which are nonrefundable unless A.R.S. § 41-1077 applies:

- 1. Application for a license through endorsement, USMLE Step 3, or Endorsement with SPX Examination, \$500;
- 2. Issuance of an initial license, \$500, which may be prorated from date of issuance to date of license renewal;
- 3. Two-year license renewal, \$500;
- 4. Reactivation of an inactive license, \$500, which may be prorated from date of reactivation to date of license renewal;
- 5. Locum tenens registration, \$350;
- 6. Duplicate license, \$50;
- 7. Effective September 2, 2014, a fingerprint processing fee for an initial application and completed fingerprint card, \$50.00;
- 8. Effective September 2, 2014, if a person did not submit fingerprints when the person was initially licensed, a fingerprint processing fee for a person completing a fingerprint card and renewing for the first time on or after September 2, 2014;

4. In addition to hearing provisions prescribed under subsection (B)(3), the Board shall send the following to the applicant in writing:
- A notice of a scheduled hearing at least 21 days before the hearing date; and
  - The Board's decision within 30 days after the hearing that shall include notice of any applicable right of appeal.
- C. For each type of license, permit, or registration issued by the Board, the substantive review time-frame under A.R.S. § 41-1072(3) is shown on Table 1.
- The Board may request additional information from an applicant according to provisions prescribed under A.R.S. § 41-1075 during the substantive review time-frame. In any request for additional information, the Board shall include a written notice that the application is withdrawn if the applicant does not submit the additional information within the time provided for response.
  - In response to a single comprehensive written request from the Board under A.R.S. § 41-1075(A), the applicant shall submit the information identified to the Board within the time to respond specified in Table 1. The time-frame for the Board to finish the substantive review is suspended from the date the Board sends the comprehensive written request for additional information until the date the Board receives the additional information from the applicant.
  - If the Board determines that the applicant does not meet all substantive criteria for a license, permit, or registration as required under A.R.S. Title 32, Chapter 13 or this Chapter, the Board shall send written notice of denial to the applicant. The Board shall include notification of any applicable right of appeal in the denial notice.
  - If the applicant meets all substantive criteria for a license, permit, or registration required under A.R.S. Title 32, Chapter 13 and this Chapter, the Board shall issue the applicable license, permit, or registration to the applicant.
- B. For license renewal, the administrative completeness review time-frame described in A.R.S. § 41-1072(1) is 45 days and begins on the date the Board receives the renewal application.
- If the required application is not administratively complete, the Board shall send a written deficiency notice to the applicant.
    - In a deficiency notice, the Board shall state each deficiency and the information required to complete the application or supporting documentation.
    - Within 60 days after the Board sends a deficiency notice, the applicant shall submit to the Board the requested documentation or information specified in the notice. The time-frame for the Board to finish the administrative completeness review is suspended from the date of the notice until the date the Board receives the requested documentation or information from the applicant.
  - The provisions prescribed under R4-16-206(B)(2) through (B)(4) apply to this Section.
- C. For license renewal, the substantive review time-frame under A.R.S. § 41-1072(3) is 45 days.
- During the substantive review time-frame, the Board may request additional information according to provisions prescribed under A.R.S. § 41-1075.
  - The applicant shall submit to the Board information identified by a single comprehensive written request from the Board for additional information allowed under A.R.S. § 41-1075(A) within 60 days after the Board sends its request.
  - If the applicant meets all license renewal substantive criteria and remits the applicable fee required under A.R.S. Title 31, Chapter 13 and this Chapter, the Board shall issue a license renewal to the applicant.
- D. If a person holding an active license does not apply for license renewal according to the biennial renewal requirement or fails to meet time-frame requirements under this Section, the person's license expires according to provisions prescribed under A.R.S. § 32-1430(A) unless the person is under investigation according to provisions prescribed under A.R.S. § 32-3202.

**Historical Note**

New Section recodified from R4-16-104 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). Amended by final rulemaking at 11 A.A.R. 2944, effective September 10, 2005 (Supp. 05-3).

**R4-16-207. Time-frames for License Renewal; Expiration**

- A. For license renewal, the overall time-frame under A.R.S. § 41-1072(2) is 90 days.

**Historical Note**

New Section recodified from R4-16-105 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). Amended by final rulemaking at 11 A.A.R. 2944, effective September 10, 2005 (Supp. 05-3).

**Table 1. Time-frames****Time-frames (in calendar days)**

Type of License	Overall Time-frame	Administrative Review Time-frame	Time to Respond to Deficiency Notice	Substantive Review Time-frame	Time to Respond to Request for Additional Information
Initial License by Examination	240	120	365	120	90
Initial License by Endorsement	240	120	365	120	90
Locum Tenens or Pro Bono Registration	120	60	30	60	30
Temporary License	60	30	30	30	30
Teaching License	40	20	30	20	30
Educational Teaching Permit	20	10	30	10	10
Training Permit	40	20	30	20	30
Short Term Training Permit	40	20	30	20	30

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One-year Training Permit	40	20	30	20	30
Registration to Dispense Controlled Substances and Prescription-only Drugs and Devices	150	45	30	105	30

**Historical Note**

Table 1 recodified from Article 1 to end of Article 2 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). Amended by final rulemaking at 11 A.A.R. 2944, effective September 10, 2005 (Supp. 05-3).

**ARTICLE 3. DISPENSING OF DRUGS**

**R4-16-301. Registration and Renewal**

- A. A physician who wishes to dispense a controlled substance as defined in A.R.S. § 32-1901(12), a prescription-only drug as defined in A.R.S. § 32-1901(65), or a prescription-only device as defined in A.R.S. § 32-1901(64) shall be currently licensed to practice medicine in Arizona and shall provide to the Board the following:
1. A completed registration form that includes the following information:
    - a. The physician's name, license number, and field of practice;
    - b. A list of the types of drugs and devices the physician will dispense; and
    - c. The location or locations where the physician will dispense a controlled substance, a prescription-only drug, or a prescription-only device.
  2. A copy of the physician's current Drug Enforcement Administration Certificate of Registration for each dispensing location from which the physician will dispense a controlled substance.
  3. The fees required in A.R.S. § 32-1436.
- B. A physician shall renew a registration to dispense a controlled substance, a prescription-only drug, or a prescription-only device by complying with the requirements in subsection (A) on or before June 30 of each year. If a physician has made timely and complete application for the renewal of a registration, the physician may continue to dispense until the Board approves or denies the renewal application.
- C. If the completed annual renewal form, all required documentation, and the fee are not received in the Board's office on or before June 30, the physician shall not dispense any controlled substances, prescription-only drugs, or prescription-only devices until re-registered. The physician shall re-register by filing for initial registration under subsection (A) and shall not dispense a controlled substance, a prescription-only drug, or a prescription-only device until receipt of the re-registration.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 751, effective February 2, 2000 (Supp. 00-1). Former Section R4-16-301 recodified to R4-16-401; New Section R4-16-301 recodified from R4-16-201 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

**R4-16-302. Packaging and Inventory; Exception**

- A. A physician shall dispense all controlled substances and prescription-only drugs in prepackaged containers or in light-resistant containers with consumer safety caps, that comply with standards specified in the official compendium as defined in A.R.S. § 32-1901(49) and state and federal law, unless a patient or a patient's representative requests a non-safety cap.
- B. All controlled substances and prescription-only drugs dispensed shall be labeled with the following information:
1. The physician's name, address, and telephone number;
  2. The date the controlled substance and prescription-only drug is dispensed;
  3. The patient's name;

4. The controlled substance and prescription-only drug name, strength, and dosage, form, name of manufacturer, the quantity dispensed, directions for use, and any cautionary statement necessary for the safe and effective use of the controlled substance and prescription-only drug; and
  5. A beyond-use-date not to exceed one year from the date of dispensing or the manufacturer's expiration date if less than one year.
- C. A physician shall secure all controlled substances in a locked cabinet or room and shall control access to the cabinet or room by a written procedure that includes, at a minimum, designation of the persons who have access to the cabinet or room and procedures for recording requests for access to the cabinet or room. This written procedure shall be made available on demand to the Board or its authorized representatives for inspection or copying. Prescription-only drugs shall be stored so as not to be accessible to patients.
- D. Controlled substances and prescription-only drugs not requiring refrigeration shall be maintained in an area where the temperature does not exceed 85° F.
- E. A physician shall maintain an ongoing dispensing log for all controlled substances and the prescription-only drug nalbuphine hydrochloride (Nubain) dispensed by the physician. The dispensing log shall include the following:
1. A separate inventory sheet for each controlled substance and prescription-only drug;
  2. The date the drug is dispensed;
  3. The patient's name;
  4. The dosage, controlled substance and prescription-only drug name, strength, dosage, form, and name of the manufacturer;
  5. The number of dosage units dispensed;
  6. A running total of each controlled substance and prescription-only drug dispensed; and
  7. The signature of the physician written next to each entry.
- F. A physician may use a computer to maintain the dispensing log required in subsection (E) if the log is quickly accessible through either on-screen viewing or printing of a copy.
- G. This Section does not apply to a prepackaged manufacturer sample of a controlled substance and prescription-only drug, unless otherwise provided by federal law.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 751, effective February 2, 2000 (Supp. 00-1). Former Section R4-16-302 recodified to R4-16-402; New Section R4-16-302 recodified from R4-16-202 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

**R4-16-303. Prescribing and Dispensing Requirements**

- A. A physician shall record on the patient's medical record the name, strength, dosage, and form, of the controlled substance, prescription-only drug, or prescription-only device dispensed, the quantity or volume dispensed, the date the controlled substance, prescription-only drug, or prescription-only device is dispensed, the medical reasons for dispensing the controlled substance, prescription-only drug, or prescription-only device, and the number of refills authorized.

- B. Before dispensing a controlled substance, prescription-only drug, or prescription-only device to a patient, a physician shall review the prepared controlled substance, prescription-only drug, or prescription-only device to ensure that:
  1. The container label and contents comply with the prescription, and
  2. The patient is informed of the name of the controlled substance, prescription-only drug, or prescription-only device, directions for use, precautions, and storage requirements.
- C. A physician shall purchase all dispensed controlled substances, prescription-only drugs, or prescription-only devices from a manufacturer or distributor approved by the United States Food and Drug Administration, or a pharmacy holding a current permit from the Arizona Board of Pharmacy.
- D. The person who prepares a controlled substance, prescription-only drug, or prescription-only device for dispensing shall countersign and date the original prescription form for the controlled substance, prescription-only drug, or prescription-only device.
- E. For purposes of this Article, "dispensing" means the delivery of a controlled substance, a prescription-only drug, or a prescription-only device to a patient for use outside the physician's office.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 751, effective February 2, 2000 (Supp. 00-1). Amended by final rulemaking at 6 A.A.R. 4585, effective November 14, 2000 (Supp. 00-4). Former Section R4-16-303 recodified to R4-16-403; New Section R4-16-303 recodified from R4-16-203 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

#### R4-16-304. Recordkeeping and Reporting Shortages

- A. A physician who dispenses a controlled substance or prescription-only drug shall ensure that an original prescription dispensed from the physician's office is dated, consecutively numbered in the order in which it is originally dispensed, and filed separately from patient medical records. A physician shall ensure that an original prescription be maintained in three separate files, as follows:
  1. Schedule II controlled substances;
  2. Schedule III, IV, and V controlled substances; and
  3. Prescription-only drugs.
- B. A physician shall ensure that purchase orders and invoices are maintained for all controlled substances and prescription-only drugs dispensed for profit and not for profit for three years from the date of the purchase order or invoice. Purchase orders and invoices shall be maintained in three separate files as follows:
  1. Schedule II controlled substances only;
  2. Schedule III, IV, and V controlled substances and nalbuphine; and
  3. All other prescription-only drugs.
- C. A physician who discovers a theft or loss of a controlled substance or a dangerous drug, as defined in A.R.S. § 13-3401, from the physician's office shall:
  1. Immediately notify the local law enforcement agency,
  2. Provide that agency with a written report, and
  3. Send a copy to the Drug Enforcement Administration and the Board within seven days of the discovery.
- D. For purposes of this Section, controlled substances are identified, defined, or listed in A.R.S. Title 36, Chapter 27.

#### Historical Note

New Section recodified from R4-16-204 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

#### R4-16-305. Inspections; Denial and Revocation

- A. A physician shall cooperate with and allow access to the physician's office and records for periodic inspection of dispensing practices by the Board or its authorized representative. Failure to cooperate or allow access shall be grounds for revocation of a physician's registration to dispense a controlled substance, prescription-only drug, or prescription-only device or denial of renewal of the physician's dispensing registration.
- B. Failure to comply with A.R.S. § 32-1491 or this Article constitutes grounds for denial or revocation of dispensing registration.
- C. The Board shall revoke a physician's registration to dispense a controlled substance, prescription-only drug, or prescription-only device upon occurrence of the following:
  1. Suspending, revoking, surrendering, or canceling the physician's license;
  2. Placing the physician's license on inactive status;
  3. Failing to timely renew the physician's license; or
  4. Restricting the physician's ability to prescribe or administer medication, including loss or expiration of the physician's Drug Enforcement Administration Certificate of Registration.
- D. If the Board denies a physician's dispensing registration, the physician may appeal the decision by filing a request, in writing, with the Board, no later than 30 days after receipt of the notice denying the registration.

#### Historical Note

New Section recodified from R4-16-205 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

### ARTICLE 4. MEDICAL ASSISTANTS

#### R4-16-401. Medical Assistant Training Requirements

- A. A supervising physician or physician assistant shall ensure that a medical assistant satisfies one of the following training requirements before employing the medical assistant:
  1. Completion of an approved medical assistant training program; or
  2. Completion of an unapproved medical assistant training program and passage of the medical assistant examination administered by either the American Association of Medical Assistants or the American Medical Technologists.
- B. This Section does not apply to any person who:
  1. Before February 2, 2000:
    - a. Completed an unapproved medical assistant training program and was employed as a medical assistant after program completion; or
    - b. Was directly supervised by the same physician, physician group, or physician assistant for a minimum of 2000 hours; or
  2. Completes a United States Armed Forces medical services training program.

#### Historical Note

New Section made by final rulemaking at 8 A.A.R. 830, February 7, 2002 (Supp. 02-1). Former Section R4-16-401 recodified to R4-16-501; New Section R4-16-401 recodified from R4-16-301 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). Former Section R4-16-401 repealed; New Section R4-16-401 renumbered from R4-16-402 and amended by final rulemaking at 12 A.A.R. 823, effective February 23, 2006 (Supp. 06-1).

#### R4-16-402. Authorized Procedures for Medical Assistants

- A. A medical assistant may perform, under the direct supervision of a physician or a physician assistant, the medical procedures listed in the 2003 revised edition, Commission on Accredita-



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tion of Allied Health Education Program's, "Standards and Guidelines for an Accredited Educational Program for the Medical Assistant, Section (III)(C)(3)(a) through (III)(C)(3)(c)." This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and may be obtained from the publisher at 35 East Wacker Drive, Suite 1970, Chicago, Illinois 60601, www.caahep.org, or the Arizona Medical Board at 9545 E. Doubletree Ranch Road, Scottsdale, AZ 85258, www.azmd.gov.

**B.** In addition to the medical procedures in subsection (A), a medical assistant may administer the following under the direct supervision of a physician or physician assistant:

1. Whirlpool treatments,
2. Diathermy treatments,
3. Electronic galvitation stimulation treatments,
4. Ultrasound therapy,
5. Massage therapy,
6. Traction treatments,
7. Transcutaneous Nerve Stimulation unit treatments,
8. Hot and cold pack treatments, and
9. Small volume nebulizer treatments.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 830, February 7, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 4270, effective November 18, 2002 (Supp. 02-3). Former Section R4-16-402 recodified to R4-16-502; New Section R4-16-402 recodified from R4-16-302 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). Former Section R4-16-402 renumbered to R4-16-401; New Section R4-16-402 renumbered from R4-16-403 and amended by final rulemaking at 12 A.A.R. 823, effective February 23, 2006 (Supp. 06-1).

**R4-16-403. Renumbered**

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 830, February 7, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 4270, effective November 18, 2002 (Supp. 02-3). Former Section R4-16-403 recodified to R4-16-503; New Section R4-16-403 recodified from R4-16-303 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1). Former Section R4-16-403 renumbered to R4-16-402 by final rulemaking at 12 A.A.R. 823, effective February 23, 2006 (Supp. 06-1).

**R4-16-404. Recodified**

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 830, February 7, 2002 (Supp. 02-1). Section recodified to R4-16-504 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

**R4-16-405. Recodified**

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 830, February 7, 2002 (Supp. 02-1). Section recodified to R4-16-505 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

**R4-16-406. Recodified**

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 830, February 7, 2002 (Supp. 02-1). Section recodified to R4-16-506 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

**R4-16-407. Recodified**

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 830, February 7, 2002 (Supp. 02-1). Section recodified to R4-16-507 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

**R4-16-408. Recodified**

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 830, February 7, 2002 (Supp. 02-1). Section recodified to R4-16-508 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

**R4-16-409. Recodified**

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 830, February 7, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 4270, effective November 18, 2002 (Supp. 02-3). Section recodified to R4-16-509 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

**R4-16-410. Recodified**

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 830, February 7, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 4270, effective November 18, 2002 (Supp. 02-3). Section recodified to R4-16-510 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

**ARTICLE 5. EXECUTIVE DIRECTOR DUTIES**

**R4-16-501. Interim Evaluation and Investigational Interview**

- A.** The executive director may require a physician, who is under investigation by the Board, to submit to a mental, physical, oral, or written medical competency examination after the following:
1. Reviewing the allegations and investigator's summary of findings; and
  2. Consulting with and receiving the agreement of the Board's supervising medical consultant or designee that an examination is necessary.
- B.** The executive director may request a physician to attend an investigational interview to answer questions regarding a complaint against the physician. Before issuing a request for an investigational interview, the executive director shall review the allegations and facts to determine whether an interview is necessary to provide information the Board needs to adjudicate the case. The executive director shall consult with and receive the agreement of either the investigation supervisor or supervising medical consultant that an investigational interview is necessary before requesting one.
- C.** The executive director shall report to the Board at each regularly scheduled Board meeting, a summary of the number and type of evaluations ordered and completed since the preceding Board meeting.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 2274, effective August 12, 2003 (Supp. 03-2). Former Section R4-16-501 recodified to R4-16-601; New Section R4-16-501 recodified from R4-16-401 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

**R4-16-502. Direct Referral to Formal Interview**

The executive director shall refer a case to a formal interview on a future Board meeting agenda, if the medical consultant in cases involving quality of care, the investigative staff, and the lead Board

member concur after review of the case that a formal interview is appropriate.

#### Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 2274, effective August 12, 2003 (Supp. 03-2). Former Section R4-16-502 recodified to R4-16-602; New Section R4-16-502 recodified from R4-16-402 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

*Editor's Note: At the time of publication, A.R.S. § 32-1401(26) (referenced in R4-16-503) was A.R.S. § 32-1401(24). Laws 2003, Ch. 59, § 1, effective 90 days after the close of the First Regular Session of the Forty-sixth Legislature, will change the subparagraph citation to A.R.S. § 32-1401(26) (Supp. 03-2). This Section was subsequently recodified to a different Section in this Chapter. Refer to the historical notes for more information (05-1).*

#### R4-16-503. Request for Inactive Status and License Cancellation

- A. If a physician requests inactive status or license cancellation and meets the requirements of A.R.S. §§ 32-1431 and 32-1433, and is not participating in the program defined under A.R.S. § 32-1452, the executive director shall grant the request.
- B. The executive director shall provide to the Board at each regularly scheduled Board meeting a list of the individuals granted inactive or cancelled license status since the preceding Board meeting.

#### Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 2274, effective August 12, 2003 (Supp. 03-2). Former Section R4-16-503 recodified to R4-16-603; New Section R4-16-503 recodified from R4-16-403 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

#### R4-16-504. Interim Consent Agreement

The executive director may enter into an interim consent agreement with a physician if there is evidence that a restriction is needed to mitigate imminent danger to the public health and safety and the investigative staff, the medical consultant, and the lead Board member concur after review of the case that a consent agreement is appropriate.

#### Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 2274, effective August 12, 2003 (Supp. 03-2). Former Section R4-16-504 recodified to R4-16-605; New Section R4-16-504 recodified from R4-16-404 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

#### R4-16-505. Mediated Case

- A. The executive director shall close a case resolved through mediation.
- B. The executive director shall provide to the Board at each regularly scheduled Board meeting a list of the physicians whose cases are resolved through mediation since the preceding Board meeting.

#### Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 2274, effective August 12, 2003 (Supp. 03-2). Former Section R4-16-505 recodified to R4-16-606; New Section R4-16-505 recodified from R4-16-405 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

#### R4-16-506. Referral to Formal Hearing

- A. The executive director may directly refer a case to a formal hearing if the investigative staff, the medical consultant, and

the lead Board member concur after review of the physician's case that a formal hearing is appropriate.

- B. The executive director shall provide to the Board at each regularly scheduled Board meeting a list of the physicians whose cases were referred to formal hearing since the preceding Board meeting and whether the referral is for revocation, suspension or is a result of an out-of-state disciplinary action, or is due to complexity of the case.

#### Historical Note

New Section R4-16-506 recodified from R4-16-406 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

#### R4-16-507. Dismissal of Complaint

- A. The executive director, with the concurrence of the investigative staff, shall dismiss a complaint if the review shows the complaint is without merit and dismissal is appropriate.
- B. The executive director shall provide to the Board at each regularly scheduled Board meeting a list of the physicians about whom complaints were dismissed since the preceding Board meeting.

#### Historical Note

New Section R4-16-507 recodified from R4-16-407 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

#### R4-16-508. Denial of License

- A. The executive director shall deny a license to an applicant who does not meet statutory requirements for licensure if the executive director, in consultation with the investigative staff and the medical consultant concur after reviewing the application, that the applicant does not meet the statutory requirements.
- B. The executive director shall provide to the Board at each regularly scheduled Board meeting a list of the physicians whose applications were denied since the preceding Board meeting.

#### Historical Note

New Section R4-16-508 recodified from R4-16-408 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

#### R4-16-509. Non-disciplinary Consent Agreement

The executive director may enter into a consent agreement under A.R.S. § 32-1451(F) with a physician to limit the physician's practice or rehabilitate the physician if there is evidence that a licensee is mentally or physically unable to safely engage in the practice of medicine and the investigative staff, the medical consultant, and the lead Board member concur after review of the case that a consent agreement is appropriate.

#### Historical Note

New Section R4-16-509 recodified from R4-16-409 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

#### R4-16-510. Appealing Executive Director Actions

- A. Any person aggrieved by an action taken by the executive director may appeal that action to the Board. The aggrieved person shall file a written request to the Board:
  1. Thirty days after notification of the action, if personally served; or
  2. Thirty-five days after the date on the notification, if mailed.
- B. The aggrieved person shall provide, in the written request, evidence showing:
  1. An irregularity in the investigative process or the executive director's review deprived the party of a fair decision; or
  2. Misconduct by Board staff, a Board consultant, or the executive director that deprived the party of a fair decision; or

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3. Material evidence newly discovered that could have a bearing on the decision and that, with reasonable diligence, could not have been discovered and produced earlier.
- C. The fact that the aggrieved party does not agree with the final decision is not grounds for a review by the Board.
- D. If an aggrieved person fails to submit a written request within the time specified in subsection (A), the Board is relieved of the requirement to review actions taken by the executive director. The executive director may, however, evaluate newly provided information that is material or substantial in content to determine whether the Board should review the case.
- E. If a written request is submitted that meets the requirements of subsection (B):
  1. The Board shall consider the written request at its next regularly scheduled meeting.
  2. If the written request provides new material or substantial evidence that requires additional investigation, the investigation shall be conducted as expeditiously as possible and the case shall be forwarded to the Board at the first possible regularly scheduled meeting.

**Historical Note**

New Section R4-16-510 recodified from R4-16-410 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

**ARTICLE 6. DISCIPLINARY ACTIONS****R4-16-601. Expired****Historical Note**

New Section R4-16-601 recodified from R4-16-501 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).  
Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 2062, effective September 14, 2010 (Supp. 10-3).

**R4-16-602. Expired****Historical Note**

New Section R4-16-602 recodified from R4-16-502 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).  
Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 2062, effective September 14, 2010 (Supp. 10-3).

*Editor's Note: To conform with the renumbering in A.R.S., the Arizona Medical Board requested (under A.R.S. § 41-1011 et seq.) a subsection reference update in R4-16-603 [R05-85]. Please refer to the historical notes for more details (Supp. 05-1).*

**R4-16-603. Expired****Historical Note**

New Section R4-16-603 recodified from R4-16-503 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).  
A.R.S. § 32-1401(26) subsection corrected to A.R.S. § 32-1401(27) under a formal written request from the Board, March 22, 2005 (Supp. 05-1). Amended by final rulemaking at 14 A.A.R. 380, effective January 8, 2008 (Supp. 08-1). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 2062, effective September 14, 2010 (Supp. 10-3).

**R4-16-604. Aggravating Factors Considered in Disciplinary Actions**

When determining the degree of discipline, the Board may consider certain factors including, but not limited to, the following:

1. Prior disciplinary offenses;
2. Dishonest or selfish motive;
3. Pattern of misconduct; multiple offenses;

4. Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the Board;
5. Submission of false evidence, false statements, or other deceptive practices during the investigative or disciplinary process;
6. Refusal to acknowledge wrongful nature of conduct; and
7. Vulnerability of the victim.

**Historical Note**

New Section R4-16-604 recodified from R4-16-504 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

**R4-16-605. Mitigating Factors Considered in Disciplinary Actions**

When determining the degree of discipline, the Board may consider certain factors including, but not limited to, the following:

1. Absence of prior disciplinary record;
2. Absence of dishonest or selfish motive;
3. Timely good faith effort to rectify consequences of misconduct;
4. Interim rehabilitation;
5. Remoteness of prior offenses; and
6. How much control the physician has of processes in the specific practice setting.

**Historical Note**

New Section R4-16-605 recodified from R4-16-504 at 11 A.A.R. 1283, effective March 25, 2005 (Supp. 05-1).

**ARTICLE 7. OFFICE-BASED SURGERY USING SEDATION****R4-16-701. Health Care Institution License**

A physician who uses general anesthesia in the physician's office or other outpatient setting that is not part of a licensed hospital or licensed ambulatory surgical center when performing office-based surgery using sedation shall obtain a health care institution license as required by the Arizona Department of Health Services under A.R.S. Title 36, Chapter 4 and 9 A.A.C. 10.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 380, effective January 8, 2008 (Supp. 08-1).

**R4-16-702. Administrative Provisions**

A. A physician who performs office-based surgery using sedation in the physician's office or other outpatient setting that is not part of a licensed hospital or licensed ambulatory surgical center shall:

1. Establish, document, and implement written policies and procedures that cover:
  - a. Patient's rights,
  - b. Informed consent,
  - c. Care of patients in an emergency, and
  - d. The transfer of patients;
2. Ensure that a staff member who assists with or a health-care professional who participates in office-based surgery using sedation:
  - a. Has sufficient education, training, and experience to perform duties assigned;
  - b. If applicable, has a current license or certification to perform duties assigned; and
  - c. Performs only those acts that are within the scope of practice established in the staff member's or health care professional's governing statutes;
3. Ensure that the office where the office-based surgery using sedation is performed has all equipment necessary:
  - a. For the physician to safely perform the office-based surgery using sedation,

- b. For the physician or health care professional to safely administer the sedation,
    - c. For the physician or health care professional to monitor the use of sedation, and
    - d. For the physician and health care professional administering the sedation to rescue a patient after the sedation is administered to the patient and the patient enters into a deeper state of sedation than what was intended by the physician.
  - 4. Ensure that a copy of the patient's rights policy is provided to each patient before performing office-based surgery using sedation;
  - 5. Obtain informed consent from the patient before performing an office-based surgery using sedation that:
    - a. Authorizes the office-based surgery, and
    - b. Authorizes the office-based surgery to be performed in the physician's office; and
  - 6. Review all policies and procedures every 12 months and update as needed.
- B.** A physician who performs office-based surgery using sedation shall comply with:
- 1. The local jurisdiction's fire code;
  - 2. The local jurisdiction's building codes for construction and occupancy;
  - 3. The biohazardous waste and hazardous waste standards in 18 A.A.C. 13, Article 14; and
  - 4. The controlled drug administration, supply, and storage standards in 4 A.A.C. 23.

#### Historical Note

New Section made by final rulemaking at 14 A.A.R. 380, effective January 8, 2008 (Supp. 08-1).

#### R4-16-703. Procedure and Patient Selection

- A.** A physician shall ensure that each office-based surgery using sedation performed:
- 1. Can be safely performed with the equipment, staff members, and health care professionals at the physician's office;
  - 2. Is of duration and degree of complexity that allows a patient to be discharged from the physician's office within 24 hours;
  - 3. Is within the education, training, experience skills, and licensure of the physician; and
  - 4. Is within the education, training, experience, skills, and licensure of the staff members and health care professionals at the physician's office.
- B.** A physician shall not perform office-based surgery using sedation if the patient:
- 1. Has a medical condition or other condition that indicates the procedure should not be performed in the physician's office, or
  - 2. Will require inpatient services at a hospital.

#### Historical Note

New Section made by final rulemaking at 14 A.A.R. 380, effective January 8, 2008 (Supp. 08-1).

#### R4-16-704. Sedation Monitoring Standards

A physician who performs office-based surgery using sedation shall ensure from the time sedation is administered until post-sedation monitoring begins:

- 1. A quantitative method of assessing a patient's oxygenation, such as pulse oximetry, is used when minimal sedation is administered to the patient, and
- 2. When moderate or deep sedation is administered to a patient:

- a. A quantitative method of assessing the patient's oxygenation, such as pulse oximetry, is used;
- b. The patient's ventilatory function is monitored by any of the following:
  - i. Direct observation,
  - ii. Auscultation, or
  - iii. Capnography;
- c. The patient's circulatory function is monitored during the surgery by:
  - i. Having a continuously displayed electrocardiogram,
  - ii. Documenting arterial blood pressure and heart rate at least every five minutes, and
  - iii. Evaluating the patient's cardiovascular function by pulse plethysmography,
- d. The patient's temperature is monitored if the physician expects the patient's temperature to fluctuate; and
- e. That a licensed and qualified healthcare professional, other than the physician performing the office-based surgery, whose sole responsibility is attending to the patient, is present throughout the office-based surgery.

#### Historical Note

New Section made by final rulemaking at 14 A.A.R. 380, effective January 8, 2008 (Supp. 08-1).

#### R4-16-705. Perioperative Period; Patient Discharge

A physician performing office-based surgery using sedation shall ensure all of the following:

- 1. During office-based surgery using sedation, the physician is physically present in the room where office-based surgery is performed;
- 2. After the office-based surgery using sedation is performed, a physician is at the physician's office and sufficiently free of other duties to respond to an emergency until the patient's post-sedation monitoring is discontinued;
- 3. If using minimal sedation, the physician or a health care professional certified in ACLS, PALS, or BLS is at the physician's office and sufficiently free of other duties to respond to an emergency until the patient is discharged;
- 4. If using deep or moderate sedation, the physician or a health care professional certified in ACLS or PALS is at the physician's office and sufficiently free of other duties to respond to an emergency until the patient is discharged;
- 5. A discharge is documented in the patient's medical record including:
  - a. The time and date of the patient's discharge, and
  - b. A description of the patient's medical condition at the time of discharge; and
- 6. A patient receives discharge instructions and documents in the patient's medical record that the patient received the discharge instructions.

#### Historical Note

New Section made by final rulemaking at 14 A.A.R. 380, effective January 8, 2008 (Supp. 08-1).

#### R4-16-706. Emergency Drugs; Equipment and Space Used for Office-Based Surgery Using Sedation

- A.** In addition to the requirements in R4-16-702(A)(3) and R4-16-703(A)(1), a physician who performs office-based surgery using sedation shall ensure that the physician's office has at a minimum:
- 1. The following:

- a. A reliable oxygen source with a SaO<sub>2</sub> monitor;
  - b. Suction;
  - c. Resuscitation equipment, including a defibrillator;
  - d. Emergency drugs; and
  - e. A cardiac monitor;
  2. The equipment for patient monitoring according to the standards in R4-16-704;
  3. Space large enough to:
    - a. Allow for access to the patient during office-based surgery using sedation, recovery, and any emergency;
    - b. Accommodate all equipment necessary to perform the office-based surgery using sedation; and
    - c. Accommodate all equipment necessary for sedation monitoring;
  4. A source of auxiliary electrical power available in the event of a power failure; and
  5. Equipment, emergency drugs, and resuscitative capabilities required under this Section for patients less than 18 years of age, if office-based surgery using sedation is performed on these patients; and
  6. Procedures to minimize the spread of infection.
- B.** A physician who performs office-based surgery using sedation shall:

1. Ensure that all equipment used for office-based surgery using sedation is maintained, tested, and inspected according to manufacturer specifications, and
2. Maintain documentation of manufacturer-recommended maintenance of all equipment used in office-based surgery using sedation.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 380, effective January 8, 2008 (Supp. 08-1).

**R4-16-707. Emergency and Transfer Provisions**

- A.** A physician who performs office-based surgery using sedation shall ensure that before a health care professional participates in or staff member assists with office-based surgery using sedation, the health care professional and staff member receive instruction in the following:
1. Policy and procedure in cases of emergency,
  2. Policy and procedure for office evacuation, and
  3. Safe and timely patient transfer.
- B.** When performing office-based surgery using sedation, a physician shall not use any drug or agent that trigger malignant hyperthermia.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 380, effective January 8, 2008 (Supp. 08-1).

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## Board of Nursing

**TITLE 4. PROFESSIONS AND OCCUPATIONS****CHAPTER 19. BOARD OF NURSING**

(Authority: A.R.S. § 32-1602 et seq.)

**ARTICLE 1. DEFINITIONS AND TIME-FRAMES***New Article 1, consisting of R4-19-101, adopted effective July 19, 1995 (Supp. 95-3).**Article 1, consisting of R4-19-101 through R4-19-102, repealed effective July 19, 1995 (Supp. 95-3).*

## Section

R4-19-101. Definitions

R4-19-102. Time-frames for Licensure, Certification, or Approval

Table 1. Time-frames

**ARTICLE 2. ARIZONA REGISTERED AND PRACTICAL NURSING PROGRAMS; REFRESHER PROGRAMS***Article 2, consisting of R4-19-201 through R4-19-214, adopted effective July 19, 1995 (Supp. 95-3).*

## Section

R4-19-201. Organization and Administration

R4-19-202. Resources, Facilities, Services, and Records

R4-19-203. Administrator; Qualifications and Duties

R4-19-204. Faculty; Personnel Policies; Qualifications and Duties

R4-19-205. Students; Policies and Admissions

R4-19-206. Curriculum

R4-19-207. New Programs; Proposal Approval; Provisional Approval

R4-19-208. Full Approval of a New Nursing Program

R4-19-209. Nursing Program Change

R4-19-210. Renewal of Approval of Nursing Programs Not Accredited by a National Nursing Accrediting Agency

R4-19-211. Unprofessional Conduct in a Nursing Program

R4-19-212. Notice of Deficiency

R4-19-213. Nursing Programs Holding National Program Accreditation

R4-19-214. Pilot Programs for Innovative Approaches in Nursing Education

R4-19-215. Voluntary Termination of a Nursing Program or a Refresher Program

R4-19-216. Approval of a Refresher Program

R4-19-217. Distance Learning Nursing Programs; Out-of-State Nursing Programs

**ARTICLE 3. LICENSURE***Article 3, consisting of R4-19-301 through R4-19-308, adopted effective July 19, 1995 (Supp. 95-3).*

## Section

R4-19-301. Licensure by Examination

R4-19-302. Licensure by Endorsement

R4-19-303. Requirements for Credential Evaluation Service (CES)

R4-19-304. Temporary License

R4-19-305. License Renewal

R4-19-306. Inactive License

R4-19-307. Application for a Duplicate License

R4-19-308. Change of Name or Address

R4-19-309. School Nurse Certification Requirements

R4-19-310. Certified Registered Nurse

R4-19-311. Nurse Licensure Compact

R4-19-312. Practice Requirement

R4-19-313. Background

**ARTICLE 4. REGULATION***Article 4, consisting of R4-19-401 through R4-19-404, adopted effective July 19, 1995 (Supp. 95-3).*

## Section

R4-19-401. Standards Related to Licensed Practical Nurse Scope of Practice

R4-19-402. Standards Related to Registered Nurse Scope of Practice

R4-19-403. Unprofessional Conduct

R4-19-404. Re-issuance or Subsequent Issuance of License

R4-19-405. Board-ordered Evaluations

**ARTICLE 5. ADVANCED PRACTICE REGISTERED NURSING**

## Section

R4-19-501. Roles and Population Foci of Advanced Practice Registered Nursing (APRN); Certification Programs

R4-19-502. Requirements for APRN Programs

R4-19-503. Application for Approval of an Advanced Practice Registered Nursing Program; Approval by Board

R4-19-504. Notice of Deficiency; Unprofessional Program Conduct

R4-19-505. Requirements for Initial APRN Certification

R4-19-506. Expiration of APRN Certificate; Practice Requirement; Renewal

R4-19-507. Temporary Advanced Practice Certificate; Temporary Prescribing and Dispensing Authority

R4-19-508. Standards Related to Registered Nurse Practitioner Scope of Practice

R4-19-509. Delegation to Medical Assistants

R4-19-510. Expired

R4-19-511. Prescribing and Dispensing Authority; Prohibited Acts

R4-19-512. Prescribing Drugs and Devices

R4-19-513. Dispensing Drugs and Devices

R4-19-514. Standards Related to Clinical Nurse Specialist Scope of Practice

R4-19-515. Repealed

R4-19-516. Repealed

**ARTICLE 6. RULES OF PRACTICE AND PROCEDURE***Article 6, consisting of R4-19-601 through R4-19-615, adopted effective October 10, 1996 (Supp. 96-4).*

## Section

R4-19-601. Expired

R4-19-602. Letter of Concern

R4-19-603. Representation

R4-19-604. Notice of Hearing; Response

R4-19-605. Expired

R4-19-606. Expired

R4-19-607. Recommended Decision

R4-19-608. Rehearing or Review of Decision

R4-19-609. Effectiveness of Orders

R4-19-610. Expired

R4-19-611. Expired

R4-19-612. Renumbered

R4-19-613. Expired

R4-19-614. Renumbered

R4-19-615. Renumbered

**ARTICLE 7. PUBLIC PARTICIPATION PROCEDURES**

*Article 7, consisting of R4-19-701 through R4-19-706, adopted effective October 10, 1996 (Supp. 96-4).*

## Section

- R4-19-701. Expired
- R4-19-702. Petition for Rulemaking; Review of Agency Practice or Substantive Policy Statement; Objection to Rule Based Upon Economic, Small Business, or Consumer Impact
- R4-19-703. Oral Proceedings
- R4-19-704. Petition for Altered Effective Date
- R4-19-705. Written Criticism of an Existing Rule
- R4-19-706. Renumbered

**ARTICLE 8. CERTIFIED NURSING ASSISTANTS AND CERTIFIED MEDICATION ASSISTANTS**

*Article 8, consisting of Sections R4-19-801 through R4-19-815, adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1).*

## Section

- R4-19-801. Common Standards for Certified Nursing Assistant (CNA) and Certified Medication Assistant (CMA) Training Programs
- R4-19-802. CNA Program Requirements
- R4-19-803. Certified Medication Assistant Program Requirements
- R4-19-804. Initial Approval and Re-approval Training Programs
- R4-19-805. Deficiencies and Rescission of Program Approval, Unprofessional Program Conduct, Voluntary Termination, Disciplinary Action, and Reinstatement
- R4-19-806. Nursing Assistant and Medication Assistant Certification by Examination
- R4-19-807. Nursing Assistant and Medication Assistant Certification by Endorsement
- R4-19-808. Fees Related to Certified Medication Assistant
- R4-19-809. Nursing Assistant and Medication Assistant Certificate Renewal
- R4-19-810. Certified Nursing Assistant Register
- R4-19-811. Application for Duplicate Certificate
- R4-19-812. Change of Name or Address
- R4-19-813. Performance of Nursing Assistant Tasks; Performance of Medication Assistant Tasks
- R4-19-814. Standards of Conduct for Certified Nursing Assistants and Certified Medication Assistants
- R4-19-815. Reissuance or Subsequent Issuance of a Nursing Assistant or Medication Assistant Certificate

**ARTICLE 1. DEFINITIONS AND TIME-FRAMES****R4-19-101. Definitions**

“Abuse” means a misuse of power or betrayal of trust, respect, or intimacy by a nurse, nursing assistant, or applicant that causes or is likely to cause physical, mental, emotional, or financial harm to a client.

“Administer” means the direct application of a medication to the body of a patient by a nurse, whether by injection, inhalation, ingestion, or any other means.

“Admission cohort” means a group of students admitted at the same time to the same curriculum in a regulated nursing, nursing assistant, or advanced practice nursing program or entering the first clinical course in a regulated program at the same time. “Same time” means on the same date or within a narrow range of dates pre-defined by the program.

“Applicant” means a person seeking licensure, certification, prescribing, or prescribing and dispensing privileges, or an entity seeking approval or re-approval, if applicable, of a:

- CNS or RNP nursing program,
- Credential evaluation service,
- Nursing assistant training program,
- Nursing program,
- Nursing program change, or
- Refresher program.

“Approved national nursing accrediting agency” means an organization recognized by the United States Department of Education as an accrediting agency for a nursing program.

“Assign” means a nurse designates nursing activities to be performed by another nurse that are consistent with the other nurse's scope of practice.

“Certificate or diploma in practical nursing” means the document awarded to a graduate of an educational program in practical nursing.

“Certified medication assistant” means a certified nursing assistant who meets Board qualifications and is additionally certified by the Board to administer medications under A.R.S. § 32-1650 et. seq.

“CES” means credential evaluation service.

“Client” means a recipient of care and may be an individual, family, group, or community.

“Clinical instruction” means the guidance and supervision provided by a nursing, nursing assistant or medication assistant program faculty member while a student is providing client care.

“CMA” means certified medication assistant.

“CNA” means a certified nursing assistant, as defined in A.R.S. § 32-1601(14).

“CNS” means clinical nurse specialist, as defined in A.R.S. § 32-1601(6).

“Collaborate” means to establish a relationship for consultation or referral with one or more licensed physicians on an as-needed basis. Supervision of the activities of a registered nurse practitioner by the collaborating physician is not required.

“Contact hour” means a unit of organized learning, which may be either clinical or didactic and is either 60 minutes in length or is otherwise defined by an accrediting agency recognized by the Board.

“Continuing education activity” means a course of study related to nursing practice that is awarded contact hours by an accrediting agency recognized by the Board, or academic credits in nursing or medicine by a regionally or nationally accredited college or university.

“CRNA” means a certified registered nurse anesthetist as defined in A.R.S. § 32-1601(5).

“DEA” means the federal Drug Enforcement Administration.

“Dispense” means to package, label, and deliver one or more doses of a prescription-only medication in a suitable container for subsequent use by a patient.

“Dual relationship” means a nurse or CNA simultaneously engages in both a professional and nonprofessional relationship with a patient or resident or a patient's or resident's family that is avoidable, non-incidental, and results in the patient

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or resident or the patient's or resident's family being exploited financially, emotionally, or sexually.

"Eligibility for graduation" means that the applicant has successfully completed all program and institutional requirements for receiving a degree or diploma but is delayed in receiving the degree or diploma due to the graduation schedule of the institution.

"Endorsement" means the procedure for granting an Arizona nursing license to an applicant who is already licensed as a nurse in another state or territory of the United States and has passed an exam as required by A.R.S. §§ 32-1633 or 32-1638 or an Arizona nursing assistant or medication assistant certificate to an applicant who is already listed on a nurse aide register or certified as a medication assistant in another state or territory of the United States.

"Episodic nursing care" means nursing care at nonspecific intervals that is focused on the current needs of the individual.

"Failure to maintain professional boundaries" means any conduct or behavior of a nurse or CNA that, regardless of the nurse's or CNA's intention, is likely to lessen the benefit of care to a patient or resident or a patient's or resident's family or places the patient, resident or the patient's or resident's family at risk of being exploited financially, emotionally, or sexually;

"Full approval" means the status granted by the Board when a nursing program, after graduation of its first class, demonstrates the ability to provide and maintain a program in accordance with the standards provided by A.R.S. Title 32, Chapter 15 and this Chapter.

"Good standing" means the license of a nurse, or the certificate of a nursing assistant, is current, and the nurse or nursing assistant is not presently subject to any disciplinary action, consent order, or settlement agreement.

"Independent nursing activities" means nursing care within an RN's scope of practice that does not require authorization from another health professional.

"Initial approval" means the permission, granted by the Board, to an entity to establish a nursing assistant training program, after the Board determines that the program meets the standards provided by A.R.S. Title 32, Chapter 15 and this Chapter.

"Licensure by examination" means the granting of permission to practice nursing based on an individual's passing of a prescribed examination and meeting all other licensure requirements.

"LPN" means licensed practical nurse.

"NCLEX" means the National Council Licensure Examination.

"Nurse" means a licensed practical or registered nurse.

"Nursing diagnosis" means a clinical judgment, based on analysis of comprehensive assessment data, about a client's response to actual and potential health problems or life processes. Nursing diagnosis statements include the actual or potential problem, etiology or risk factors, and defining characteristics, if any.

"Nursing process" means applying problem-solving techniques that require technical and scientific knowledge, good judgment, and decision-making skills to assess, plan, implement, and evaluate a plan of care.

"Nursing program" means a formal course of instruction designed to prepare its graduates for licensure as registered or practical nurses.

"Nursing program administrator" means a nurse educator who meets the requirements of A.R.S. Title 32, Chapter 15 and this Chapter and has the administrative responsibility and authority for the direction of a nursing program.

"Nursing program faculty member" means an individual working full or part time within a nursing program who is responsible for either developing, implementing, teaching, evaluating, or updating nursing knowledge, clinical skills, or curricula.

"Nursing-related activities or duties" means client care tasks for which education is provided by a basic nursing assistant training program.

"P & D" means prescribing and dispensing.

"Parent institution" means the educational institution in which a nursing program, nursing assistant training program or medication assistant program is conducted.

"Patient" means an individual recipient of care.

"Pharmacology" means the science that deals with the study of drugs.

"Physician" means a person licensed under A.R.S. Title 32, Chapters 7, 8, 11, 13, 14, 17, or 29, or by a state medical board in the United States.

"Preceptor" means a licensed nurse or other health professional who meets the requirements of A.R.S. Title 32, Chapter 15 and this Chapter who instructs, supervises and evaluates a licensee, clinical nurse specialist, nurse practitioner or pre-licensure nursing student, for a defined period.

"Preceptorship" means a clinical learning experience by which a learner enrolled in a nursing program, nurse refresher program, clinical nurse specialist, or registered nurse practitioner program or as part of a Board order provides nursing care while assigned to a health professional who holds a license or certificate equivalent to or higher than the level of the learner's program or in the case of a nurse under Board order, meets the qualifications in the Board order.

"Prescribe" means to order a medication, medical device, or appliance for use by a patient.

"Private business" means any individual or sole proprietorship, partnership, limited liability partnership, limited liability company, corporation or other legal business entity.

"Proposal approval" means that an institution has met the standards provided by A.R.S. Title 32, Chapter 15 and this Chapter to proceed with an application for provisional approval to establish a pre-licensure nursing program in Arizona.

"Provisional approval" means that an institution has met the standards provided by A.R.S. Title 32, Chapter 15 and this Chapter to implement a pre-licensure nursing program in Arizona.

"Refresher program" means a formal course of instruction designed to provide a review and update of nursing theory and practice.

"Register" means a listing of Arizona certified nursing assistants maintained by the Board that includes the following about each nursing assistant:

Identifying demographic information;

Date placed on the register;  
 Date of initial and most recent certification, if applicable;  
 and  
 Status of the nursing assistant certificate, including findings of abuse, neglect, or misappropriation of property made by the Arizona Department of Health Services, sanctions imposed by the United States Department of Health and Human Services, and disciplinary actions by the Board.

“Resident” means a patient who receives care in a long-term care facility or other residential setting.

“RN” means registered nurse.

“RNP” means a registered nurse practitioner as defined in A.R.S. § 32-1601(19).

“SBTPE” means the State Board Test Pool Examination.

“School nurse” means a registered nurse who is certified under R4-19-309.

“Secure examination” means a written test given to an examinee that:

Is administered under conditions designed to prevent cheating;  
 Is taken by an individual examinee without access to aides, textbooks, other students or any other material that could influence the examinee’s score; and,  
 After opportunity for examinee review, is either never used again or stored such that only designated employees of the educational institution are permitted to access the test.

“Self-study” means a written self-evaluation conducted by a nursing program to assess the compliance of the program with the standards listed in Article 2.

“Standards related to scope of practice” means the expected actions of any nurse who holds the identified level of licensure.

“Substance use disorder” means misuse, dependence or addiction to alcohol, illegal drugs or other substances.

“Supervision” means the direction and periodic consultation provided to an individual to whom a nursing task or patient care activity is delegated.

“Unlicensed assistive personnel” or “UAP” means a CNA or any other unlicensed person, regardless of title, to whom nursing tasks are delegated.

“Verified application” means an affidavit signed by the applicant attesting to the truthfulness and completeness of the application and includes an oath that applicant will conform to ethical professional standards and obey the laws and rules of the Board.

#### Historical Note

Former Glossary of Terms; Amended effective Nov. 17, 1978 (Supp. 78-6). Former Section R4-19-01 repealed, new Section R4-19-01 adopted effective February 20, 1980 (Supp. 80-1). Amended paragraphs (1) and (7), added paragraphs (9) through (25) effective July 16, 1984 (Supp. 84-4). Former Section R4-19-01 renumbered as Section R4-19-101 (Supp. 86-1). Amended effective November 18, 1994 (Supp. 94-4). Section repealed, new Section adopted effective July 19, 1995 (Supp. 95-3). Amended effective December 22, 1995 (Supp. 95-4). Amended effective November 25, 1996 (Supp. 96-4).

Amended by final rulemaking at 7 A.A.R. 1712, effective April 4, 2001 (Supp. 01-2). Amended by final rulemaking at 14 A.A.R. 4621, effective January 31, 2009 (Supp. 08-4). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2012, Ch. 152, § 1, provides for A.R.S. references to be corrected to reflect the renumbering of definitions. Therefore the A.R.S. citations in the definitions of “CNA” “CNS” and “RNP” have been updated. Agency request filed July 12, 2012, Office File No. M12-242 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 1308, effective July 6, 2013 (Supp. 13-2). Amended by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3).

#### R4-19-102. Time-frames for Licensure, Certification, or Approval

##### A. In this Section:

1. “Administrative completeness” or “administratively complete” means Board receipt of all application components required by statute or rule and necessary to begin the substantive review time-frame.
2. “Application packet” means an application form provided by the Board and the documentation necessary to establish an applicant’s qualifications for licensure, certification, or approval.
3. “Comprehensive written request for additional information” means written communication after the administrative completeness time-frame by the Board to an applicant in person or at the mailing or electronic address identified on the application notifying the applicant that additional information, including missing documents is needed before the Board can grant the license. The written communication shall:
  - a. Contain a list of information required by statute or rule and necessary to complete the application or grant the license, and
  - b. Inform the applicant that the request suspends the running of days within the time-frame, and
  - c. Be effective on the date of issuance which is:
    - i. The date of its postmark, if mailed;
    - ii. The date of delivery, if delivered in person by a Board employee or agent; or
    - iii. The date of delivery to the electronic address if delivered electronically.
4. “Deficiency notice” means written communication by the Board to an applicant in person or at the mailing or electronic address identified on the application notifying the applicant that additional information, including missing documents, is needed to complete the application. The written communication shall:
  - a. Contain a list of information required by statute or rule and necessary to complete the application or grant the license;
  - b. Inform the applicant that the request suspends the running of days within the time-frame; and
  - c. Be effective on the date of issuance which is:
    - i. The date of its postmark, if mailed;
    - ii. The date of delivery, if delivered in person by a Board employee or agent; or
    - iii. The date of delivery to the electronic address if delivered electronically.
5. “Notice of administrative completeness” means written communication by the Board to an applicant in person or at the mailing or electronic address identified on the application notifying the applicant the application contains all information required by statute or rule to complete the application.

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6. "Overall time-frame" has the same meaning as A.R.S. § 41-1072(2).
7. "Substantive review time-frame" has the same meaning as A.R.S. § 41-1072(3).
- B.** In computing the time-frames in this Section, the day of the act or event from which the designated period begins to run is not included. The last day of the period is included unless it is a Saturday, Sunday, or official state holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or official state holiday.
- C.** For each type of licensure, certification, or approval issued by the Board, the overall time-frame described in A.R.S. § 41-1072(2) is listed in Table 1. An applicant may submit a written request to the Board for an extension of time in which to provide a complete application. The request for an extension of time shall be submitted to the Board office before the deadline for submission of a complete application and shall state the reason that the applicant is unable to comply with the time-frame requirements in Table 1 and the amount of additional time requested. The Board may grant an extension of time based on whether the Executive Director of the Board finds that the applicant is unable to comply within the time-frame due to circumstances beyond the applicant's control and that the additional information can reasonably be supplied during the extension of time.
- D.** For each type of licensure, certification, or approval issued by the Board, the administrative completeness review time-frame described in A.R.S. § 41-1072(1) is listed in Table 1 and begins to run when the Board receives an application packet.
  1. If the application packet is not administratively complete, the Board shall send a deficiency notice to the applicant. The time for the applicant to respond to a deficiency notice begins to run on the date the deficiency notice is issued.
    - a. The deficiency notice shall list each deficiency.
    - b. The applicant shall submit to the Board the missing information listed in the deficiency notice within the period specified in Table 1 for responding to a deficiency notice. The time-frame for the Board to complete the administrative review is suspended until the Board receives the missing information.
    - c. If an applicant fails to provide the missing information listed in the deficiency notice within the period specified in Table 1, the Board shall close the applicant's file and send a notice to the applicant by U.S. mail and electronically, if an electronic address is included in the application.
    - d. If the applicant is the subject of an investigation, the Board may continue to process the application. Failure of the applicant to supply the requested information may result in denial of the license or certificate based on information gathered during the investigation.
  2. If the application packet is administratively complete, the Board shall send a written notice of administrative completeness to the applicant.
  3. If the Board issues a license, certificate, or approval during the administrative completeness review time-frame, the Board shall not send a separate written notice of administrative completeness.
- E.** For each type of licensure, certification, or approval issued by the Board, the substantive review time-frame described in A.R.S. § 41-1072(3) is listed in Table 1 and begins to run on the date the notice of administrative completeness is issued.
  1. During the substantive review time-frame, an applicant may make a request to withdraw an application packet.
 

The Board may deny the request to withdraw an application packet if the applicant is the subject of an investigation, based on information gathered during the investigation.
  2. If an applicant discloses or the Board receives allegations of unprofessional conduct as described in A.R.S. § 32-1601 or this Chapter, the Board shall review the allegations and may investigate the applicant. The Board may require the applicant to provide additional information as prescribed in subsection (E)(3) based on its assessment of whether the conduct is or might be harmful or dangerous to the health of a client or the public.
  3. During the substantive review time-frame, the Board may make one comprehensive written request for additional information. The applicant shall submit the additional information within the period specified in Table 1. The time-frame for the Board to complete the substantive review of the application packet is suspended from the date the comprehensive written request for additional information is issued until the Board receives the additional information.
  4. If the applicant fails to provide the additional information identified in the comprehensive written request for additional information within the time specified in Table 1, the Board shall close the applicant's file and send a notice to the applicant by U.S. mail and electronically, if an electronic address is included in the application. The Board may continue to process the application if the applicant is the subject of an investigation. Failure of the applicant to supply the requested information may result in denial of the license or certificate based on information gathered during the investigation.
  5. The Board shall grant licensure, conditional licensure, limited licensure, certification, or approval to an applicant:
    - a. Who meets the substantive criteria for licensure, certification, or approval required by A.R.S. Title 32, Chapter 15 and this Chapter; and
    - b. Whose licensure, certification, or approval is in the best interest of the public.
  6. The Board shall deny licensure, certification, or approval to an applicant:
    - a. Who fails to meet the substantive criteria for licensure, certification, or approval required by A.R.S. Title 32, Chapter 15 and this Chapter; or
    - b. Who has engaged in unprofessional conduct as described in A.R.S. § 32-1601 or this Chapter; and
    - c. Whose licensure, certification, or approval is not in the best interest of the public.
  7. The Board's written order of denial shall meet the requirements of A.R.S. § 41-1076. The applicant may request a hearing by filing a written request with the Board within 30 days of receipt of the Board's order of denial. The Board shall conduct hearings in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

**Historical Note**

Adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-02 renumbered and amended as Section R4-19-102 effective February 21, 1986 (Supp. 86-1).

Section repealed effective July 19, 1995 (Supp. 95-3).

New Section adopted April 20, 1998 (Supp. 98-2).

Amended by final rulemaking at 7 A.A.R. 1712, effective April 4, 2001 (Supp. 01-2). Amended by final rulemaking at 14 A.A.R. 4621, effective January 31, 2009 (Supp. 08-4).

**Table 1. Time-frames**

Time-frames (in days)								
Type of License, Certificate, or Approval	Applicable Statute and Section	Board Overall Time-frame Without Investigation	Board Overall Time-frame With Investigation	Board Administrative Completeness Review Time-frame	Applicant Time to Respond to Deficiency Notice	Board Substantive Review Time-frame Without Investigation	Board Substantive Review Time-frame With Investigation	Applicant Time to Respond to Comprehensive Written Request
Nursing Program Proposal Approval	A.R.S. §§ 32-1606(B)(2), 32-1644; R4-19-207	150	Not applicable	60	180	90	Not applicable	120
Nursing Program Provisional Approval	A.R.S. §§ 32-1606(B)(2), 32-1644; R4-19-207	150	Not applicable	60	180	90	Not applicable	120
Nursing Program Full Approval or Re-approval	A.R.S. §§ 32-1606(B)(2), 32-1644; R4-19-208, R4-19-210	150	Not applicable	60	180	90	Not applicable	120
Nursing Program Change	A.R.S. § 32-1606(B)(1); R4-19-209	150	Not applicable	60	180	90	Not applicable	120
Refresher Program Approval or Re-approval	A.R.S. § 32-1606(B)(21); R4-19-216	150	Not applicable	60	180	90	No applicable	120
CNS or RNP Nursing Program Approval or Re-approval	A.R.S. §§ 32-1606(B)(18), 32-1644; R4-19-503	150	Not applicable	60	180	90	Not applicable	120
Credential Evaluation Service Approval or Re-approval	A.R.S. §§ 32-1634.01(A)(1), 32-1634.02(A)(1), 32-1639.01(1), 32-1639.02(1); R4-19-303	150	Not applicable	60	180	90	Not applicable	120
Licensure by Exam	A.R.S. §§ 32-1606(B)(5), 32-1633, 32-1638, and R4-19-301	150	270	30	270	120	240	150
Licensure by Endorsement	A.R.S. §§ 32-1606(B)(5), 32-1634, 32-1639, and R4-19-302	150	270	30	270	120	240	150
Temporary License or Renewal	A.R.S. §§ 32-1605.01(B)(3), 32-1635, 32-1640; R4-19-304	60	90	30	60	30	60	90
License Renewal	A.R.S. §§ 32-1606(B)(5), 32-1642; R4-19-305	120	270	30	270	90	240	150
School Nurse Certification or Renewal	A.R.S. §§ 32-1606(B)(13), 32-1643(A)(8); R4-19-309	150	270	30	270	120	240	150

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Re-issuance or Subsequent Issuance of License	A.R.S. § 32-1664(O); R4-19-404	150	270	30	270	120	240	150
Registered Nurse Practitioner Certification or Renewal	A.R.S. §§ 32-1601(19), 32-1606(B)(21); R4-19-505, R4-19-506	150	270	30	270	120	240	150
RNP Prescribing and Dispensing Privilege	A.R.S. § 32-1601(19); R4-19-511	150	270	30	270	120	240	150
CNS Certification or Renewal	A.R.S. §§ 32-1601(6), 32-1606(B)(21); R4-19-505, R4-19-506	150	270	30	270	120	240	150
CRNA Certification or Renewal	A.R.S. § 32-1634.03; R4-19-505, R4-19-506	150	270	30	270	120	240	150
Temporary RNP, CRNA or CNS Certificate or Renewal	A.R.S. §§ 32-1635.01, 1634.03; R4-19-507	60	Not applicable	30	60	30	Not applicable	60
Nursing Assistant and Medication Assistant Training Programs Approval or Re-approval	A.R.S. §§ 32-1606(B)(11), 32-1650.01; R4-19-803, R4-19-804	120	Not applicable	30	180	90	Not applicable	120
Nursing Assistant and Medication Assistant Certification by Examination	A.R.S. §§ 32-1606(B)(11), 32-1647, 32-1650.02, 32-1650.03; R4-19-806	150	270	30	270	120	240	150
Nursing Assistant and Medication Assistant Certification by Endorsement	A.R.S. §§ 32-1606(B)(11), 32-1648, 32-1650.04; R4-19-807	150	270	30	270	120	240	150
Temporary CNA or CMA Certificate or Renewal	A.R.S. §§ 1646(A)(5), 32-1650; R4-19-808	60	Not applicable	30	60	30	Not applicable	60
Nursing and Medication Assistant Certificate Renewal	A.R.S. § 32-1606(B)(11); R4-19-809	120	270	30	270	90	240	150
Re-issuance or Subsequent Issuance of a Nursing Assistant Certificate	A.R.S. § 32-1664(O); R4-19-815	150	270	30	270	120	240	150

## Historical Note

Table 1 adopted effective April 20, 1998 (Supp. 98-2). Amended by final rulemaking at 7 A.A.R. 1712, effective April 4, 2001

(Supp. 01-2). Table 1 amended by final rulemaking at 14 A.A.R. 4621, effective January 31, 2009 (Supp. 08-4). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2012, Ch. 152, § 1, provides for A.R.S. references to be corrected to reflect the renumbering of definitions. Therefore the A.R.S. citations in column two of "Registered Nurse Practitioner Certification or Renewal," "RNP Prescribing and Dispensing Privilege," and "CNS Certification or Renewal" have been updated. Agency request filed July 12, 2012, Office File No. M12-242 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 1308 effective July 6, 2013 (Supp. 13-2).

## ARTICLE 2. ARIZONA REGISTERED AND PRACTICAL NURSING PROGRAMS; REFRESHER PROGRAMS

### R4-19-201. Organization and Administration

- A. The parent institution of a nursing program shall be accredited as a post-secondary institution, college, or university, by an accrediting body that is recognized as an accrediting body by the U.S. Department of Education, and shall hold Arizona private post-secondary approval status if applicable. The parent institution shall submit evidence to the board of continuing accreditation after each reaccreditation review or action. If the parent institution holds both secondary and post-secondary accreditation, it shall operate any RN or PN program under its post-secondary accreditation.
- B. A nursing program shall have a written statement of mission and goals consistent with those of the parent institution and compatible with current concepts in nursing education and practice appropriate for the type of nursing program offered.
- C. A nursing program shall be an integral part of the parent institution and shall have at a minimum equivalent status with other academic units of the parent institution.
- D. The parent institution shall center the administrative control of the nursing program in the nursing program administrator and shall provide the support and resources necessary to meet the requirements of R4-19-203 and R4-19-204.
- E. A nursing program shall provide an organizational chart that identifies the actual relationships, lines of authority, and channels of communication within the program, and between the program and the parent institution.
- F. A nursing program shall have a written agreement between the program and each clinical agency where clinical experience is provided to the program's students that:
  1. Defines the rights and responsibilities of both the clinical agency and the nursing program,
  2. Lists the role and authority of the governing bodies of both the clinical agency and the nursing program,
  3. Allows faculty members of the program the right to participate in selecting learning experiences for students, and
  4. Contains a termination clause that provides sufficient time for enrolled students to complete the clinical experience upon termination of the agreement.
- G. A nursing program shall implement written policies and procedures that provide a mechanism for student input into the development of academic policies and procedures and allow students to anonymously evaluate faculty, nursing courses, clinical experiences, resources and the overall program.
- H. The parent institution shall appoint a sole individual to the full-time position of nursing program administrator. The parent institution shall ensure that the individual appointed meets or exceeds the requirements of, and fulfills the duties specified in, R4-19-203, whether on an interim or permanent basis.
- I. A nursing program shall develop and implement a written plan for the systematic evaluation of the total program that is based on program and student learning outcomes and that incorporates continuous improvement based on the evaluative data. The plan shall include measurable outcome criteria, logical methodology, frequency of evaluation, assignment of responsibility, actual outcomes and actions taken. The following areas shall be evaluated:
  1. Internal structure of the program, its relationship to the parent institution, and compatibility of program policies and procedures with those of the parent institution;
  2. Mission and goals;
  3. Curriculum;
  4. Education facilities, resources, and student support services;
  5. Clinical resources;
  6. Student achievement of program educational outcomes;
  7. Graduation and attrition for each admission cohort including at a minimum:
    - a. Number and percent of students who left the program;
    - b. Number and percent of students who are out of sequence in the program; and
    - c. Number and percent of students who graduated within 100%, 150% or greater than 150% of time allotted in the curriculum plan.
  8. Graduate performance on the licensing examination;
  9. Faculty performance; and
  10. Protection of patient safety including but not limited to:
    - a. Student and faculty policies regarding supervision of students, practicing within scope and student safe practice;
    - b. The integration of safety concepts within the curriculum;
    - c. The application of safety concepts in the clinical setting; and
    - d. Policies made under R4-19-203(C)(6).
- J. The parent institution shall provide adequate fiscal, human, physical, and learning resources to support program processes and outcomes necessary for compliance with this Article.
- K. The parent institution shall provide adequate resources to recruit, employ, and retain sufficient numbers of qualified faculty members to meet program and student learning outcomes and the requirements of this Article.
- L. The parent institution shall notify the Board of a vacancy, pending vacancy, or leave of absence greater than 30 days in the position of nursing program administrator within 15 days of the program's awareness of the vacancy, pending vacancy, or leave of absence and do the following:
  1. Appoint an interim or permanent administrator who meets the requirements of R4-19-203(A) within 15 days of the effective date of the vacancy or absence, and
  2. Notify the Board of the appointment of an interim or permanent administrator within 15 days of appointment and provide a copy of the administrator's credentials to the Board.
- M. A parent institution shall notify the Board within 15 days of any change or pending change in institutional accreditation status or reporting requirements.
- N. Prior to final approval for new nursing programs and by July 31, 2015 for existing programs, all RN nursing programs offering less than a bachelor's degree in nursing shall have a minimum of one articulation agreement with a Board approved and nationally accredited baccalaureate or higher nursing program that includes recognition of prior learning in nursing and recognition of foundational courses.



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**Historical Note**

Former Section I, Part I; Amended effective January 20, 1975 (Supp. 75-1). Former Section R4-19-11 repealed, new Section R4-19-11 adopted effective February 20, 1980 (Supp. 80-1). Amended effective July 16, 1984 (Supp. 84-4). Former Section R4-19-11 renumbered as Section R4-19-201 (Supp. 86-1). Section repealed; new Section adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 7 A.A.R. 5349, effective November 8, 2001 (Supp. 01-4). Amended by final rulemaking at 11 A.A.R. 451, effective March 7, 2005 (05-1). Amended by final rulemaking at 19 A.A.R. 1419, effective July 6, 2013 (Supp. 13-2).

**R4-19-202. Resources, Facilities, Services, and Records**

A. The parent institution of a nursing program shall consider the size of the program including number of program faculty and number of program students and shall provide and maintain resources, services and facilities for the effective development and implementation of the program that are at a minimum:

1. Equivalent to those provided by approved programs of equivalent size and type, or in the case of no equivalent program, scaled relative to an approved program;
2. Comparable to those provided to other academic units of the parent institution; and
3. Include the following:
  - a. A private office for the nursing program administrator;
  - b. Faculty offices that are conveniently located to program classrooms and secretarial support staff;
  - c. If faculty offices are not private, the parent institution shall provide dedicated space for private faculty-student conferences that is:
    - i. Conveniently located to faculty offices, and
    - ii. Available whenever confidential student information is discussed.
  - d. Space for secretarial support and a secure area for records and files, convenient to the nursing program faculty and administrator;
  - e. Classrooms, laboratories, and conference rooms of the size and type needed with furnishings and equipment consistent with the educational purposes for which the facilities are used;
  - f. Acoustics, lighting, ventilation, plumbing, heating and cooling in working order;
  - g. Dedicated secretarial, laboratory and other support personnel available to meet the needs of the program;
  - h. Access to a comprehensive, current, and relevant collection of educational materials and learning resources for faculty members and students;
  - i. Access to supplies and equipment to simulate patient care that are:
    - i. In working order,
    - ii. Organized in a manner so that they are readily available to faculty,
    - iii. Consistent with current clinical practices, and
    - iv. Of sufficient quantity for the number of students enrolled,
  - j. Current technology in working order to support teaching and learning. Institutions offering web-enhanced and distance education shall provide ongoing and effective technical, design and production support for faculty members and technical support services for students.

B. A nursing program shall maintain current and accurate records of the following:

1. Student records, including admission materials, courses taken, grades received, scores in any standardized tests taken, health and performance records, and health information submitted to meet program or clinical requirements for a minimum of three years after the fiscal year of program completion for academic records and one year after program completion for health records;
2. Faculty records, including Arizona professional nursing license number, evidence of fulfilling the requirements in R4-19-204, and performance evaluations for faculty employed by the parent institution for one or more years. Records shall be kept current during the period of employment and retained for a minimum of three years after termination of employment;
3. Minutes of faculty and committee meetings for a minimum of three years;
4. Reports from accrediting agencies and the Board for a minimum of 10 years;
5. The statement of mission and goals, and curricular materials consistent with the requirements of R4-19-206 for the current curriculum and, if the current curriculum is less than three years old, the previous curriculum; and
6. Formal program complaints and grievances since the last site review with evidence of due process and resolution.

**Historical Note**

Former Section I, Part II; Former Section R4-19-12 repealed, new Section R4-19-12 adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-12 repealed, new Section R4-19-12 adopted effective July 16, 1984 (Supp. 84-4). Former Section R4-19-12 renumbered as Section R4-19-202 (Supp. 86-1). Section repealed; new Section adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 7 A.A.R. 5349, effective November 8, 2001 (Supp. 01-4). Amended by final rulemaking at 11 A.A.R. 451, effective March 7, 2005 (05-1). Amended by final rulemaking at 19 A.A.R. 1419, effective July 6, 2013 (Supp. 13-2).

**R4-19-203. Administrator; Qualifications and Duties**

A. The nursing program administrator shall hold a current Arizona registered nurse license in good standing or multi-state privilege to practice in Arizona under A.R.S., Title 32, Chapter 15 and:

1. For registered nursing programs:
  - a. A graduate degree with a major in nursing;
  - b. A minimum of three years work experience as a registered nurse providing direct patient care; and
  - c. If appointed to the position of nursing program administrator on or after the effective date of these rules, have a minimum of one academic year full-time experience teaching in or administering a nursing education program leading to licensure; or
  - d. If lacking the requirements of subsection (A)(1)(c), the parent institution may appoint an individual to the position of "Interim Program Administrator" under the following conditions:
    - i. The individual is subject to termination based on performance and any factors determined by the institution;
    - ii. A direct supervisor evaluates performance periodically over the next 12 months to ensure institutional and program goals are being addressed; and
    - iii. If evaluations are satisfactory, the individual may be appointed to permanent status after 12 months in the interim position.

2. For practical nursing programs:
  - a. If appointed prior to the effective date of these rules, a baccalaureate degree with a major in nursing; and
  - b. If appointed on or after the effective date of these rules, the requirements of subsection (A)(1).
- B. The administrator shall have comparable status with other program administrators in the parent institution and shall report directly to an academic officer of the institution.
- C. The administrator shall have the authority to direct the program in all its phases, including:
  1. Administering the nursing education program;
  2. Directing activities related to academic policies, personnel policies, curriculum, resources, facilities, services, and program evaluation;
  3. Preparing and administering the budget;
  4. Recommending candidates for faculty appointment, retention, and promotion;
  5. In addition to any other evaluation used by the parent institution, ensuring that nursing program faculty members are evaluated at a minimum:
    - a. Annually in the first year of employment and every three years thereafter;
    - b. Upon receipt of information that a faculty member, in conjunction with performance of their duties, may be engaged in intentional, negligent or other behavior that either is or might be:
      - i. Below the standards of the program or the parent institution,
      - ii. Inconsistent with nursing professional standards, or
      - iii. Potentially or actually harmful to a patient.
    - c. By the nurse administrator or a nurse educator designated by the nurse administrator, and
    - d. In the areas of teaching ability and application of nursing knowledge and skills relative to the teaching assignment.
  6. Together with faculty develop, enforce and evaluate equivalent student and faculty policies necessary for safe patient care and to meet clinical agency requirements regarding:
    - a. Physical and mental health,
    - b. Criminal background checks,
    - c. Substance use screens,
    - d. Functional abilities, and
    - e. Supervision of clinical activities.
  7. Participating in activities that contribute to the governance of the parent institution;
  8. Together with faculty develop, enforce and evaluate both student and faculty policies regarding minimal requisite nursing skills and knowledge necessary to provide safe patient care for the type of unit and patient assignment; and
  9. Enforcing consistent application of all nursing program policies.
- D. The administrator of the nursing program shall not carry a teaching load of more than three clock hours per week if required to teach.
- E. The administrator may have administrative responsibilities other than the nursing program, provided that a nursing program faculty member is designated to assist with program management and the administrator is able to fulfill the duties of this Article.

#### Historical Note

Former Section I, Part III; Former Section R4-19-13 repealed, new Section R4-19-13 adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-13

repealed, new Section R4-19-13 adopted effective July 16, 1984 (Supp. 84-4). Former Section R4-19-13 renumbered as Section R4-19-203 (Supp. 86-1). Section repealed; new Section adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 7 A.A.R. 5349, effective November 8, 2001 (Supp. 01-4). Amended by final rulemaking at 11 A.A.R. 451, effective March 7, 2005 (05-1). Amended by final rulemaking at 19 A.A.R. 1419, effective July 6, 2013 (Supp. 13-2).

#### R4-19-204. Faculty; Personnel Policies; Qualifications and Duties

- A. A nursing program shall implement written personnel policies for didactic and clinical nursing faculty members including workload policies that at minimum conform to those for other faculty members of the parent institution and that are in accordance with accepted nursing educational standards or provide a written explanation of any differences not related to the requirements of this Article.
- B. A nursing program shall provide at a minimum the number of qualified faculty members necessary for compliance with the provisions of this Article and comparable to that provided by approved programs of equivalent size and program type, or, in the case of no equivalent program, a number scaled relative to an approved program.
- C. The parent institution of a nursing program shall ensure that at least one nursing faculty member is assigned to no more than ten students while students are directly or indirectly involved in the care of patients including precepted experiences.
- D. The faculty shall supervise all students in clinical areas in accordance with the acuity of the patient population, clinical objectives, demonstrated competencies of the student, and requirements established by the clinical agency.
- E. The parent institution of a nursing program shall ensure that every registered nursing program faculty member holds a current Arizona registered nurse license in good standing or multi-state privilege to practice in Arizona under A.R.S., Title 32, Chapter 15 and that every faculty member meets one of the following:
  1. If providing didactic instruction:
    - a. At least two years of experience as a registered nurse providing direct patient care; and
    - b. A graduate degree. The majority of the faculty members of a registered nursing program shall hold a graduate degree with a major in nursing. If the graduate degree is not in nursing, the faculty member shall hold a minimum of a baccalaureate degree in nursing; or
  2. If providing clinical instruction, as defined in R4-19-101, only:
    - a. The requirements for didactic faculty, or
    - b. A baccalaureate degree with a major in nursing and at least three years of experience as a registered nurse providing direct patient care.
- F. The parent institution of a nursing program shall ensure that each practical nursing program faculty member holds a current Arizona registered nurse license in good standing or multi-state privilege to practice in Arizona under A.R.S., Title 32, Chapter 15 and that every faculty member meets the following:
  1. At least two years of experience as a registered nurse providing direct patient care, and
  2. A minimum of a baccalaureate degree with a major in nursing.
- G. Under the leadership of the nursing program administrator, nursing program faculty members shall:

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1. Develop, implement, evaluate, and revise the program of learning including the curriculum and learning outcomes of the program;
  2. Develop, implement, evaluate and revise standards for the admission, progression, and graduation of students;
  3. Participate in advisement and guidance of students.
- H. Together with the nursing program administrator, develop, implement and evaluate written policies for faculty orientation, continuous learning and evaluation.

**Historical Note**

Former Section I, Part IV; Former Section R4-19-14 repealed, new Section R4-19-14 adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-14 repealed, new Section R4-19-14 adopted effective July 16, 1984 (Supp. 84-4). Former Section R4-19-14 renumbered as Section R4-19-204 (Supp. 86-1). Section repealed; new Section adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 7 A.A.R. 5349, effective November 8, 2001 (Supp. 01-4). Amended by final rulemaking at 11 A.A.R. 451, effective March 7, 2005 (05-1). Amended by final rulemaking at 19 A.A.R. 1419, effective July 6, 2013 (Supp. 13-2).

**R4-19-205. Students; Policies and Admissions**

- A. The number of students admitted to a nursing program shall be determined by the number of qualified faculty, the size, number and availability of educational facilities and resources, and the availability of the appropriate clinical learning experiences for students. The number of students admitted shall not exceed the number for which the program was approved plus minor increases allowed under R4-19-209 without Board approval.
- B. A nursing program shall implement written student admission and progression requirements that are evidence-based, allow for a variety of clinical experiences and satisfy the licensure criteria of A.R.S. Title 32, Chapter 15 and A.A.C. Title 4 Chapter 19.
- C. A nursing program shall have and enforce written policies available to students and the public regarding admission, readmission, transfer, advanced placement, progression, graduation, withdrawal, and dismissal.
- D. A nursing program and parent institution shall have and enforce written policies that are readily available to students in either the college catalogue or nursing student handbook that address student rights, responsibilities, grievances, health, and safety.
- E. A nursing program and parent institution shall provide accurate and complete written information that is readily available to all students and the general public about the program including
  1. The nature of the program, including course sequence, prerequisites, co-requisites and academic standards;
  2. The length of the program;
  3. Total program costs including tuition, fees and all program related expenses;
  4. The transferability of credits to other public and private educational institutions in Arizona; and
  5. A clear statement regarding any technology based instruction and the technical support provided to students.
- F. A nursing program shall communicate changes in policies, procedures and program information clearly to all students, prospective students and the public and provide advance notice similar to the advance notice provided by an approved program of similar size and type.

**Historical Note**

Adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-15 repealed, new Section R4-19-15

adopted effective July 16, 1984 (Supp. 84-4). Former Section R4-19-15 renumbered as Section R4-19-205 (Supp. 86-1). Section repealed; new Section adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 7 A.A.R. 5349, effective November 8, 2001 (Supp. 01-4). Amended by final rulemaking at 11 A.A.R. 451, effective March 7, 2005 (05-1). Amended by final rulemaking at 19 A.A.R. 1419, effective July 6, 2013 (Supp. 13-2).

**R4-19-206. Curriculum**

- A. A nursing program shall assign students only to those clinical agencies that provide the experience necessary to meet the established clinical objectives of the course.
- B. A nursing program shall provide a written program curriculum to students that includes;
  1. Student centered outcomes for the program;
  2. A curriculum plan that identifies the prescribed course sequencing and time required;
  3. Specific course information that includes:
    - a. A course description;
    - b. Student centered and measurable didactic objectives;
    - c. Student centered and measurable clinical objectives, if applicable;
    - d. Student centered and measurable simulation objectives, if applicable;
    - e. A course content outline that relates to the course objectives;
    - f. Student centered and measurable objectives and a content outline for each unit of instruction.
    - g. Graded activities to demonstrate that course objectives have been met.
- C. A nursing program administrator and faculty members shall ensure that the curriculum:
  1. Reflects the nursing program's mission and goals;
  2. Is designed so that the student is able to achieve program objectives within the curriculum plan;
  3. Is logically consistent between and within courses and structured in a manner whereby each course builds on previous learning.
  4. Incorporates established professional standards, guidelines or competencies; and
  5. Is designed so that a student who completes the program will have the knowledge and skills necessary to function in accordance with the definition and scope of practice specified in A.R.S. § 32-1601(16) and R4-19-401 for a practical nurse or A.R.S. § 32-1601(20) and R4-19-402 for a registered nurse.
- D. A nursing program shall provide for progressive sequencing of classroom and clinical instruction sufficient to meet the goals of the program and be organized in such a manner to allow the student to form necessary links of theoretical knowledge, clinical reasoning, and practice.
  1. A nursing program curriculum shall provide coursework that includes, but is not limited to:
    - a. Content in the biological, physical, social, psychological and behavioral sciences to provide a foundation for safe and effective nursing practice consistent with the level of the nursing program;
    - b. Content regarding professional responsibilities, legal and ethical issues, history and trends in nursing and health care;
    - c. Didactic content and supervised clinical experience in the prevention of illness and the promotion, restoration and maintenance of health in patients across

the life span and from diverse cultural, ethnic, social and economic backgrounds to include:

- i. Patient centered care,
  - ii. Teamwork and collaboration,
  - iii. Evidence-based practice,
  - iv. Quality improvement,
  - v. Safety, and
  - vi. Informatics,
2. A registered nursing program shall provide clinical instruction that includes, at a minimum, selected and guided experiences that develop a student's ability to apply core principles of registered nursing in varied settings when caring for:
    - a. Adult and geriatric patients with acute, chronic, and complex, life-threatening, medical and surgical conditions;
    - b. Peri-natal patients and families;
    - c. Neonates, infants, and children;
    - d. Patients with mental, psychological, or psychiatric conditions; and
    - e. Patients with wellness needs.
  2. A practical nursing program shall provide clinical instruction that includes, at minimum, selected and guided experiences that develop a student's ability to apply core principles of practical nursing when caring for:
    - a. Patients with medical and surgical conditions throughout the life span,
    - b. Peri-natal patients, and
    - c. Neonates, infants, and children in varied settings.
- E.** A nursing program may provide precepted clinical instruction. Programs offering precepted clinical experiences shall:
1. Develop and adhere to policies that require preceptors to:
    - a. Be licensed nurses at or above the level of the program either by holding an Arizona license in good standing, holding multi-state privilege to practice in Arizona under A.R.S. Title 32, Chapter 15, or if practicing in a federal facility, meet requirements of A.R.S. § 32-1631(5);
    - b. For LPN preceptors, practice under the general supervision of an RN or physician according to A.R.S. § 32-1601(16).
  2. Develop and implement policies that require a faculty member of the program to:
    - a. Together with facility personnel, select preceptors that possess clinical expertise sufficient to accomplish the goals of the preceptorship;
    - b. Supervise the clinical instruction according to the provisions of R4-19-204(C) and (D), and
    - c. Maintain accountability for student education and evaluation.
- F.** A nursing program may utilize simulation in accordance with the clinical objectives of the course. Unless approved under R4-19-214, a nursing program shall not utilize simulation for an entire clinical experience with any patient population identified in subsection (D) of this Section.
- G.** A nursing program shall maintain at least a 80% NCLEX® passing rate for graduates taking the NCLEX-PN® or NCLEX-RN® for the first time within 12 months of graduation. The Board shall issue a notice of deficiency to any program that has a NCLEX® passing rate less than 80% for two consecutive calendar years or less than 75% for one calendar year.
- H.** At least 45% of students enrolled in the first nursing clinical course shall graduate within 100% of the prescribed period. "Prescribed period" means the time required to complete all

courses and to graduate on time according to the nursing program's curriculum plan excluding the time to complete program pre-requisite or pre-clinical courses.

#### Historical Note

Adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-16 repealed, former Section R4-19-17 renumbered and amended as Section R4-19-16 effective July 16, 1984 (Supp. 84-4). Former Section R4-19-16 renumbered as R4-19-206 (Supp. 86-1). Section repealed; new Section adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 7 A.A.R. 5349, effective November 8, 2001 (Supp. 01-4). Amended by final rulemaking at 11 A.A.R. 451, effective March 7, 2005 (05-1). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2012, Ch. 152, § 1, provides for A.R.S. references to be corrected to reflect the renumbering of definitions. Therefore the A.R.S. citations in subsection (B)(3) were updated. Agency request filed July 12, 2012, Office File No. M12-242 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 1419, effective July 6, 2013 (Supp. 13-2).

#### R4-19-207. New Programs; Proposal Approval; Provisional Approval

- A.** At a minimum of one year before establishing a nursing program, a parent institution shall submit to the Board one electronic copy and one paper copy of an application for proposal approval. The parent institution shall ensure that the proposal application was written by or under the direction of a registered nurse who meets the requirements of R4-19-203(A) and includes the following information and documentation:
1. Name and address of the parent institution;
  2. Statement of intent to establish a nursing program, including the academic and licensure level of the program; and
  3. Proposal that includes, but is not limited to, the following information:
    - a. Documentation of the present and future need for the type and level of program in the state including availability of potential students, need for entry level nurses at the educational level of the program and availability of clinical placements that meet the requirements of R4-19-206;
    - b. Evidence that written notification of intent to establish a new nursing education program has been provided to the nursing program administrators of all existing Arizona-approved programs a minimum of 30 days prior to submission of the proposal application, including projected student enrollment and clinical sites;
    - c. Organizational structure of the educational institution documenting the relationship of the nursing program within the institution and the role of the nursing program administrator consistent with R4-19-201 and R4-19-203;
    - d. Evidence of institutional accreditation consistent with R4-19-201 and post-secondary approval, if applicable. The institution shall provide the most recent full reports including findings and recommendations of the applicable accrediting organization or approval agency. The Board may request additional accreditation or approval evidence.
    - e. Purpose and mission of the nursing program,
    - f. Curriculum development documentation to include:
      - i. Student-centered outcomes for the program;

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- ii. A plan that identifies the prescribed course sequencing and time required; and
    - iii. Identification of established professional standards, guidelines or competencies upon which the curriculum will be based;
  - g. Name, qualifications, and job description of a nursing program administrator who meets the requirements of R4-19-203 and availability and job description of faculty who meet qualifications of R4-19-204;
  - h. Number of budgeted clinical and didactic faculty positions from the time of the first admission to graduation of the first class;
  - i. Evidence that the program has secured clinical sites for its projected enrollment that meet the requirements of R4-19-206;
  - j. Anticipated student enrollment per session and annually;
  - k. Documentation of planning for adequate academic facilities and secretarial and support staff to support the nursing program consistent with the requirements of R4-19-202;
  - l. Evidence of program financial resources comparable to an approved program of similar size and type or, if there is no comparable program, scaled relative to an approved program adequate for the planning, implementation, and continuation of the nursing program; and
  - m. Tentative time schedule for planning and initiating the nursing program including faculty hiring, entry date and size of student cohorts, and obtaining and utilizing clinical placements from the expected date of proposal approval to graduation of the first cohort.
  - n. A parent institution or owner corporation that has multiple nursing programs in one or more U.S. jurisdictions including Arizona, shall provide the following evidence for each nursing program:
    - i. Program approval in good standing with no conditions, restrictions, ongoing investigations or deficiencies;
    - ii. An NCLEX pass rate of at least 80% for the past two years or since inception; and
    - iii. An on-time graduation rate consistent with the requirements of R4-19-206(H).
- B.** The Board shall grant proposal approval to any parent institution that meets the requirements of subsection (A) if the Board deems that such approval is in the best interests of the public. Proposal approval expires one year from the date of Board issuance.
- C.** A parent institution that is denied proposal approval may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for proposal approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.
- D.** At a minimum of 180 days before planned enrollment of students, a parent institution that received proposal approval within the previous year may submit to the Board one electronic copy and one paper copy of an application for provisional approval. The parent institution shall ensure that the provisional approval application was written by or under the direction of a registered nurse who meets the requirements of R4-19-203(A) and includes the following information and documentation:
1. Name and address of parent institution;
  2. A self-study that provides evidence supporting compliance with R4-19-201 through R4-19-206, and
  3. Names and qualifications of:
    - a. The nursing program administrator;
    - b. Didactic nursing faculty or one or more nurse consultants who are responsible for developing the curriculum and determining nursing program admission, progression and graduation criteria;
  4. Plan for recruiting and hiring additional didactic faculty for the first semester or session of operation at least 60 days before classes begin;
  5. Plan for recruiting and hiring additional clinical nursing faculty at least 30 days before the clinical rotation begins;
  6. Final program implementation plan including dates and number of planned student admissions not to exceed 60 per calendar year, recruitment and hire dates for didactic and clinical faculty for the period of provisional approval. An increase in student admissions may be sought under subsection (H) of this Section;
  7. Descriptions of available and proposed physical facilities with dates of availability; and
  8. Detailed written plan for clinical placements for all planned enrollments until graduation of the first class that is:
    - a. Based on current clinical availability and curriculum needs;
    - b. Accompanied by documentation of commitment from proposed clinical agencies for the times and units specified, in addition to a signed clinical contract that meets the requirements of R4-19-201(F) from each agency; and
    - c. Lists any nursing programs who are currently using the planned clinical units for the times proposed and will be displaced.
- E.** Following an onsite evaluation conducted according to A.R.S. § 41-1009, the Board shall grant provisional approval to a parent institution that meets the requirements of R4-19-201 through R4-19-206 if approval is in the best interest of the public. A parent institution that is denied provisional approval may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for provisional approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.
- F.** The provisional approval of a nursing program expires 12 months from the date of the grant of provisional approval if a class of nursing students is not admitted by the nursing program within that time. The Board may rescind the provisional approval of a nursing program for a violation of any provision of this Article according to R4-19-211.
- G.** One year after admission of the first nursing class into nursing courses, the program shall provide a report to the Board containing information on:
1. Implementation of the program including any differences from the plans submitted in the applications for proposal and provisional approval and an explanation of those differences; and
  2. The outcomes of the evaluation of the program according to the program's evaluation plan under R4-19-201(I);
- H.** Following receipt of the report, a representative of the Board shall conduct a site survey visit under A.R.S. § 41-1009 to determine compliance with this Article. A report of the site visit shall be provided to the Board. After reviewing the consultant report and at the request of the program under R4-19-209, the Board may grant permission to increase admissions.

- I. If a nursing program fails to apply for full approval within two years of graduating its first class of students, the Board shall rescind its provisional approval. A nursing program whose provisional approval is rescinded may request a hearing by filing a written request with the Board within 30 days of service of the Board's order rescinding the provisional approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.
- J. A nursing program or the parent institution or governing body of a nursing program under provisional approval may not admit additional students other than those specifically provided for in the application or subsequently approved by the Board under subsection (H) of this Section and R4-19-209 and may not expand to another geographical location.
- K. A nursing program whose provisional approval is rescinded may request a hearing by filing a written request with the Board within 30 days of service of the Board's order rescinding the provisional approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

#### Historical Note

Adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-17 renumbered and amended as Section R4-19-16 effective July 16, 1984 (Supp. 84-4). Former Section R4-19-17 renumbered as R4-19-207 (Supp. 86-1). New Section adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 7 A.A.R. 5349, effective November 8, 2001 (Supp. 01-4). Amended by final rulemaking at 11 A.A.R. 451, effective March 7, 2005 (05-1). Amended by final rulemaking at 19 A.A.R. 1419, effective July 6, 2013 (Supp. 13-2).

#### R4-19-208. Full Approval of a New Nursing Program

- A. A nursing program seeking full approval shall submit an electronic and one paper copy of an application that includes the following information and documentation:
  - 1. Name and address of the parent institution,
  - 2. Date the nursing program graduated its first class of students, and
  - 3. A self-study report that contains evidence the program is in compliance with R4-19-201 through R4-19-206.
- B. Following an onsite evaluation conducted according to A.R.S. § 41-1009, the Board shall grant full approval for a maximum of five years or the accreditation period for nationally accredited programs governed by R4-19-213, to a nursing program that meets the requirements of this Article and if approval is in the best interest of the public. A nursing program that is denied full approval may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for full approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

#### Historical Note

Adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 7 A.A.R. 5349, effective November 8, 2001 (Supp. 01-4). Amended by final rulemaking at 11 A.A.R. 451, effective March 7, 2005 (05-1). Amended by final rulemaking at 19 A.A.R. 1419, effective July 6, 2013 (Supp. 13-2).

#### R4-19-209. Nursing Program Change

- A. The program administrator shall ensure that the following changes to a nursing education program are evidence-based and supported by rationale. A nursing program administrator shall receive approval from the Board before implementing any of the following nursing program changes:
  - 1. Substantive change in the mission or goals of the program that requires revision of curriculum or program delivery method;
  - 2. Increasing or decreasing the academic credits or units of the program excluding pre-requisite credits;
  - 3. Adding a geographical location of the program;
  - 4. Increasing the student admission capacity annually by more than 30 students;
  - 5. Changing the level of educational preparation provided;
  - 6. Transferring the nursing program from one institution to another; or
  - 7. Establishing different admission, progression or graduation requirements for specific cohorts of the program.

- B. The administrator shall submit one electronic and one paper copy of the following materials with the request for nursing program changes:
  - 1. The rationale for the proposed change and the anticipated effect on the program administrator, faculty, students, resources, and facilities;
  - 2. A summary of the differences between the current practice and proposed change;
  - 3. A timetable for implementation of the change; and
  - 4. The methods of evaluation to be used to determine the effect of the change.
- C. The Board shall approve a request for a nursing program change if the program demonstrates that it has the resources to implement the change and the change is evidence-based and consistent with R4-19-201 through R4-19-206. A nursing program that is denied approval of program changes may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for full approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

#### Historical Note

Adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 7 A.A.R. 5349, effective November 8, 2001 (Supp. 01-4). Amended by final rulemaking at 11 A.A.R. 451, effective March 7, 2005 (05-1). Amended by final rulemaking at 19 A.A.R. 1419, effective July 6, 2013 (Supp. 13-2).

#### R4-19-210. Renewal of Approval of Nursing Programs Not Accredited by a National Nursing Accrediting Agency

- A. An approved nursing program that is not accredited by an approved national nursing accrediting agency shall submit an application packet to the Board at least four months before the expiration of the current approval that includes the following:
  - 1. Name and address of the parent institution,
  - 2. Evidence of current institutional accreditation status under R4-19-201,
  - 3. Copy or on-line access to:
    - a. A current catalog of the parent institution,
    - b. Current nursing program and institutional student and academic policies, and
    - c. Institutional and nursing program faculty policies and job descriptions for nursing program faculty, and
  - 4. One electronic copy and one paper copy of a self-study report that contains evidence of compliance with R4-19-201 through R4-19-206.
- B. Following an onsite evaluation conducted according to A.R.S. § 41-1009, the Board shall renew program approval for a maximum of five years if the nursing program meets the criteria in R4-19-201 through R4-19-206 and if renewal is in the best

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interest of the public. The Board shall determine the term of approval that is in the best interest of the public.

- C. If the Board denies renewal of approval, the nursing program may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for renewal of approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

**Historical Note**

Adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 7 A.A.R. 5349, effective November 8, 2001 (Supp. 01-4). Amended by final rulemaking at 11 A.A.R. 451, effective March 7, 2005 (05-1).

Amended by final rulemaking at 19 A.A.R. 1419, effective July 6, 2013 (Supp. 13-2).

**R4-19-211. Unprofessional Conduct**

A disciplinary action, denial of approval, or notice of deficiency may be issued against a nursing or refresher program for any of the following acts of unprofessional conduct in a nursing program:

1. Failure to maintain minimum standards of acceptable and prevailing educational or nursing practice;
2. Deficiencies in compliance with the provisions of this Article;
3. Utilization of students to meet staffing needs in health care facilities;
4. Non-compliance with the program's or parent institution's mission or goals, program design, objectives, or policies;
5. Failure to provide the variety and number of clinical learning opportunities necessary for students to achieve program outcomes or minimal competence;
6. Student enrollments without necessary faculty, facilities, or clinical experiences;
7. Ongoing or repetitive employment of unqualified faculty or program administrator;
8. Failure to comply with Board requirements within designated time-frames;
9. Fraud or deceit in advertising, promoting or implementing the program;
10. Material misrepresentation of fact by a nursing or refresher program in any advertisement, application or information submitted to the Board;
11. Failure to allow Board staff to visit the program or conduct an investigation including failure to supply requested documents; or
12. Any other evidence that gives the Board reasonable cause to believe the program's conduct may be a threat to the safety and well-being of students, faculty, patients or potential patients.

**Historical Note**

Adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 7 A.A.R. 5349, effective November 8, 2001 (Supp. 01-4). Amended by final rulemaking at 11 A.A.R. 451, effective March 7, 2005 (05-1). R4-19-211 renumbered to R4-19-212; New Section R4-19-211 made by final rulemaking at 19 A.A.R. 1419, effective July 6, 2013 (Supp. 13-2).

**R4-19-212. Notice of Deficiency**

- A. Under A.R.S. § 32-1644(D), when surveying or re-surveying a nursing program, the Board shall, upon initially determining that a nursing program is not in compliance with applicable provisions of this Article provide to the nursing program administrator a written notice of deficiencies that establishes a

reasonable time, based upon the number and severity of deficiencies, to correct the deficiencies not to exceed 18 months.

1. The administrator shall, within 30 days from the date of service of the notice of deficiencies, file a plan to correct each of the identified deficiencies after consultation with the Board or designated Board representative.
  2. The administrator may, within 30 days from the date of service of the notice of deficiencies, submit a written request for a hearing before the Board to appeal the Board's determination of deficiencies. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.
  3. If the Board's determination is not appealed or is upheld upon appeal, the Board shall conduct periodic evaluations of the program during the time of correction to determine whether the deficiencies have been corrected.
- B. The Board shall, following a determination of continued non-compliance, rescind the approval of, or restrict admissions to a nursing program if the program fails to comply with Article 2 within the time set by the Board in the notice of deficiencies served upon the program.
1. The Board shall serve the administrator with a written notice of proposed rescission of approval or restriction of admissions that states the grounds for the proposed action. The administrator shall have 30 days to submit a written request for a hearing to appeal the Board's proposed action. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.
  2. Upon the effective date of a decision to rescind program approval, the nursing program shall immediately cease operation and be removed from the official approved-status listing. A nursing program that has been ordered to cease operations shall assist currently enrolled students to transfer to an approved nursing program.
- C. In addition to the cause in subsection (B), the Board may, depending on the severity and pattern of violations, issue discipline, rescind approval of or restrict admissions to a nursing program for any of the following causes:
1. For a program that was served with a notice of deficiencies within the preceding three years and timely corrected the noticed deficiencies, subsequent noncompliance with the standards in this Article;
  2. Failure to comply with orders of or stipulations with the Board within the time determined by the Board; or
  3. Unprofessional program conduct under R4-19-211.
- D. A parent institution that voluntarily terminates a nursing education program while under a Board action, including a Notice of Deficiency, shall not apply to open a new nursing education program for a period of two years and shall provide evidence in any future application that the basis for the Board action has been rectified.

**Historical Note**

Adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 7 A.A.R. 5349, effective November 8, 2001 (Supp. 01-4). Amended by final rulemaking at 11 A.A.R. 451, effective March 7, 2005 (05-1). R4-19-212 renumbered to R4-19-213; New Section R4-19-212 renumbered from R4-19-211 and amended by final rulemaking at 19 A.A.R. 1419, effective July 6, 2013 (Supp. 13-2).

**R4-19-213. Nursing Programs Holding National Program Accreditation**

- A. An approved nursing program that is accredited by an approved national nursing accrediting agency shall submit to

the Board evidence of initial accreditation including a copy of the site visit report and the official notice of accreditation.

- B.** A nationally accredited nursing program or a program seeking national accreditation or re-accreditation shall inform the Board at least 30 days in advance of any pending visit by a nursing program accrediting agency and allow Board staff to attend all portions of the visit.
- C.** Following any visit by the accrediting agency, a nursing program shall submit a complete copy of all site visit reports to the Board within 15 days of receipt by the program and notify the Board within 15 days of any change or pending change in program accreditation status or reporting requirements.
- D.** The administrator of a nursing program that loses its accreditation status or allows its accreditation status to lapse shall file an application for renewal of approval under R4-19-210 within 30 days of loss of or lapse in accreditation status.
- E.** Under A.R.S. § 32-1644(D) the Board may periodically re-survey a nationally accredited program to determine compliance with this Article and require a self study report. Board site visits may be conducted in conjunction with the national accrediting team.
- F.** Unless otherwise notified by the Board following receipt and review of the documents required by subsections (A), (B) and (C), a nationally accredited nursing program continues to have full-approval status. The administrator of a nursing program that has its continuing approval-status rescinded by the Board may request a hearing by filing a written request with the Board within 30 days of service of the Board's order rescinding continuing full-approval status. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

#### Historical Note

Adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 7 A.A.R. 5349, effective November 8, 2001 (Supp. 01-4). R4-19-213 renumbered to R4-19-215; New Section R4-19-213 renumbered from R4-19-212 and amended by final rulemaking at 19 A.A.R. 1419, effective July 6, 2013 (Supp. 13-2).

#### R4-19-214. Pilot Programs for Innovative Approaches in Nursing Education

- A.** Under A.R.S. § 32-1606(A)(9) a nursing education program, refresher program or a certified nursing assistant program may implement a pilot program for an innovative approach by complying with the provisions of this Section. Education programs approved to implement innovative approaches shall comply with all other applicable provisions of A.R.S. Title 32, Chapter 15 and A.A.C. Title 4, Chapter 19.
- B.** A program applying for a pilot program shall:
  - 1. Hold full approval;
  - 2. Have no substantiated complaints, discipline or deficiencies in the past two years; and
  - 3. Have been compliant with all Board regulations during the past two years.
- C.** The following written information shall be provided to the Board at least 90 days prior to a Board meeting:
  - 1. Identifying information including name of program, address, responsible party and contact information;
  - 2. A brief description of the current program, including accreditation and Board approval status;
  - 3. Identification of the regulation or regulations that the proposed innovative approach would violate;
  - 4. Length of time for which the innovative approach is requested;
  - 5. Description of the innovative approach, including objectives;

- 6. Brief explanation of the rationale for the innovative approach at this time;
  - 7. Explanation of how the proposed innovation differs from approaches in the current program;
  - 8. Available evidence supporting the innovative approach;
  - 9. Identification of resources that support the proposed innovative approach;
  - 10. Expected impact the innovative approach will have on the program, including administration, students, faculty, and other program resources;
  - 11. Plan for implementation, including timeline;
  - 12. Plan for evaluation of the proposed innovation, including measurable outcomes, method of evaluation, and frequency of evaluation; and
  - 13. Additional application information as requested by the Board.
- D.** The Board shall approve an application for innovation that meets the following criteria:
    - 1. Eligibility criteria in subsection (B) and application criteria in subsection (C) are met;
    - 2. The innovative approach will not compromise the quality of education or safe practice of students;
    - 3. Resources are sufficient to support the innovative approach;
    - 4. Rationale with available evidence supports the implementation of the innovative approach;
    - 5. Implementation plan is reasonable to achieve the desired outcomes of the innovative approach;
    - 6. Timeline provides for a sufficient period to implement and evaluate the innovative approach; and
    - 7. Plan for periodic evaluation is comprehensive and supported by appropriate methodology.
  - E.** The Board may:
    - 1. Deny the application or request additional information if the program does not meet the criteria in subsections (B) and (C); or
    - 2. Rescind the approval of the innovation or require the program to make modifications if:
      - a. The Board receives substantiated evidence indicating adverse impact,
      - b. The program fails to implement or evaluate the innovative approach as presented and approved, or
      - c. The program fails to maintain eligibility criteria in subsection (B).
  - F.** An education program that is granted approval for an innovation shall maintain eligibility criteria in subsection (B) and submit:
    - 1. Progress reports conforming to the evaluation plan annually or as requested by the Board; and
    - 2. A final evaluation report that conforms to the evaluation plan, detailing and analyzing the outcomes data.
  - G.** If the innovative approach has achieved the desired outcomes and the final evaluation has been submitted, the program may request that the innovative approach be continued.
  - H.** The Board may grant the request to continue approval if the innovative approach has achieved desired outcomes and has not compromised public protection.

#### Historical Note

Adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 7 A.A.R. 5349, effective November 8, 2001 (Supp. 01-4). Amended by final rulemaking at 11 A.A.R. 451, effective March 7, 2005 (05-1). R4-19-214 renumbered to R4-19-216; New Section R4-19-214 made by final rulemaking at 19 A.A.R. 1419, effective July 6, 2013 (Supp. 13-2).



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**R4-19-215. Voluntary Termination of a Nursing Program or a Refresher Program**

- A.** The administrator of a nursing program or a refresher program shall notify the Board within 15 days of a decision to voluntarily terminate the program. The administrator shall, at the same time, submit a written plan for terminating the nursing program or refresher program. A program is considered voluntarily terminated when it no longer admits or plans to admit students after current students graduate.
- B.** The administrator shall ensure that the nursing program or refresher program is maintained, including the nursing faculty, until the last student is transferred or completes the program. At that time the Board shall remove the program from the current list of approved programs.
- C.** Within 15 days after the termination of a nursing program or refresher program, the administrator shall notify the Board of the permanent location and availability of all program records.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 451, effective March 7, 2005 (Supp. 05-1). Amended by final rulemaking at 13 A.A.R. 1483, effective June 2, 2007 (Supp. 07-2). R4-19-215 renumbered to R4-19-217; New Section R4-19-215 renumbered from R4-19-213 and amended by final rulemaking at 19 A.A.R. 1419, effective July 6, 2013 (Supp. 13-2).

**R4-19-216. Approval of a Refresher Program**

- A.** An applicant for approval of a refresher program for nurses whose licenses have been inactive or expired for five or more years, nurses under Board order to enroll in a refresher program, or nurses who have not met the requirements of R4-19-312 shall submit one electronic and one paper copy of a completed application that provides all of the following information and documentation:
  1. Applicant's name, address, e-mail address, telephone number, web site address, if applicable, and fax number;
  2. Proposed starting date for the program;
  3. Name and qualifications of all instructors that meet the requirements of subsection (C);
  4. Statement describing the facilities, staff, and resources that the applicant will use to conduct the refresher program;
  5. A program and participant evaluation plan that includes student evaluation of the course, instructor, and clinical experience;
  6. Evidence of a curriculum that meets the requirements of subsection (B);
- B.** A refresher program shall provide:
  1. A minimum of 40 hours of didactic instruction for a licensed practical nurse program and 80 hours of didactic instruction for a registered nurse program. Didactic instruction shall include, at a minimum:
    - a. Nursing process and patient centered care;
    - b. Pharmacology, medication calculation, and medication administration;
    - c. Communication;
    - d. Critical thinking, clinical decision making and evidence-based practice;
    - e. Delegation, management, and leadership;
    - f. Working with interdisciplinary teams;
    - g. Meeting psychosocial and physiological needs of adult clients with medical-surgical conditions;
    - h. Ethics;
    - i. Documentation including electronic health records;
    - j. Informatics;
    - k. Quality Improvement; and

1. At the program's discretion, additional content hours in other populations of care for students who will be engaged in clinical experiences with these populations.
2. A clinical experience of a type and duration to meet course objectives for each student which consists of a minimum of 112 hours for a practical nurse program and 160 hours for a registered nurse program. Relative to the clinical portion of the program, the program shall:
  - a. Ensure that each qualified student has a verified clinical placement within 12 months of course enrollment;
  - b. Provide program policies for clinical placement in advance of enrollment that specify both the obligations of the school and the student regarding placement;
  - c. Validate that a student has the necessary theoretical knowledge to function safely in the specific clinical setting before starting a clinical experience;
  - d. Ensure that clinical placements provide an opportunity to demonstrate safe and competent application of program didactic content through either direct or indirect client care; and
  - e. Include, at its discretion, up to 32 hours of scheduled clinical time in laboratory experiences including simulation.
3. Curriculum and other materials to students and prospective students that, include:
  - a. An overall program description including goals;
  - b. Objectives, content, and hours allotted for each area of instruction;
  - c. Implemented course policies that include but are not limited to admission requirements, passing criteria, cause for dismissal, clinical requirements, grievance process and student responsibilities; and
  - d. Program costs and length of the program.
- C.** Refresher program personnel qualifications and responsibilities:
  1. An administrator of a refresher program shall:
    - a. Hold a graduate degree in nursing or a bachelor of science in nursing degree and a graduate degree in either education or a health-related field, and
    - b. Be responsible for administering and evaluating the program.
  2. A faculty member of a refresher program shall:
    - a. Hold a minimum of a bachelor of science in nursing degree,
    - b. Be responsible for implementing the curriculum and supervising clinical experiences either directly or indirectly through the use of clinical preceptors.
  3. Licensure requirements for program administrator and faculty:
    - a. If the program is located in Arizona, the administrator and faculty members shall hold a current Arizona RN license in good standing or a multi-state privilege under A.R.S., Title 32, Chapter 15;
    - b. If the program is located in another state, the administrator and didactic faculty members shall either hold a current RN license in good standing in the state of the program location or meet the requirements of subsection (a).
  4. If preceptors are used for clinical experiences, the program shall adhere to the preceptorship requirements of R4-19-206(E).
  5. Other licensed health care professionals may participate in course instruction consistent with their licensure and

scope of practice and under the direction of the program administrator or faculty.

**D. Program types; bonding**

1. A refresher program may be offered by:
  - a. A private educational institution that is accredited by the private post-secondary board,
  - b. A public post-secondary educational institution,
  - c. A licensed health care institution, or
  - d. A private individual, partnership or corporation.
2. If the refresher program is offered by a private individual, partnership or corporation, the program shall:
  - a. Submit proof of insurance covering any potential or future claims for damages resulting from any aspect of the program or provide evidence of a surety bond from a surety company with a rating of "A" or better by either Best's Credit Ratings, Moody's Investor Service, or Standard and Poor's rating service in the amount of a minimum of \$15,000. The program shall ensure that:
    - i. Bond or insurance distributions are limited to students or former students with a valid claim for instructional or program deficiencies;
    - ii. The amount of the bond or insurance coverage is sufficient to reimburse the full amount of collected tuition and fees for all students during all enrollment periods of the program; and
    - iii. The bond or insurance is maintained for an additional 24 months after program closure.
  - b. For programs offering on-ground instruction, provide a fire inspection report of the classroom and building by the Arizona State Fire Marshal or an entity approved by the Arizona State Fire Marshal for each program location.
  - c. Subsection (D) is effective immediately for new programs and within one year of the effective date for approved programs.

**E. The Board shall approve a refresher program that meets the requirements of this Section, if approval is in the best interest of the public, for a maximum term of five years. An applicant who is denied refresher program approval may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.**

**F. The refresher program sponsor shall apply for renewal of approval in accordance with subsection (A) not later than 90 days before expiration of the current approval. The sponsor of a refresher program that is denied renewal of approval may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for renewal of approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, and 4 A.A.C. 19, Article 6.**

**G. The sponsor of an approved refresher program shall provide written notification to the Board within 15 days of a participant's completion of the program of the following:**

1. Name of the participant and whether the participant successfully completed or failed the program,
2. Participant's license, and
3. Date of participant's completion of the program.

**H. The Board may accept a refresher program from another U.S. jurisdiction for an individual applicant on a case-by-case basis if the applicant provides verifiable evidence that the refresher program substantially meets the requirements of this Section.**

The acceptance of the program for an individual applicant does not confer approval status upon the program.

**I. Within 30 days, a refresher program shall report to the Board changes in:**

1. Name, address, electronic address, web site address or phone number of the program;
2. Clinical or didactic hours of the program;
3. Program delivery method; or
4. Ownership including adding or deleting an owner.

**J. The Board may take action against the approval of a refresher program under A.R.S. § 32-1606(C) and the provisions of this Article. The administrator of a refresher program whose approval is disciplined or subject to a notice of deficiency may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for renewal of approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, and 4 A.A.C. 19, Article 6.**

**Historical Note**

New Section R4-19-216 renumbered from R4-19-214 and amended by final rulemaking at 19 A.A.R. 1419, effective July 6, 2013 (Supp. 13-2).

**R4-19-217. Distance Learning Nursing Programs; Out-of-State Nursing Programs**

**A. An out-of-state nursing program that is in good standing in another state and plans to provide distance based didactic instruction and on-ground clinical instruction in Arizona shall comply with the application requirements of R4-19-207 and R4-19-208. The program shall employ at least one faculty member who is physically present in this state to coordinate the education and clinical experience.**

**B. Any nursing program that delivers didactic instruction by distance learning methods, whether in this state or another, shall ensure that the methods of instruction are compatible with the program curriculum plan and enable a student to meet the goals, competencies, and objectives of the educational program and standards of the Board.**

1. A distance learning nursing program shall establish a means for assessing individual student outcomes, and program outcomes including, at minimum, student learning outcomes, student retention, student satisfaction, and faculty satisfaction.
2. For out-of-state nursing programs, the program shall be within the jurisdiction of and regulated by an equivalent United States nursing regulatory authority in the state from which the program originates, unless also providing clinical experience in Arizona.
3. Didactic faculty members shall be licensed in the state of origination of a distance learning nursing program and in Arizona or hold a multi-state compact license unless exempt under A.R.S. § 32-1631(8). Clinical supervising faculty shall be licensed in the location of the clinical activity.
4. A distance learning nursing program shall provide students with supervised clinical and laboratory experiences so that program objectives are met and didactic learning is validated by supervised, land-based clinical and laboratory experiences.
5. A distance-learning nursing program shall provide students with access to technology, resources, technical support, and the ability to interact with peers, preceptors, and faculty.

**C. A nursing program, located in another state or territory of the United States, that wishes to provide clinical experiences in Arizona under A.R.S. § 32-1631(3), shall obtain Board**

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approval before offering or conducting a clinical session. To obtain approval, the program shall submit a proposal package that contains:

1. A self study, describing the program's compliance with R4-19-201 through R4-19-206; and
  2. A statement regarding, the number and type of student placements planned, a copy of signed clinical contracts and written commitment by the clinical facilities to provide the necessary clinical experiences, the name and qualifications of faculty licensed in Arizona and physically present in the facility who will supervise the experience and verification of good standing of the program in the jurisdiction of origin.
- D.** The Board may require a nursing program approved under this Section to file periodic reports for the purpose of data collection or to determine compliance with the provisions of this Article. A program shall submit a report to the Board within 30 days of the date on a written request from the Board or by the due date stated in the request if the due date is after the normal 30-day period.
- E.** The Board shall approve an application to conduct clinical instruction in Arizona that meets the requirements in A.R.S. Title 32, Chapter 15 and this Chapter, and is in the best interest of the public. An applicant who is denied approval to conduct clinical instruction in Arizona may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.
- F.** The Board may rescind an approval held by an out-of-state nursing program to conduct clinical instruction in Arizona, in accordance with R4-19-212.
- G.** If the Board finds that a nursing program located and approved in another state or territory of the United States does not meet requirements for nursing programs prescribed in this Article the Board shall either provide a notice of deficiency to the program as prescribed in R4-19-212(A), (A)(1) and (A)(2) or take other disciplinary action depending on the severity of the offense under R4-19-211.
1. If the Board issues a notice of deficiency and the program fails to correct the deficiency before the expiration of the period of correction, the Board shall rescind approval of the program as prescribed in R4-19-212(B)(1).
  2. If the period of rescission, from the date of rescission to the date of reinstatement, is at any time concurrent with an applicant's education from the date of admission to the date of graduation, the Board shall withhold licensure unless the applicant meets all licensure requirements and completes any remedial education prescribed by the Board under R4-19-301(H). The Board shall ensure that the applicant has completed a curriculum that is equivalent to that of an approved nursing program.
  3. If a nursing program provides evidence of compliance with this Article after the rescission of approval, the Board shall review the evidence, determine whether or not the nursing program complies with these standards, and reinstate approval of the program if the program complies with these standards and reinstatement is in the best interest of the public.

**Historical Note**

New Section R4-19-217 renumbered from R4-19-215 and amended by final rulemaking at 19 A.A.R. 1419, effective July 6, 2013 (Supp. 13-2). Amended by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3).

**ARTICLE 3. LICENSURE****R4-19-301. Licensure by Examination**

- A.** An applicant for licensure by examination shall:
1. Submit a verified application to the Board on a form furnished by the Board that provides the following information about the applicant:
    - a. Full legal name and all former names used by the applicant;
    - b. Mailing address, including declared primary state of residence, and telephone number;
    - c. Place and date of birth;
    - d. Ethnic category, marital status and e-mail address, at the applicant's discretion;
    - e. Social Security number for an applicant who lives or works in the United States;
    - f. Post-secondary education, including the names and locations of all schools attended, graduation dates, and degrees received, if applicable;
    - g. Current employer or practice setting, including address, position, and dates of service, if employed or practicing in nursing or health care;
    - h. Information regarding the applicant's compliance with the practice or education requirements in R4-19-312;
    - i. Any state, territory, or country in which the applicant holds or has held a registered or practical nursing license and the license number and status of the license, including original state of licensure, if applicable;
    - j. The date the applicant previously filed an application for licensure in Arizona, if applicable;
    - k. Responses to questions regarding the applicant's background on the following subjects:
      - i. Current investigation or pending disciplinary action by a nursing regulatory agency in the United States or its territories;
      - ii. Action taken on a nursing license by any other state;
      - iii. Undesignated offenses, felony charges, convictions and plea agreements, including deferred prosecution;
      - iv. Misdemeanor charges, convictions and plea agreements, including deferred prosecution, that are required to be reported under A.R. S. § 32-3208;
      - v. Unprofessional conduct as defined in A.R.S. § 32-1601;
      - vi. Substance use disorder within the last 5 years;
      - vii. Current participation in an alternative to discipline program in any other state;
    - l. Explanation and supporting documentation for each affirmative answer to questions regarding the applicant's background; and
    - m. Certification in nursing including category, specialty, name of certifying body, date of certification, and expiration date.
  2. Submit proof of United States citizenship or alien status as specified in A.R.S. § 41-1080;
  3. Submit a completed fingerprint card on a form provided by the Board or prints for the purpose of obtaining a criminal history report under A.R.S. § 32-1606 if the applicant has not submitted a fingerprint card or prints to the Board within the last two years; and
  4. Pay the applicable fees.
- B.** If an applicant is a graduate of a pre-licensure nursing program in the United States that has been assigned a program code by

the National Council of State Boards of Nursing during the period of the applicant's attendance, the applicant shall submit one of the following:

1. If the program is an Arizona-approved program, the transcript required in subsection (B)(2) or a statement signed by a nursing program administrator or designee verifying that:
    - a. The applicant graduated from or is eligible to graduate from a registered nursing program for a registered nurse applicant; or
    - b. The applicant graduated from or is eligible to graduate from a practical nursing program or graduated from a registered nursing program and completed Board-prescribed role delineation education for a practical nurse applicant; or
  2. If the program is located either in Arizona or in another state or territory and meets educational standards that are substantially comparable to Board standards for educational programs under Article 2 when the applicant completed the program, an official transcript sent directly from one of the following as:
    - a. Evidence of graduation or eligibility for graduation from a diploma registered nursing program, associate degree registered nursing program, or baccalaureate or higher degree registered nursing program for a registered nurse applicant.
    - b. Evidence of graduation or eligibility for graduation of a practical nursing program, associate degree registered nursing program, or baccalaureate or higher degree registered nursing program for a practical nurse applicant.
- C.** If an applicant is a graduate of a pre-licensure international nursing program and lacks items required in subsection (B), the applicant shall comply with subsection (A), submit a self report on the status of any international nursing license, and submit the following:
1. To demonstrate nursing program equivalency, one of the following:
    - a. If the applicant graduated from a Canadian nursing program, evidence of a passing score on the English language version of either the Canadian Nurses' Association Testing Service, the Canadian Registered Nurse Examination, NCLEX or an equivalent examination;
    - b. A Certificate or Visa Screen Certificate issued by the Commission on Graduates of Foreign Nursing Schools (CGFNS), or a report from CGFNS that indicates an applicant's program is substantially comparable to a U.S. program; or
    - c. A report from any other credential evaluation service (CES) approved by the Board.
  2. If a graduate of an international pre-licensure nursing program subsequently obtains a degree in nursing from an accredited U.S. nursing program, the requirement for a CES equivalency report may be waived by the Board, however the applicant is not eligible for a multi-state compact license.
  3. If an applicant's pre-licensure nursing program provided classroom instruction, textbooks, or clinical experiences in a language other than English, a test of written, oral, and spoken English is required. Clinical experiences are deemed to have been provided in a language other than English if the principal or official language of the country or region where the clinical experience occurred is a language other than English, according to the United States Department of State.
4. An applicant who is required to demonstrate English language proficiency shall ensure that one of the following is submitted to the Board directly from the testing or certifying agency:
    - a. Evidence of a minimum score of 84 with a minimum speaking score of 26 on the Internet-based Test of English as a Foreign Language (TOEFL),
    - b. Evidence of a minimum score of 6.5 overall with minimum of 6.0 on each module of the Academic Exam of the International English Language Test Service (IELTS) Examination,
    - c. Evidence of a minimum score of 55 overall with a minimum score of 50 on each section of the Pearson Test of English Academic exam.
    - d. A Visa Screen Certificate from CGFNS,
    - e. A CGFNS Certificate,
    - f. Evidence of a similar minimum score on another written and spoken English proficiency exam determined by the Board to be equivalent to the other exams in this subsection, or
    - g. Evidence of employment for a minimum of 960 hours within the past five years as a nurse in a country or territory where the principal language is English, according to the United States Department of State.
- D.** An applicant for a registered nurse license shall attain one of the following:
1. A passing score on the NCLEX-RN;
  2. A score of 1600 on the NCLEX-RN, if the examination was taken before July 1988; or
  3. A score of not less than 350 on each part of the SBTPE for registered nurses.
- E.** An applicant for a practical nurse license shall attain:
1. A passing score on the NCLEX-PN;
  2. A score of not less than 350 on the NCLEX-PN, if the examination was taken before October 1988; or
  3. A score of not less than 350 on the SBTPE for practical nurses.
- F.** The Board shall grant a license to practice as a registered or practical nurse to any applicant who meets the criteria established in statute and this Article. An applicant who is denied a license by examination may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the license. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10.
- G.** If the Board receives an application from a graduate of a nursing program and the program's approval was rescinded under R4-19-212 at any time during the applicant's nursing education, the Board shall ensure that the applicant has completed a basic curriculum that is equivalent to that of a Board-approved nursing program and may do any of the following:
1. Grant licensure, if the program's approval was reinstated during the applicant's period of enrollment and the program provides evidence that the applicant completed a curriculum equivalent to that of a Board-approved nursing program;
  2. By order, require successful completion of remedial education while enrolled in a Board approved nursing program which may include clinical experiences, before granting licensure; or
  3. Return or deny the application if the education was not equivalent and no remediation is possible.

#### Historical Note

Former Section II, Part I; Amended effective January 20, 1975 (Supp. 75-1). Amended effective December 7, 1976 (Supp. 76-5). Former Section R4-19-24 repealed, new

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Section R4-19-24 adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-24 repealed, new Section R4-19-24 adopted effective May 9, 1984 (Supp. 84-3). Former Section R4-19-24 renumbered as Section R4-19-301 (Supp. 86-1). Section repealed, new Section adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 4819, effective December 7, 2000 (Supp. 00-4). Amended by final rulemaking at 10 A.A.R. 792, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 13 A.A.R. 1483, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 19 A.A.R. 1308, effective July 6, 2013 (Supp. 13-2).

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

- A. An applicant for a license by endorsement shall submit all of the information required in R4-19-301(A).
- B. In addition to the information required in subsection (A), an applicant for a license by endorsement shall:
  1. Submit evidence of a passing examination score in accordance with:
    - a. R4-19-301(E) for a registered nurse applicant, or
    - b. R4-19-301(F) for a practical nurse applicant.
  2. Submit the following:
    - a. Evidence of previous or current license in another state or territory of the United States,
    - b. Information related to the nurse's practice for the purpose of collecting nursing workforce data, and
    - c. One of the following:
      - i. Completion of a pre-licensure nursing program that has been assigned a nursing program code by the National Council of State Boards of Nursing (NCSBN) at the time of program completion and the program meets educational standards substantially comparable to Board standards for educational programs in Article 2;
      - ii. If the applicant completed a pre-licensure nursing program that has been assigned a program code by the NCSBN but the program's approval was rescinded under A.R.S. § 32-1606(B)(8) or removed from the list of approved programs under A.R.S. § 32-1644(D) or R4-19-212 during the applicant's enrollment in the program, proof of completion of the program and completion of any remedial education required by the Board to mitigate the deficiencies in the applicant's initial nursing program;
      - iii. If the applicant graduated from a U.S. nursing program before 1986 and the applicant was issued an initial license in another state or territory of the United States without being required to obtain additional education or experience, proof both of program completion and initial licensure without additional educational or experiential requirements;
      - iv. If the applicant graduated from an international nursing program, proof of meeting the requirements in R4-19-301.
      - v. If the Board finds that the documentation submitted by the applicant does not fulfill one of the requirements in (B)(2)(b)(i) through (iv), but the applicant has submitted verified employer evaluations demonstrating applicant's safe practice as a registered or practical nurse in another state for a minimum of two years full-time during the past three years and applicant otherwise meets licensure require-

ments, the Board may grant a single-state only license if the Board determines that licensure is in the best interest of the public.

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

**Historical Note**

Former Section II, Part II; Amended effective December 7, 1976 (Supp. 76-5). Former Section R4-19-25 repealed, new Section R4-19-25 adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-25 repealed, new Section R4-19-25 adopted effective May 9, 1984 (Supp. 84-3). Former Section R4-19-25 renumbered and amended as Section R4-19-302 effective February 21, 1986 (Supp. 86-1). Section repealed, new Section adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 4819, effective December 7, 2000 (Supp. 00-4). Amended by final rulemaking at 10 A.A.R. 792, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 13 A.A.R. 1483, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 19 A.A.R. 1308, effective July 6, 2013 (Supp. 13-2).

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

- A. A CES seeking Board approval shall submit documentation to the Board demonstrating that it:
  1. Provides a credential evaluation to determine comparability of registered nurse or practical nurse programs in other countries to nursing education in the United States;
  2. Evaluates original source documents;
  3. Has five or more years of experience in evaluating nursing educational programs or employs personnel that have this experience;
  4. Employs staff with expertise in evaluating nursing programs;
  5. Has access to resources pertinent to the field of nursing education and the evaluation of nursing programs;
  6. Issues a report on each applicant, and supplies the Board with a sample of such a report, regarding the comparability of the applicant's nursing educational program to nursing education in the United States that includes:
    - a. The current name of the applicant including any names formerly used by the applicant;
    - b. Source and description of the documents evaluated;
    - c. Name and nature of the nursing education program, including status of the parent institution;
    - d. Dates applicant attended;
    - e. References consulted;
    - f. A seal or some other security measure;
    - g. Notification of any falsification or misrepresentation of documents by the applicant;
    - h. A report on licensure examination results for the applicant, if an exam was required for licensure in the international jurisdiction; and
    - i. The status of any international nursing licenses held by the applicant.
  7. Has a quality control program that includes at a minimum:
    - a. Standards regarding the use of original documents;
    - b. Verification of authenticity of documents and translations;

- c. Processes and procedures to prevent and detect fraud;
  - d. Policies for maintaining confidentiality of applicant educational records;
  - e. Responsiveness to applicants, including ensuring that reports are issued no later than eight weeks from the receipt of an applicant's documents; and
  - f. Tracking of and notification to the Board of any trends in falsification or misrepresentation of documents;
8. Follows or exceeds the standards of the National Association of Credentialing Services (NACES) or an equivalent organization;
  9. Responds to Board requests for information in a timely and thorough manner; and
  10. Agrees to notify the Board before any changes in any of the above criteria.
- B.** If a CES fails to comply with the provisions of subsection (A), the Board may rescind its approval of the CES.
- C.** The Board shall approve a credential evaluation service that meets the criteria established in this Section. A CES applicant who is denied approval or whose approval is revoked may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10.

#### Historical Note

Former Section II, Part III; Former Section R4-19-26 repealed, new Section R4-19-26 adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-26 renumbered and amended as Section R4-19-27, new Section R4-19-26 adopted effective May 9, 1984 (Supp. 84-3). Former Section R4-19-27 renumbered as Section R4-19-303 (Supp. 86-1). Section repealed, new Section adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 5 A.A.R. 1802, effective May 18, 1999 (Supp. 99-2). Amended by final rulemaking at 6 A.A.R. 4819, effective December 7, 2000 (Supp. 00-4). Former Section R4-19-303 renumbered to R4-19-304; new Section R4-19-303 made by final rulemaking at 10 A.A.R. 792, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 1308, effective July 6, 2013 (Supp. 13-2).

#### R4-19-304. Temporary License

- A.** Subject to subsection (B), the Board shall issue a temporary license if:
1. An applicant:
    - a. Is qualified under:
      - i. A.R.S. § 32-1635 and applies for a temporary registered nursing license, or is qualified under A.R.S. § 32-1640 and applies for a temporary practical nursing license; and
      - ii. R4-19-301 for applicants for licensure by examination, or is qualified under R4-19-302 for applicants for licensure by endorsement; and
    - b. Submits an application for a temporary license with the applicable fee required under A.R.S. § 32-1643(A)(9); and
    - c. Submits an application for a license by endorsement or examination with the applicable fee required under A.R.S. § 32-1643(A).
  2. An applicant is seeking a license by examination, meets the requirements of R4-19-312(C), and the Board receives a report from the Arizona Department of Public

Safety (DPS), verifying that DPS has no criminal history record information, as defined in A.R.S. § 41-1701, relating to the applicant or that any criminal history reported has been reviewed by the executive director or the director's designee and determined not to pose a threat to public health, safety, or welfare; or

3. An applicant is seeking a license by endorsement, meets the requirements in R4-19-312(B), and the applicant submits evidence that the applicant has a current license in good standing in another state or territory of the United States or, if no current license, a previous license in good standing that was not the subject of an investigation or pending discipline; or
  4. An applicant who does not meet the practice requirements in R4-19-312(B) or (C), but provides evidence that the applicant has applied for enrollment in a refresher or other competency program approved by the Board, may practice nursing under a temporary license during the clinical portion of the program only.
- B.** An applicant who has a criminal history, a history of disciplinary action by a regulatory agency, a pending complaint before the Board, or answers affirmatively to any criminal background or disciplinary question in the application is not eligible for a temporary license or extension of a temporary license without Board approval.
- C.** A temporary license is valid for a maximum of 12 months unless extended for good cause under subsection (D) of this Section.
- D.** An applicant with a temporary license may apply for and the Board, the Executive Director or the Executive Director's designee may grant an extension of the temporary license period for good cause. Good cause means reasons beyond the control of the temporary licensee, such as unavoidable delays in obtaining information required for licensure.
- E.** An applicant who receives a temporary license but does not meet the criteria for a regular license within the established period under subsections (C) and (D) is no longer eligible for a temporary license except for the purpose of completing a refresher or other competency program under subsection (A)(4) of this Section.

#### Historical Note

Former Section II, Part IV; Amended effective January 20, 1975 (Supp. 75-1). Former Section R4-19-27 repealed, new Section R4-19-27 adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-27 renumbered and amended as Section R4-19-28. Former Section R4-19-26 renumbered and amended as Section R4-19-27 effective May 9, 1984 (Supp. 84-3). Former Section R4-19-27 renumbered and amended as Section R4-19-304 effective February 21, 1986 (Supp. 86-1). Section repealed, new Section adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 4819, effective December 7, 2000 (Supp. 00-4). Former Section R4-19-304 renumbered to R4-19-305; new Section R4-19-304 renumbered from R4-19-303 and amended by final rulemaking at 10 A.A.R. 792, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 1308, effective July 6, 2013 (Supp. 13-2).

#### R4-19-305. License Renewal

- A.** An applicant for renewal of a registered or practical nursing license shall:
1. Submit a verified application to the Board on a form furnished by the Board that provides all of the following information about the applicant:

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- a. Full legal name, mailing address, telephone number and declared primary state of residence;
  - b. A listing of all states in which the applicant is currently licensed, or, since the last renewal, was previously licensed or has been denied licensure;
  - c. Marital status, ethnic category and e-mail address, at the applicant's discretion;
  - d. Information regarding qualifications, including:
    - i. Educational background;
    - ii. Employment status;
    - iii. Practice setting; and
    - iv. Other information related to the nurse's practice for the purpose of collecting nursing workforce data.
  - e. Responses to questions regarding the applicant's background on the following subjects:
    - i. Criminal convictions for offenses involving drugs or alcohol since the time of last renewal;
    - ii. Undesignated offenses and felony charges, convictions and plea agreements including deferred prosecution;
    - iii. Misdemeanor charges, convictions and plea agreements, including deferred prosecution, that are required to be reported under A.R.S. § 32-3208;
    - iv. Unprofessional conduct as defined in A.R.S. § 32-1601 since the time of last renewal;
    - v. Substance use disorder within the last five years;
    - vi. Current participation in an alternative to discipline program in any other state; and
    - vii. Disciplinary action or investigation related to the applicant's nursing license by any other state nursing regulatory agency since the last renewal.
  - f. Explanation and supporting documentation for each affirmative answer to questions regarding the applicant's background;
  - g. Information related to the applicant's current or most recent nursing practice setting, including position, address, telephone number, and dates of practice;
  - h. Information regarding the applicant's compliance with the practice or education requirements in R4-19-312;
  - i. National certification in nursing including specialty, name of certifying body, date of certification, certification number, and expiration date, if applicable; and for an applicant certified as a registered nurse practitioner or clinical nurse specialist the patient population of the certification; and
2. Pay fees for renewal authorized by A.R.S. § 32-1643(A)(6); and
  3. Pay an additional fee for late renewal authorized by A.R.S. § 32-1643(A)(7) if the application for renewal is submitted after May 1 of the year of renewal.
- B.** A license expires on August 1 of the year of renewal indicated on the license.
  - C.** A licensee who fails to submit a renewal application before expiration of a license shall not practice nursing until the Board issues a renewal license.
  - D.** If the applicant holds a license or certificate that has been or is currently revoked, surrendered, denied, suspended or placed on probation in another jurisdiction, the applicant is not eligible to renew or reactivate a license until a review or investigation has been completed and a decision regarding eligibility for renewal or reactivation is made by the Board.
  - E.** The Board shall renew the license of any registered or practical nurse applicant who meets the criteria established in statute and this Article. An applicant who is denied renewal of a license may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying renewal of the license. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10.

**Historical Note**

Former Section II, Part V; Repealed effective January 20, 1975 (Supp. 75-1). New Section R4-19-28 adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-28 renumbered and amended as Section R4-19-29. Former Section R4-19-27 renumbered and amended as Section R4-19-28 effective May 9, 1984 (Supp. 84-3). Former Section R4-19-28 renumbered and repealed as Section R4-19-305 effective February 21, 1986 (Supp. 86-1). New Section adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 4819, effective December 7, 2000 (Supp. 00-4). Former Section R4-19-305 renumbered to R4-19-306; new Section R4-19-305 renumbered from R4-19-304 and amended by final rulemaking at 10 A.A.R. 792, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 1308, effective July 6, 2013 (Supp. 13-2).

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

- A.** A licensee in good standing may submit to the Board either as a separate written document or as part of the renewal application, a request to transfer to inactive status, or retirement status under A.R.S. §§ 32-1606(A)(10) and 32-1636(E).
- B.** The Board shall send a written notice to the licensee granting inactive or retirement status or denying the request. A licensee denied a request for transfer to inactive or retirement status may request a hearing by filing a written request with the Board within 30 days of service of the denial of the request. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10.

**Historical Note**

Former Section II, Part VI; Amended effective January 20, 1975 (Supp. 75-1). Amended effective December 7, 1976 (Supp. 76-5). Former Section R4-19-29 repealed, new Section R4-19-29 adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-29 renumbered and amended as Section R4-19-30 effective May 9, 1984 (Supp. 84-3). Former Section R4-19-28 renumbered and amended as Section R4-19-29 effective May 9, 1984 (Supp. 84-3). Former Section R4-19-29 renumbered as Section R4-19-306 (Supp. 86-1). Section repealed, new Section adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 4819, effective December 7, 2000 (Supp. 00-4). Former Section R4-19-306 renumbered to R4-19-307; new Section R4-19-306 renumbered from R4-19-305 and amended by final rulemaking at 10 A.A.R. 792, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 1308, effective July 6, 2013 (Supp. 13-2).

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

- A.** A licensee shall report a lost or stolen license to the Board, in writing or electronically through the Board website, within 30 days of the loss.
- B.** A licensee requesting a duplicate license shall file an application on a form provided by the Board for a duplicate license and pay the applicable fee under A.R.S. § 32-1643(A)(14).

**Historical Note**

Former Section II, Part VII; Former Section R4-19-30

renumbered and amended as Section R4-19-45, new Section R4-19-30 adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-30 renumbered and amended as Section R4-19-31. Former Section R4-19-29 renumbered and amended as R4-19-30 effective May 9, 1984 (Supp. 84-3). Former Section R4-19-29 renumbered and amended as Section R4-19-307 effective February 21, 1986 (Supp. 86-1). Section repealed, new Section adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 4819, effective December 7, 2000 (Supp. 00-4). Former Section R4-19-307 renumbered to R4-19-308; new Section R4-19-307 renumbered from R4-19-306 and amended by final rulemaking at 10 A.A.R. 792, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 1308, effective July 6, 2013 (Supp. 13-2).

#### **R4-19-308. Change of Name or Address**

- A.** A licensee or applicant shall notify the Board, in writing or electronically through the Board website, of any legal change in name within 30 days of the change, and submit a copy of the official document verifying the name change.
- B.** A licensee or applicant shall notify the Board in writing or electronically through the Board website of any change in mailing address within 30 days.

#### **Historical Note**

Former Section II, Part VII; Former Section R4-19-31 repealed, new Section R4-19-31 adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-31 renumbered and amended as Section R4-19-32. Former Section R4-19-30 renumbered and amended as Section R4-19-31 effective May 9, 1984 (Supp. 84-3). Former Section R4-19-31 renumbered as Section R4-19-308 (Supp. 86-1). Section repealed, new Section adopted effective July 19, 1995 (Supp. 95-3). Amended effective December 3, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 4819, effective December 7, 2000 (Supp. 00-4). Former Section R4-19-308 renumbered to R4-19-309; new Section R4-19-308 renumbered from R4-19-307 and amended by final rulemaking at 10 A.A.R. 792, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 1308, effective July 6, 2013 (Supp. 13-2).

#### **R4-19-309. School Nurse Certification Requirements**

- A.** An applicant for initial school nurse certification shall:
  1. Hold a current license in good standing or multistate privilege to practice as a registered nurse in Arizona.
  2. Submit a verified application to the Board on a form furnished by the Board that provides the following information about the applicant:
    - a. Full legal name and any former names used by the applicant;
    - b. Mailing address and telephone number;
    - c. Registered nurse license number;
    - d. Social security number;
    - e. A description of the applicant's educational background, including the number and location of schools attended, the number of years attended, the date of graduation, the type of degree or certificate awarded, and if applicable, evidence that the applicant has satisfied the requirements specified in subsection (B), (C) or (D);
    - f. Current employer, including address, telephone number, position type, dates of employment, and previous employer if the current employment is less than 12 months;

- g. The name of any national certifying organization, specialty area, certification number and date of certification, if applicable; and for an applicant certified in as a nurse practitioner or clinical nurse specialist, the population of the certification;
- h. Responses to questions regarding the applicant's background on the following subjects:
  - i. Current investigation or pending disciplinary action by a nursing regulatory agency in the United States or its territories or current investigation in another state or territory of the United States;
  - ii. Action taken on a nursing license by any other state;
  - iii. Undesignated offenses, felony charges, convictions and plea agreements, including deferred prosecution;
  - iv. Misdemeanor charges, convictions and plea agreements, including deferred prosecution, that are required to be reported under A.R.S. § 32-3208;
  - v. Unprofessional conduct as defined in A.R.S. § 32-1601;
  - vi. Substance use disorder within the last five years; and
  - vii. Current participation in an alternative to discipline program in any other state;
- i. Explanation and supporting documentation for each affirmative answer to questions regarding the applicant's background; and
- j. E-mail address, ethnic category and marital status at the applicant's discretion.

3. Pay applicable fees.

- B.** National certification. In addition to the requirements of subsection (A), if an applicant provides evidence of current national certification as a school nurse or school nurse practitioner from an organization that meets the requirements of R4-19-310, the applicant qualifies for Arizona school nurse certification without meeting the requirements in subsection (C) for as long as the national certification remains current. The nurse shall provide evidence of continuing certification upon each renewal under subsection (D).

#### **C. Initial certification**

1. In addition to the requirements in subsection (A), the registered nurse applicant shall provide evidence of completion of all the following:
  - a. Three semester hours in school nurse practice course work;
  - b. Three semester hours in physical assessment of the school-aged child course work unless the applicant provides evidence of current national certification from an organization that meets the requirements of R4-19-310 as a pediatric nurse practitioner, family nurse practitioner, or pediatric clinical nurse specialist; and
  - c. Three semester hours in nursing care of the child with special needs.
2. An initial certificate expires six years after the issue date on the certificate.

#### **D. Renewal of certification.**

1. If the initial certificate of a school nurse has expired and the applicant, has met the requirements in subsections (B) or (C)(1) of this Section, the applicant is eligible to apply for re-certification. Within the application, the applicant shall provide evidence of completion of one of the following for renewal of certification:



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- a. Current national certification as a school nurse as specified in subsection (B),
  - b. A bachelor of science or graduate degree in nursing earned from an accredited institution as specified in R4-19-201(A) within the last six years, or
  - c. Evidence of completion of a minimum of 90 contact hours of continuing education activity, as defined in R4-19-101, related to school nursing practice and completed within the last six years.
2. Renewal of certification expires six years after the issue date on the certificate.
- E.** The Board shall grant a school nurse certificate to any applicant who meets the criteria established in statute and this Article. An applicant who is denied a school nurse certificate may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the certificate. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10.

**Historical Note**

Former Section II, Part IX; Repealed effective February 20, 1980 (Supp. 80-1). Former Section R4-19-31 renumbered and amended as Section R4-19-32 effective May 9, 1984 (Supp. 84-3). Former Section R4-19-32 renumbered as Section R4-19-309 (Supp. 86-1). Repealed effective July 19, 1995 (Supp. 95-3). New Section made by final rulemaking at 8 A.A.R. 1813, effective March 20, 2002 (Supp. 02-1). Former Section R4-19-309 renumbered to R4-19-311; new Section R4-19-309 renumbered from R4-19-308 and amended by final rulemaking at 10 A.A.R. 792, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 1308, effective July 6, 2013 (Supp. 13-2).

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

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

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 792, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 1308, effective July 6, 2013 (Supp. 13-2).

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

The Board shall implement A.R.S. §§ 32-1668 and 32-1669 according to the provisions of the Nurse Licensure Compact Model Rules and Regulations for RNs and LPN/VNs, published by the National Council of State Boards of Nursing, Inc., 111 E. Wacker Dr., Suite 2900, Chicago, IL 60601, [www.ncsbn.org](http://www.ncsbn.org), November 13, 2012, and no later amendments or editions, which is incorporated by reference and on file with the Board.

**Historical Note**

New Section renumbered from R4-19-309 and amended by final rulemaking at 10 A.A.R. 792, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 18 A.A.R. 2485, effective September 11, 2012 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 2852, effective September 11, 2013 (Supp. 13-3).

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

- A.** The Board shall not issue a license or renew the license of an applicant who does not meet the applicable requirements in subsections (B), (C), and (D).

- B.** An applicant for licensure by endorsement or renewal shall either have completed a post-licensure nursing program or practice nursing at the applicable level of licensure for a minimum of 960 hours in the five years before the date on which the application is received. This requirement is satisfied if the applicant verifies that the applicant has:

1. Completed a post-licensure nursing education program at a school that is accredited under R4-19-201(A) and obtained a degree, or an advanced practice certificate in nursing within the past five years; or
2. Practiced for a minimum of 960 hours within the past five years where the nurse:
  - a. Worked for compensation or as a volunteer, as a licensed nurse in the United States or an international jurisdiction, and performed one or more acts under A.R.S. § 32-1601(20) as an RN if applying for RN renewal or licensure or A.R.S. § 32-1601(16) as an LPN if applying for LPN renewal or licensure; or
  - b. Held a position for compensation or as a volunteer in the United States or an international jurisdiction that required or recommended, in the job description, the level of licensure being sought or renewed; or
  - c. Engaged in clinical practice as part of an RN-to-Bachelor of Science in Nursing, Masters, Doctoral or Nurse Practitioner program.

- C.** Care of family members does not meet the requirements of subsection (B)(2) unless the applicant submits evidence:

1. That the applicant is providing care as part of a medical foster home; or
2. That the specific care provided by the applicant was:
  - a. Ordered by another health care provider who is authorized to prescribe and was responsible for the care of the patient,
  - b. The type of care would typically be authorized by a third-party payer, and
  - c. The care was documented and reviewed by the health care provider.

- D.** An applicant for licensure by either examination or endorsement, who is a graduate of a nursing program located in the U.S. or its territories and does not meet the requirements of subsection (B), shall have completed the clinical portion of a pre-licensure nursing program within two years of the date of licensure. Examination applicants who were previously licensed in an international jurisdiction shall meet the applicable requirements of subsection (B) or (E).

- E.** A licensee or applicant who fails to satisfy the requirements of subsection (B) or (D), shall submit evidence of satisfactory completion of a Board-approved refresher or competency program. The Board may issue a temporary license stamped "for refresher course only" to any applicant who meets all requirements of this Article except subsection (B) or (D) and provides evidence of applying for enrollment in a Board-approved refresher or competency program.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 792, effective April 3, 2004 (Supp. 04-1). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2012, Ch. 152, § 1, provides for A.R.S. references to be corrected to reflect the renumbering of definitions. Therefore the A.R.S. citations in subsection (B)(2)(a) were updated. Agency request filed July 12, 2012, Office File No. M12-242 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 1308, effective July 6, 2013 (Supp. 13-2).

**R4-19-313. Background**

- A. All applicants convicted of a sexual offense involving a minor or performing a sexual act against the will of another person shall be subject to a Board order under A.R.S. § 32-1664(F) and R4-19-405 unless the individual is precluded from licensure under A.R.S. § 32-1606(B)(17). If the evaluation identifies sexual behaviors of a predatory nature, the Board shall deny licensure or renewal of licensure.
  - B. All individuals reporting a substance use disorder in the last five years may be subject to a Board order for an evaluation under A.R.S. § 32-1664(F) and R4-19-405 to determine safety to practice.
  - C. The Board may order the evaluation of other individuals on a case-by-case basis under A.R.S. § 32-1664(F) and R4-19-405.
- b. Assisting the registered nurse or supervising physician in identification of client needs and goals; and
  - c. Determining priorities of care together with the supervising registered nurse or physician;
- 3. Implement aspects of a client's care consistent with the LPN scope of practice in a timely and accurate manner including:
    - a. Following nurse and physician orders and seeking clarification of orders when needed;
    - b. Administering treatments, medications, and procedures;
    - c. Attending to client and family concerns or requests;
    - d. Providing health information to clients as directed by the supervising RN or physician or according to an established educational plan;
    - e. Promoting a safe client environment;
    - f. Communicating relevant and timely client information with other health team members regarding:
      - i. Client status and progress,
      - ii. Client response or lack of response to therapies,
      - iii. Significant changes in client condition, and
      - iv. Client needs and special requests, and
    - g. Documenting the nursing care the LPN provided;
  - 4. Contribute to evaluation of the plan of care by:
    - a. Gathering, observing, recording, and communicating client responses to nursing interventions; and
    - b. Modifying the plan of care in collaboration with a registered nurse based on an analysis of client responses.

#### Historical Note

New Section made by final rulemaking at 19 A.A.R. 1308, effective July 6, 2013 (Supp. 13-2).

#### ARTICLE 4. REGULATION

##### R4-19-401. Standards Related to Licensed Practical Nurse Scope of Practice

- A. A licensed practical nurse shall engage in practical nursing as defined in A.R.S. § 32-1601 only under the supervision of a registered nurse or licensed physician.
- B. A LPN's nursing practice is limited to those activities for which the LPN has been prepared through basic practical nursing education in accordance with A.R.S. § 32-1637(1) and those additional skills that are obtained through subsequent nursing education and within the scope of practice of a LPN as determined by the Board.
- C. A LPN shall:
  - 1. Practice within the legal boundaries of practical nursing within the scope of practice authorized by A.R.S. Title 32, Chapter 15 and 4 A.A.C.19;
  - 2. Demonstrate honesty and integrity;
  - 3. Base nursing decisions on nursing knowledge and skills, the needs of clients, and licensed practical nursing standards;
  - 4. Accept responsibility for individual nursing actions, decisions, and behavior in the course of practical nursing practice.
  - 5. Maintain competence through ongoing learning and application of knowledge in practical nursing practice.
  - 6. Protect confidential information unless obligated by law to disclose the information;
  - 7. Report unprofessional conduct, as defined in A.R.S. § 32-1601(22) and further specified in R4-19-403 and R4-19-814, to the Board;
  - 8. Respect a client's rights, concerns, decisions, and dignity;
  - 9. Maintain professional boundaries; and
  - 10. Respect a client's property and the property of others.
- D. In participating in the nursing process and implementing client care across the lifespan, a LPN shall:
  - 1. Contribute to the assessment of the health status of clients by:
    - a. Recognizing client characteristics that may affect the client's health status;
    - b. Gathering and recording assessment data;
    - c. Demonstrating attentiveness by observing, monitoring, and reporting signs, symptoms, and changes in client condition in an ongoing manner to the supervising registered nurse or physician;
  - 2. Contribute to the development and modification of the plan of care by:
    - a. Planning episodic nursing care for a client whose condition is stable or predictable;
- E. A LPN assigns and delegates nursing activities. The LPN shall:
  - 1. Assign nursing care within the LPN scope of practice to other LPNs;
  - 2. Delegate nursing tasks to unlicensed assistive personnel (UAPs). In maintaining accountability for the delegation, the LPN shall ensure that the:
    - a. UAP has the education, legal authority, and demonstrated competency to perform the delegated task;
    - b. Tasks delegated are consistent with the UAP's job description and can be safely performed according to clear, exact, and unchanging directions;
    - c. Results of the task are reasonably predictable;
    - d. Task does not require assessment, interpretation, or independent decision making during its performance or at completion;
    - e. Selected client and circumstances of the delegation are such that delegation of the task poses minimal risk to the client and the consequences of performing the task improperly are not life-threatening;
    - f. LPN provides clear directions and guidelines regarding the delegated task or, for routine tasks on stable clients, verifies that the UAP follows each written facility policy or procedure when performing the delegated task;
    - g. LPN provides supervision and feedback to the UAP; and
    - h. LPN observes and communicates the outcomes of the delegated task.

#### Historical Note

Former Section III, Part II; Amended effective February 20, 1980 (Supp. 80-1). Former Section R4-19-42 renumbered as Section R4-19-401 (Supp. 86-1). Section repealed, new Section adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 14 A.A.R. 4621, effective January 31, 2009 (Supp. 08-4). Subsection (C)(7) amended at request of Board, Office File No.

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M11-423, filed November 18, 2011 (Supp. 11-4). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2012, Ch. 152, § 1, provides for A.R.S. references to be corrected to reflect the renumbering of definitions. Therefore the A.R.S. citation in subsection (C)(7) was updated. Agency request filed July 12, 2012, Office File No. M12-242 (Supp. 12-3).

#### **R4-19-402. Standards Related to Registered Nurse Scope of Practice**

- A.** A registered nurse (RN) shall perform only those nursing activities for which the RN has been prepared through basic registered nursing education and those additional skills which are obtained through subsequent nursing education and within the scope of practice of an RN as determined by the Board.
- B.** A RN shall:
1. Practice within the legal boundaries of registered nursing within the scope of practice authorized by A.R.S. Title 32, Chapter 15 and 4 A.A.C. 19;
  2. Demonstrate honesty and integrity;
  3. Base nursing decisions on nursing knowledge and skills, the needs of clients, and registered nursing standards;
  4. Accept responsibility for individual nursing actions, decisions, and behavior in the course of registered nursing practice;
  5. Maintain competence through ongoing learning and application of knowledge in registered nursing practice;
  6. Protect confidential information unless obligated by law to disclose the information;
  7. Report unprofessional conduct, as defined in A.R.S. § 32-1601(22) and further specified in R4-19-403 and R4-19-814, to the Board;
  8. Respect a client's rights, concerns, decisions, and dignity;
  9. Maintain professional boundaries;
  10. Respect a client's property and the property of others; and
  11. Advocate on behalf of a client to promote the client's best interest.
- C.** In utilizing the nursing process to plan and implement nursing care for clients across the life-span, a RN shall:
1. Conduct a nursing assessment of a client in which the nurse:
    - a. Recognizes client characteristics that may affect the client's health status;
    - b. Gathers or reviews comprehensive subjective and objective data and detects changes or missing information;
    - c. Applies nursing knowledge in the integration of the biological, psychological, and social aspects of the client's condition; and
    - d. Demonstrates attentiveness by providing ongoing client surveillance and monitoring;
  2. Use critical thinking and nursing judgment to analyze client assessment data to:
    - a. Make independent nursing decisions and formulate nursing diagnoses; and
    - b. Determine the clinical implications of client signs, symptoms, and changes, as either expected, unexpected, or emergent situations;
  3. Based on assessment and analysis of client data, plan strategies of nursing care and nursing interventions in which the nurse:
    - a. Identifies client needs and goals;
    - b. Formulates strategies to meet identified client needs and goals;
    - c. Modifies defined strategies to be consistent with the client's overall health care plan; and
  - d. Prioritizes strategies based on client needs and goals;
- 4.** Provide nursing care within the RN scope of practice in which the nurse:
- a. Administers prescribed aspects of care including treatments, therapies, and medications;
  - b. Clarifies health care provider orders when needed;
  - c. Implements independent nursing activities consistent with the RN scope of practice;
  - d. Institutes preventive measures to protect client, others, and self;
  - e. Intervenes on behalf of a client when problems are identified;
  - f. Promotes a safe client environment;
  - g. Attends to client concerns or requests;
  - h. Communicates client information to health team members including:
    - i. Client concerns and special needs;
    - ii. Client status and progress;
    - iii. Client response or lack of response to interventions; and
    - iv. Significant changes in client condition; and
- 5.** Evaluate the impact of nursing care including the:
- a. Client's response to interventions;
  - b. Need for alternative interventions;
  - c. Need to communicate and consult with other health team members; and
  - d. Need to revise the plan of care;
- 6.** Provide comprehensive nursing and health care education in which the RN:
- a. Assesses and analyzes educational needs of learners;
  - b. Plans educational programs based on learning needs and teaching-learning principles;
  - c. Ensures implementation of an educational plan either directly or by delegating selected aspects of the education to other qualified persons; and
  - d. Evaluates the education to meet the identified goals;
- D.** A RN assigns and delegates nursing activities. The RN shall:
1. Assign nursing care within the RN scope of practice to other RNs;
  2. Assign nursing care to a LPN within the LPN scope of practice based on the RN's assessment of the client and the LPN's ability;
  3. Supervise, monitor, and evaluate the care assigned to a LPN; and
  4. Delegate nursing tasks to UAPs. In maintaining accountability for the delegation, an RN shall ensure that the:
    - a. UAP has the education, legal authority, and demonstrated competency to perform the delegated task;
    - b. Tasks delegated are consistent with the UAP's job description and can be safely performed according to clear, exact, and unchanging directions;
    - c. Results of the task are reasonably predictable;
    - d. Task does not require assessment, interpretation, or independent decision making during its performance or at completion;
    - e. Selected client and circumstances of the delegation are such that delegation of the task poses minimal risk to the client and the consequences of performing the task improperly are not life-threatening;
    - f. RN provides clear directions and guidelines regarding the delegated task or, for routine tasks on stable clients, verifies that the UAP follows each written facility policy or procedure when performing the delegated task;

- g. RN provides supervision and feedback to the UAP; and
- h. RN observes and communicates the outcomes of the delegated task.

#### Historical Note

Former Section III, Part I; Amended effective February 20, 1980 (Supp. 80-1). Former Section R4-19-43 renumbered as Section R4-19-402 (Supp. 86-1). Section repealed, new Section adopted effective July 19, 1995 (Supp. 95-3). Section repealed, new Section made by final rulemaking at 14 A.A.R. 4621, effective January 31, 2009 (Supp. 08-4). Subsection (B)(7) amended at request of Board, Office File No. M11-423, filed November 18, 2011 (Supp. 11-4). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2012, Ch. 152, § 1, provides for A.R.S. references to be corrected to reflect the renumbering of definitions. Therefore the A.R.S. citation in subsection (B)(7) was updated. Agency request filed July 12, 2012, Office File No. M12-242 (Supp. 12-3).

#### R4-19-403. Unprofessional Conduct

For purposes of A.R.S. § 32-1601(22)(d), any conduct or practice that is or might be harmful or dangerous to the health of a patient or the public includes one or more of the following:

1. A pattern of failure to maintain minimum standards of acceptable and prevailing nursing practice;
2. Intentionally or negligently causing physical or emotional injury;
3. Failing to maintain professional boundaries or engaging in a dual relationship with a patient, resident, or any family member of a patient or resident;
4. Engaging in sexual conduct with a patient, resident, or any family member of a patient or resident who does not have a pre-existing relationship with the nurse, or any conduct in the work place that a reasonable person would interpret as sexual;
5. Abandoning or neglecting a patient who requires immediate nursing care without making reasonable arrangement for continuation of care;
6. Removing a patient's life support system without appropriate medical or legal authorization;
7. Failing to maintain for a patient record that accurately reflects the nursing assessment, care, treatment, and other nursing services provided to the patient;
8. Falsifying or making a materially incorrect, inconsistent, or unintelligible entry in any record:
  - a. Regarding a patient, health care facility, school, institution, or other work place location; or
  - b. Pertaining to obtaining, possessing, or administering any controlled substance as defined in the federal Uniform Controlled Substances Act, 21 U.S.C. 801 et seq., or Arizona's Uniform Controlled Substances Act, A.R.S. Title 36, Chapter 27;
9. Failing to take appropriate action to safeguard a patient's welfare or follow policies and procedures of the nurse's employer designed to safeguard the patient;
10. Failing to take action in a health care setting to protect a patient whose safety or welfare is at risk from incompetent health care practice, or to report the incompetent health care practice to employment or licensing authorities;
11. Failing to report to the Board a licensed nurse whose work history includes conduct, or a pattern of conduct, that leads to or may lead to an adverse patient outcome;
12. Assuming patient care responsibilities that the nurse lacks the education to perform, for which the nurse has failed to maintain nursing competence, or that are outside the scope of practice of the nurse;
13. Failing to supervise a person to whom nursing functions are delegated;
14. Delegating services that require nursing judgment to an unauthorized person;
15. Removing, without authorization, any money, property, or personal possessions, or requesting payment for services not performed from a patient, employer, co-worker, or member of the public.
16. Removing, without authorization, a narcotic, drug, controlled substance, supply, equipment, or medical record from any health care facility, school, institution, or other work place location;
17. A pattern of using or being under the influence of alcohol, drugs, or a similar substance to the extent that judgment may be impaired and nursing practice detrimentally affected, or while on duty in any health care facility, school, institution, or other work location;
18. Obtaining, possessing, administering, or using any narcotic, controlled substance, or illegal drug in violation of any federal or state criminal law, or in violation of the policy of any health care facility, school, institution, or other work location at which the nurse practices;
19. Providing or administering any controlled substance or prescription-only drug for other than accepted therapeutic or research purposes;
20. Engaging in fraud, misrepresentation, or deceit in taking a licensing examination or on an initial or renewal application for a license or certificate;
21. Impersonating a nurse licensed or certified under this Chapter;
22. Permitting or allowing another person to use the nurse's license for any purpose;
23. Advertising the practice of nursing with untruthful or misleading statements;
24. Practicing nursing without a current license or while the license is suspended;
25. Failing to:
  - a. Furnish in writing a full and complete explanation of a matter reported pursuant to A.R.S. § 32-1664, or
  - b. Respond to a subpoena issued by the Board;
26. Making a written false or inaccurate statement to the Board or the Board's designee in the course of an investigation;
27. Making a false or misleading statement on a nursing or health care related employment or credential application concerning previous employment, employment experience, education, or credentials;
28. If a licensee or applicant is charged with a felony or a misdemeanor involving conduct that may affect patient safety, failing to notify the Board in writing, as required under A.R.S. § 32-3208, within 10 days of being charged. The licensee or applicant shall include the following in the notification:
  - a. Name, address, telephone number, social security number, and license number, if applicable;
  - b. Date of the charge; and
  - c. Nature of the offense;
29. Failing to notify the Board, in writing, of a conviction for a felony or an undesignated offense within 10 days of the conviction. The nurse or applicant shall include the following in the notification:
  - a. Name, address, telephone number, social security number, and license number, if applicable;
  - b. Date of the conviction; and

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- c. Nature of the offense;
- 30. For a registered nurse granted prescribing privileges, any act prohibited under R4-19-511(D); or
- 31. Practicing in any other manner that gives the Board reasonable cause to believe the health of a patient or the public may be harmed.

**Historical Note**

Adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-44 repealed, new Section R4-19-44 adopted effective May 9, 1984 (Supp. 84-3). Amended by adding Paragraphs 18 through 22 effective July 16, 1984 (Supp. 84-4). Former Section R4-19-44 renumbered and amended as Section R4-19-403 effective February 21, 1986 (Supp. 86-1). Section repealed, new Section adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (Supp. 05-3). Amended by final rulemaking at 14 A.A.R. 4621, effective January 31, 2009 (Supp. 08-4). Antiquated statute reference in opening subsection revised at the request of Board under A.R.S. § 41-1011(C), Office File No. M11-189, filed May 16, 2011 (Supp. 11-2). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2012, Ch. 152, § 1, provides for A.R.S. references to be corrected to reflect the renumbering of definitions. Therefore the A.R.S. citation in the opening subsection was updated. Agency request filed July 12, 2012, Office File No. M12-242 (Supp. 12-3).

**R4-19-404. Re-issuance or Subsequent Issuance of License**

- A. The Board may restore a license to a nurse whose license has been suspended after the period of suspension if the licensee provides written evidence that all requirements or conditions prescribed or ordered in the consent agreement or Board order for suspension have been met to the satisfaction of the Board. The Board may place conditions or limitations on the restored license. The license of a nurse who fails to provide such evidence of fulfilling the requirements or conditions prescribed by the Board shall remain on suspended status until such submission and acceptance by the Board.
- B. A person whose nursing license is denied, revoked, or voluntarily surrendered under A.R.S. § 32-1663 may apply to the Board to issue or re-issue the license:
  - 1. Five years from the date of denial or revocation, or
  - 2. In accordance with the terms of a voluntary surrender agreement.
- C. A person who applies for issuance or re-issuance of a license under the conditions of subsection (B) is subject to the following terms and conditions:
  - 1. The person shall submit a written application for issuance or re-issuance of the license that contains substantial evidence that the basis for surrendering, denying, or revoking the license has been removed and that the issuance or re-issuance of the license will not be a threat to public health or safety.
  - 2. Safe practice.
    - a. Under A.R.S. § 32-1664(F), the Board for reasonable cause may require a combination of mental, physical, nursing competency, psychological, or psychiatric evaluations, or any combination of evaluations, reports, and affidavits that the Board considers necessary to determine the person's competence and conduct to safely practice nursing.
    - b. Under A.R.S. 32-1664(K) the Board may issue subpoenas and compel the attendance of witnesses and the production of records and documentary evidence

relevant to the person's ability to safely practice nursing.

- 3. After receipt of the application, the information required under subsection (C)(2), and the completion of an investigation, the Board shall place the application on the agenda of a regularly scheduled Board meeting.
- 4. After consideration of the application and any information required under subsection (C)(2), the Board may:
  - a. Grant the license with or without conditions or limitations;
  - b. If other licensure requirements have been met, grant, with or without conditions, a temporary license for the sole purpose of allowing the applicant to successfully complete an approved nurse refresher course; or
  - c. Deny the license if the Board determines that licensure might be harmful or dangerous to the health of a patient or the public.
- 5. If the Board orders a refresher course described in subsection (C)(4)(b) the Board shall consider the applicant's performance in the approved refresher course and any other evidence, if available, of the applicant's safety to practice, and either deny the license under subsection (C)(4)(c) or grant the license with or without conditions or limitations.
- 6. An applicant who is denied issuance or re-issuance of a license shall have 30 days from the date of issuance of the notice of denial from the Board to file a written request for hearing with the Board. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

**Historical Note**

Former Section R4-19-30 renumbered and amended as Section R4-19-45 effective February 20, 1980 (Supp. 80-1). Former Section R4-19-45 renumbered as Section R4-19-404 (Supp. 86-1). Section repealed, new Section adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 14 A.A.R. 4621, effective January 31, 2009 (Supp. 08-4).

**R4-19-405. Board-ordered Evaluations**

- A. Under A.R.S. § 32-1664(F), the Board may order a licensee or CNA certificate-holder to undergo an evaluation by an independent qualified evaluator for the purposes of determining the licensee's or certificate holder's safety and competence to practice. Evaluations may be in the areas of:
  - 1. Nursing knowledge or skills or both;
  - 2. Mental functioning, including but not limited to neuropsychological evaluation, and other cognition evaluations;
  - 3. Medical status including but not limited to medical review of drug screen results, chronic pain evaluation, physical examination, and biological testing;
  - 4. Psychiatric or psychological status including but not limited to substance abuse evaluation, boundary or sexual misconduct evaluations, and psychological testing; or
  - 5. Other similar evaluations that the Board determines are necessary to evaluate a licensee or certificate holder's ability to safely practice.
- B. Before making the decision to order the evaluation, the Board shall review the allegations and investigative findings.
- C. The Board retains the discretion to use an evaluator based on the evaluator's licensure history, the Board's past experience with the evaluator, and the quality of the evaluation provided. Before conducting a Board-ordered evaluation, a potential evaluator shall submit documentation that the evaluator:

1. Possesses expertise and educational credentials in the area that the Board has ordered an evaluation;
  2. Holds a license or certificate in good standing with a licensing or certifying board located in the United States and discloses any past licensure disciplinary actions and criminal history;
  3. Will provide equipment and environmental conditions necessary to conduct a valid evaluation;
  4. Has no current or past treatment, collegial, or social relationship with the licensee or certificate holder, any family member of the licensee or certificate holder, or the licensee's or certificate holder's legal counsel;
  5. Will not enter into a treatment relationship with the licensee or certificate holder unless the relationship is unavoidable due to geographical location or the specific expertise of the evaluator; and
  6. Agrees to keep information provided by the Board under subsection (D) confidential as evidenced by a signed confidentiality agreement provided by the Board.
- D.** Upon receipt of the evaluator's signed confidentiality agreement, the Board may provide confidential investigative information and documents to the evaluator for the purpose of disclosing the reason for the evaluation, the focus of the evaluation, and the conduct causing the Board to order the evaluation including:
1. The complaint and all information that has been received during the investigation of the complaint. Documents may include but are not limited to employment records, medical records, arrest records, conviction and sentencing records, excluding FBI fingerprint results, drug screen results, pharmacy profiles, witness statements, past licensure history, and a summary of information obtained during investigative interviews; and
  2. The specific questions for which the Board is seeking answers; and
- E.** The evaluator shall provide the following information to the Board:
1. A professional report that is objective, thorough, timely, accurate, and defensible;
  2. Evaluation findings including diagnosis if appropriate and assessment of ability to practice safely;
  3. Recommendations for further evaluation, treatment, and remediation; and
  4. Suggestions for assuring safe practice and compliance with treatment and remediation recommendations, if any.
- Historical Note**
- Adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-46 renumbered and amended as Section R4-19-405 effective February 21, 1986 (Supp. 86-1). Repealed effective July 19, 1995 (Supp. 95-3). New Section made by final rulemaking at 14 A.A.R. 4621, effective January 31, 2009 (Supp. 08-4).
- ARTICLE 5. ADVANCED PRACTICE REGISTERED NURSING**
- R4-19-501. Roles and Population Foci of Advanced Practice Registered Nursing (APRN); Certification Programs**
- A.** The Board recognizes the following APRN roles;
1. Registered nurse practitioner (RNP) in a population focus including Certified Nurse Midwife as a population focus of RNP;
  2. Clinical Nurse Specialist (CNS) in a population focus; and
  3. Certified Registered Nurse Anesthetist (CRNA).
- B.** RNPs and CNSs shall practice within one or more population foci, consistent with their education and certification. Population foci include:
1. Family-individual across the life span;
  2. Adult-gerontology primary or acute care;
  3. Neonatal;
  4. Pediatric primary or acute care;
  5. Women's health-gender related;
  6. Psychiatric-mental health;
  7. For Certified Nurse Midwives, women's health gender related including childbirth and neonatal care;
  8. Other foci that have been recognized by the Board previously and new foci that meet the following conditions:
    - a. There is an accredited educational program and a national certifying process that meets the requirements of subsection (C); and
    - b. The focus is broad enough for an educational program to be developed that prepares a registered nurse to function both within the scope of practice of the role and population focus.
- C.** The Board shall accept advanced practice certifications from programs that meet the following qualifications:
1. The certification program:
    - a. Is accredited by the National Commission for Certifying Agencies, the Accreditation Board for Specialty Nursing Certification, or an equivalent organization as determined by the Board;
    - b. Establishes educational requirements for certification that are consistent with the requirements in R4-19-505;
    - c. Has an application process and credential review that requires an applicant to submit original source documentation of the applicant's education and clinical practice in the advanced practice role and population focus, if applicable, for which certification is granted; and
    - d. Is national in the scope of its credentialing.
  2. The certification program uses an examination as a basis for certification in the advanced practice role and population focus, as applicable that meets all of the following criteria:
    - a. The examination is based upon job analysis studies conducted using standard methodologies acceptable to the testing community both initially and every five years;
    - b. The examination assesses entry-level practice in the advanced practice role and population focus, if applicable;
    - c. The examination assesses the knowledge, skills, and abilities essential for the delivery of safe and effective advanced nursing care to clients;
    - d. Examination items are reviewed for content validity, cultural sensitivity, and correct scoring using an established mechanism, both before first use and periodically; items are reviewed for currency at least every three years;
    - e. The examination is evaluated for psychometric performance and conforms to psychometric standards that are routinely utilized for other types of high-stakes testing;
    - f. The passing standard is established using accepted psychometric methods and is re-evaluated periodically;
    - g. Examination security is maintained through established procedures;
    - h. A re-take policy is in place; and

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- i. Conditions for taking the certification examination are consistent with standards of the testing community;
  - 3. Certification is issued upon passing the examination and meeting all other certification requirements;
  - 4. The certification program periodically provides for recertification that includes review of qualifications and continued competence;
  - 5. The certification program provides timely communication to the Board regarding licensee or applicant certification status, changes in an individual's certification status, exam results and changes in the certification program, including qualifications, test plan, and scope of practice; and
  - 6. The certification program has an evaluation process to provide quality assurance in its certificate program.
- D. The Board shall determine whether a certification program meets the requirements of this Section. The following certification programs meet the requirements of this Section as of the effective date of this rulemaking:
  - 1. For RNP:
    - a. American Academy of Nurse Practitioner certification programs;
      - i. Adult nurse practitioner,
      - ii. Family nurse practitioner,
      - iii. Gerontologic nurse practitioner,
      - iv. Adult health-gerontological nurse practitioner.
    - b. American Nurses Credentialing Center certification programs:
      - i. Acute care nurse practitioner (adult/gerontology),
      - ii. Adult nurse practitioner,
      - iii. Family nurse practitioner,
      - iv. Gerontological nurse practitioner,
      - v. Pediatric nurse practitioner,
      - vi. Adult psychiatric and mental health nurse practitioner,
      - vii. Family psychiatric and mental health nurse practitioner,
      - viii. Adult health-gerontological nurse practitioner,
    - c. Pediatric Nursing Certification Board certification programs:
      - i. Pediatric nurse practitioner primary care,
      - ii. Pediatric nurse practitioner acute care,
    - d. National Certification Corporation for Obstetric, Gynecological, and Neonatal Nursing Specialties certification programs;
      - i. Women's health nurse practitioner,
      - ii. Neonatal nurse practitioner,
    - e. For a nurse-midwife, the American Midwifery Certification Board certification program in nurse midwifery,
    - f. AACN Certification Corporation certification programs:
      - i. Adult acute care nurse practitioner,
      - ii. Adult-gerontology acute care nurse practitioner,
  - 2. For CNS:
    - a. AACN Certification Corporation certification programs:
      - i. Adult acute and critical care CNS,
      - ii. Pediatric acute and critical care CNS,
      - iii. Neonatal acute and critical care CNS,
    - b. American Nurses Credentialing Center certification:
      - i. Adult psychiatric-mental health CNS,
      - ii. Family psychiatric-mental health CNS,
      - iii. Gerontological CNS,
      - iv. Adult health CNS,
      - v. Pediatric CNS.
- E. The Board shall approve a certification program that meets the criteria established in this Section. An entity that seeks approval of a certification program and is denied approval may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10.

**Historical Note**

Former Section IV, Part I. Former Section R4-19-53 renumbered as Section R4-19-501 (Supp. 86-1). Former Section R4-19-501 renumbered to R4-19-502, new Section R4-19-501 adopted effective November 18, 1994 (Supp. 94-4). Amended effective November 25, 1996 (Supp. 96-4). Amended by final rulemaking at 7 A.A.R. 3213, effective July 12, 2001 (Supp. 01-3). Amended by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (05-3). Amended by final rulemaking at 19 A.A.R. 1438, effective July 6, 2013 (Supp. 13-2).

**R4-19-502. Requirements for APRN Programs**

- A. An educational institution or other entity that offers an APRN program in this state for RNP or CNS roles shall ensure that the program:
  - 1. Is offered by or affiliated with a college or university that is accredited under A.R.S. § 32-1644;
  - 2. For new programs, the college or university offering the program has at least one additional nationally accredited nursing program as defined in R4-19-101 or otherwise provides substantial evidence of the ability to attain national APRN program accreditation for all graduating cohorts;
  - 3. Is a formal educational program, that is part of a masters or doctoral program or a post-masters program in nursing with a concentration in an advanced practice registered nursing role and population focus under R4-19-501;
  - 4. Is nationally accredited, or has achieved candidacy status for national accreditation by an approved national nursing accrediting agency as defined in R4-19-101;
  - 5. Offers a curriculum that covers the scope of practice for both the role of advanced practice as specified in A.R.S. § 32-1601 and the population focus including:
    - a. Three separate graduate level courses in:
      - i. Advanced physiology and pathophysiology, including general principles across the lifespan;
      - ii. Advanced health assessment, which includes assessment of all human systems, advanced assessment techniques, concepts and approaches;
      - iii. Advanced pharmacology, which includes pharmacodynamics, pharmacokinetics and pharmacotherapeutics of all broad category agents;
    - b. Diagnosis and management of diseases across practice settings including diseases representative of all systems;
    - c. Preparation that provides a basic understanding of the principles for decision making in the identified role;
    - d. Preparation in the core competencies for the identified APRN role including legal, ethical and professional responsibilities; and

- e. Role preparation in an identified population focus under R4-19-501.
- 6. Verifies that each student has an unencumbered license to practice as an RN in the state of clinical practice;
- 7. Includes a minimum of 500 hours of faculty supervised clinical practice (programs that prepare students for more than one role or population focus shall have 500 hours of clinical practice in each role and population focus);
- 8. Notifies the Board of any changes in hours of clinical practice, accreditation status, denial or deferral of accreditation or program administrator and responds to Board requests for information;
- 9. Has financial resources sufficient to support accreditation standards and the educational goals of the program;
- 10. Establishes academic, professional, and conduct standards that determine admission to the program, progression in the program, and graduation from the program that are consistent with sound educational practices and recognized standards of professional conduct;
- 11. Establishes provisions for advanced placement for individuals holding a graduate degree in nursing who are seeking education in an APRN role and population focus, provided that advanced placement students master the same APRN competencies as students in the graduate-level APRN program; and
- 12. Provides the Board an application for approval under the provisions of R4-19-209(B) before making changes to the:
  - a. Scope of the program, or
  - b. Level of educational preparation provided.
- B.** A CNS or RNP program shall appoint the following personnel:
  - 1. An APRN program administrator who:
    - a. Holds a current unencumbered RN license or multi-state privilege to practice in Arizona and a current unencumbered APRN certificate issued by the Board;
    - b. Holds an earned doctorate in nursing or health-related field if appointed after the effective date of this Section;
    - c. Has at least two years clinical experience as an APRN; and
    - d. Holds current national certification as an APRN.
  - 2. A lead faculty member who is educated and certified both nationally and by the Board in the same role and population focus to coordinate the educational component for the role and population focus in the advanced practice registered nursing program.
  - 3. Nursing faculty to teach any APRN course that includes a clinical learning experience who have the following qualifications:
    - a. A current unencumbered RN license or multi-state privilege to practice registered nursing in Arizona;
    - b. A current unencumbered Arizona APRN certificate,
    - c. A graduate degree in nursing or a health related field in the population focus,
    - d. Two years of APRN clinical experience, and
    - e. Current knowledge, competence and certification as an APRN in the role and population focus consistent with teaching responsibilities.
  - 4. Adjunct or part-time clinical faculty employed solely to supervise clinical nursing experiences shall meet all of the faculty qualifications for the APRN program they are teaching.
  - 5. Interdisciplinary faculty who teach non-clinical courses shall have advanced preparation in the areas of course content.
- 6. Clinical preceptors may be used to enhance faculty-directed clinical learning experiences, but not to replace faculty. A clinical preceptor shall be approved by program administration or faculty and:
  - a. Hold a current unencumbered license or multistate privilege to practice as a registered nurse or physician in the state in which the preceptor practices or, if employed by the federal government, holds a current unencumbered RN or physician license in the United States;
  - b. Have at least one year clinical experience as a physician or an advanced practice nurse
  - c. Practice in a population focus comparable to that of the APRN program;
  - d. For nurse preceptors, have at least one of the following:
    - i. Current national certification in the advanced practice role and population focus of the course or program in which the student is enrolled;
    - ii. Current Board certification in the advanced practice role and population focus of the course or program in which the student is enrolled; or
    - iii. If an advanced practice preceptor cannot be found who meets the requirements of subsection (B)(6)(d)(i) or (ii), educational and experiential qualifications that will enable the preceptor to precept students in the program, as determined by the nursing program and approved by the Board.
- C.** An entity that offers a CRNA program in Arizona shall maintain full national program accreditation with no limitations from the Council on Accreditation of Nurse Anesthesia Educational Programs or an equivalent agency approved by the Board. The program shall notify the Board of all program accreditation actions within 30 days of official notification by the accrediting agency.

#### Historical Note

Former Section IV, Part II; Amended effective February 20, 1980 (Supp. 80-1). Former Section R4-19-54 repealed, new Section R4-19-54 adopted effective July 20, 1981 (Supp. 81-4). Former Section R4-19-54 renumbered as Section R4-19-502 (Supp. 86-1). Section repealed, new Section R4-19-502 renumbered from R4-19-501 and Section heading amended effective November 18, 1994 (Supp. 94-4). Section repealed, new Section R4-19-502 adopted effective November 25, 1996 (Supp. 96-4). Amended by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (05-3). Amended by final rulemaking at 19 A.A.R. 1438, effective July 6, 2013 (Supp. 13-2).

#### R4-19-503. Application for Approval of an Advanced Practice Registered Nursing Program; Approval by Board

- A.** An administrator of an educational institution that proposes to offer a CNS or RNP program shall submit an application that includes all of the following information to the Board:
  - 1. Role, population focus that meets the criteria in R4-19-501 program administrator and lead faculty member as required in R4-19-502(B);
  - 2. Name, address, and evidence verifying institutional accreditation status of the affiliated educational institution and program accreditation status of current nursing programs offered by the educational institution;
  - 3. The mission, goals, and objectives of the program consistent with generally accepted standards for advanced practice



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- tice education in the role and population focus of the program;
4. List of the required courses, and a description, measurable objectives, and content outline for each required course consistent with curricular requirements in R4-19-502;
  5. A proposed time schedule for implementation of the program and attaining national accreditation;
  6. The total hours allotted for both didactic instruction and supervised clinical practicum in the program;
  7. A program proposal that provides evidence of sufficient financial resources, clinical opportunities and available faculty and preceptors for the proposed enrollment and planned expansion;
  8. A self-study that provides evidence of compliance with R4-19-502;
- B.** An entity that wishes to offer a CRNA program shall submit evidence of current accreditation by the Council on Accreditation of Nurse Anesthesia Education Programs or an equivalent organization.
- C.** The Board shall approve an advanced practice registered nursing program if approval is in the best interest of the public and the program meets the requirements of this Article. The Board may grant approval for a period of two years or less to an advanced practice nursing program where the program meets all the requirements of this Article except for accreditation by a national nursing accrediting agency, based on the program's presentation of evidence that it has applied for accreditation and meets accreditation standards.
- D.** An educational institution or entity that is denied approval of an advanced practice registered nursing program may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying its application for approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.
- E.** Approval of an advanced practice registered nursing program expires 12 months from the date of approval if a class of students is not admitted within that time.
- Historical Note**
- Former Section IV, Part III; Amended effective Nov. 17, 1978 (Supp. 78-6). Amended effective February 20, 1980 (Supp. 80-1). Amended by adding subsection (F) effective July 20, 1981 (Supp. 81-4). Amended by adding subsection (G) effective September 15, 1982 (Supp. 82-5). Former Section R4-19-55 renumbered as Section R4-19-503 (Supp. 86-1). Former Section R4-19-503 repealed, new Section adopted effective November 18, 1994 (Supp. 94-4). Former Section R4-19-503 renumbered to Section R4-19-504; new Section R4-19-503 adopted effective November 25, 1996 (Supp. 86-1). Amended by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (05-3). Amended by final rulemaking at 19 A.A.R. 1438, effective July 6, 2013 (Supp. 13-2).
- R4-19-504. Notice of Deficiency; Unprofessional Program Conduct**
- A.** The Board may periodically survey an advanced practice registered nursing program under its jurisdiction to determine whether criteria for approval are being met.
- B.** The Board shall, upon determining that an advanced practice registered nursing program is not in compliance with this Article, provide to the program administrator a written notice of deficiencies that establishes a reasonable time, based upon the number and severity of deficiencies, to correct the deficiencies. The time for correction may not exceed 18 months.
1. The program administrator shall, within 30 days from the date of service of the notice of deficiencies, consult with the Board or designated Board representative and, after consultation, file a plan to correct each of the identified deficiencies.
  2. The program administrator may, within 30 days from the date of service of the notice of deficiencies, submit a written request for a hearing before the Board to appeal the Board's determination of deficiencies. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.
  3. If the Board's determination is not appealed or is upheld upon appeal, the Board may conduct periodic evaluations of the program during the time of correction to determine whether the deficiencies have been corrected.
- C.** The Board shall, following a Board-conducted survey and report, rescind the approval or limit the ability of a program to admit students if the program fails to comply with R4-19-502 within the time set by the Board in the notice of deficiencies provided to the program administrator.
1. The Board shall serve the program administrator with a written notice of proposed rescission of approval or limitation of admission of students that states the grounds for the rescission or limitation. The program administrator has 30 days to submit a written request for a hearing to show cause why approval should not be rescinded or admissions limited. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.
  2. Upon the effective date of a decision to rescind program approval, the affected advanced practice registered nursing program shall immediately cease operation and be removed from the official approved-status listing. An advanced practice registered nursing program that is ordered to cease operations shall assist currently enrolled students to transfer to an approved nursing program.
- D.** A disciplinary action, denial of approval, or notice of deficiency may be issued against an RNP or CNS nursing program for any of the following acts of unprofessional conduct:
1. Failure to maintain minimum standards of acceptable and prevailing educational practice;
  2. For a program that was served with a notice of deficiencies within the preceding three years and timely corrected the noticed deficiencies, subsequent noncompliance with the standards in this Article;
  3. Utilization of students to meet staffing needs in health care facilities;
  4. Non-compliance with the program or parent institution mission or goals, program design, objectives, or policies;
  5. Failure to provide the variety and number of clinical learning opportunities necessary for students to achieve program outcomes or minimal competence;
  6. Student enrollments without adequate faculty, facilities, or clinical experiences;
  7. Ongoing or repetitive employment of unqualified faculty;
  8. Failure to comply with Board requirements within designated time-frames;
  9. Fraud or deceit in advertising, promoting or implementing a nursing program;
  10. Material misrepresentation of fact by the program in any advertisement, application or information submitted to the Board;
  11. Failure to allow Board staff to visit the program or conduct an investigation;
  12. Any other evidence that gives the Board reasonable cause to believe the program's conduct may be a threat to the

safety and well-being of students, faculty or potential patients.

#### Historical Note

Former R4-19-504 renumbered to R4-19-505; new R4-19-504 made by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (05-3). Amended by final rulemaking at 19 A.A.R. 1438, effective July 6, 2013 (Supp. 13-2).

#### R4-19-505. Requirements for Initial APRN Certification

A. An applicant for certification as an advanced practice registered nurse, shall:

1. Hold a current Arizona registered nurse (RN) license in good standing or an RN license in good standing from a compact party state with multistate privileges; and
2. Submit a verified application to the Board on a form provided by the Board that provides all of the following:
  - a. Full legal name and all former names used by the applicant;
  - b. Current mailing address, including primary state of residence and telephone number;
  - c. Place and date of birth;
  - d. RN license number, application for RN license, or copy of a multistate compact RN license;
  - e. Social security number for an applicant who lives or works in the United States;
  - f. Current e-mail address;
  - g. Educational background, including the name and location of basic nursing program, the institution that awarded the highest degree held and any and all advanced practice registered nursing education programs or schools attended including the number of years attended, the length of each program, the date of graduation or completion, and the type of degree or certificate awarded;
  - h. Role and population focus, as applicable for which the applicant is applying;
  - i. Current employer or practice setting, including address, position, and dates of service, if employed or practicing in nursing or health care;
  - j. Evidence of national certification or recertification as an advanced practice registered nurse in the role and population focus, if applicable, of the application and by a certification program that meets the requirements of R4-19-501(C). The applicant shall include the name of the certifying organization, population focus, certification number, date of certification, and expiration date;
  - k. For applicants holding a multistate compact RN license in a state other than Arizona:
    - i. State of original licensure and license number;
    - ii. State of current compact RN license, license number and expiration date;
    - iii. Date of taking RN licensure exam and name of exam;
    - iv. Whether the applicant ever submitted an application for and was granted an Arizona license and, if applicable, the date of Arizona licensure;
    - v. Other information related to the nurse's practice for the purpose of collecting nursing workforce data; and
    - vi. State of licensure and license number of all RN licenses held,
  - l. Responses regarding the applicant's background on the following subjects:
    - i. Current investigation or pending disciplinary action by a nursing regulatory agency in the United States or its territories;
    - ii. Undesignated offense and felony charges, convictions and plea agreements including deferred prosecution;
    - iii. Misdemeanor charges, convictions, and plea agreements, including deferred prosecution, that are required to be reported under A.R.S. § 32-3208;
    - iv. Actions taken on a nursing license by any other state;
    - v. Unprofessional conduct as defined in A.R.S. § 32-1601;
    - vi. Substance use disorder within the last five years;
    - vii. Current participation in an alternative to discipline program in any other state; and
  - m. Information that the applicant meets the criteria in R4-19-506(A) or (C).
3. Submit a fingerprint card on a form provided by the Board or prints if the applicant has not submitted fingerprints to the Board within the last two years.
4. Submit an official transcript from an institution accredited under A.R.S. § 32-1644 either sent directly from the institution or obtained from a Board-approved database that provides evidence of:
  - a. A graduate degree with a major in nursing for RNP and CNS Applicants, or
  - b. A graduate degree associated with a CRNA program for a CRNA applicant.
5. The applicant shall cause the program to provide the Board with evidence of completion of an APRN program in the role and population focus of the application through submission of an official letter or other official program document sent either directly from the program, or from a Board-approved data base. The APRN program shall meet one of the following criteria during the period of the applicant's attendance in the program:
  - a. The program was part of a graduate degree, or postmasters program at an institution accredited under A.R.S. § 32-1644; or
  - b. The program was approved or recognized in the U.S. jurisdiction of program location for the purpose granting APRN licensure or certification.
6. For an applicant who completed an advanced practice or graduate program in a foreign jurisdiction, submit an evaluation from the Commission on Graduates of Foreign Nursing Schools or a Board-approved credential evaluation service that indicates the applicant's program is comparable to a U.S. graduate nursing or APRN program.
7. Submit the required fee.

B. If the applicant satisfies all other requirements, the Board shall continue to certify:

1. An RNP without a graduate degree with a major in nursing if the applicant:
  - a. Meets all other requirements for certification; and
  - b. Ensures that the U.S. jurisdiction of an applicant's previous RNP licensure or certification submits evidence of the applicant's certification or licensure in the nurse practitioner role and population focus that either is current or was current at least six months before the application was received by the Board, and was originally issued:
    - i. Before January 1, 2001, if the RNP applicant lacks a graduate degree; or

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- ii. Before November 13, 2005 if the RNP's graduate degree is in a health-related area other than nursing.
- 2. An RNP or CNS applicant without evidence of national certification who received initial advanced practice certification or licensure in another state not later than July 1, 2004 and provides evidence, directly from the jurisdiction, that the certification or licensure is current.
- 3. A CNS applicant without evidence of completion of a CNS program who received initial certification or advanced practice licensure in this or another state not later than November 13, 2005 and provides evidence, directly from the jurisdiction, that the certificate or license is current.
- 4. A CRNA who completed a CRNA program before the effective date of this Section without evidence of a graduate degree.
- 5. A CNS applicant who completed a women's health clinical nurse specialist program that was part of a graduate degree in nursing program under subsection (A), without evidence of national certification upon submission of the following:
  - a. A description of the applicant's scope of practice that is consistent with A.R.S. § 32-1601(6);
  - b. One of the following:
    - i. A letter from a faculty member who supervised the applicant during the graduate program attesting to the applicant's competence to practice within the defined scope of practice;
    - ii. A letter from a current supervisor verifying the applicant's competence in the defined scope of practice; or
    - iii. A letter from a physician, RNP, or CNS who has worked with the applicant within the past two years attesting to the applicant's competence in the defined scope of practice; and
  - c. A form verifying that the applicant has practiced a minimum of 500 hours in the population focus within the past two years, which may include clinical practice time in a CNS program.
- C. The Board shall issue a certificate to practice as an RNP in a population focus, a CNS in a population focus, or a registered nurse anesthetist to a registered nurse who meets the criteria in this Section. An applicant who is denied a certificate may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying certification. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

**Historical Note**

Adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-56 repealed, new Section R4-19-56 adopted effective July 16, 1984 (Supp. 84-4). Former Section R4-19-56 renumbered as Section R4-19-504 (Supp. 86-1). Former Section R4-19-504 renumbered to R4-19-505, new Section R4-19-504 adopted effective November 18, 1994 (Supp. 94-4). Former Section R4-19-504 renumbered to Section R4-10-505; new Section R4-19-504 renumbered from R4-19-503 and amended effective November 25, 1996 (Supp. 96-4). Amended effective January 10, 1997 (Supp. 97-1). Amended by final rulemaking at 5 A.A.R. 3911, effective September 28, 1999 (Supp. 99-3). Former R4-19-505 renumbered to R4-19-508; new R4-19-505 renumbered from R4-19-504 and amended by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (Supp. 05-3). Amended by final rulemaking at 13 A.A.R. 1483, effective June 2, 2007

(Supp. 07-2). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2012, Ch. 152, § 1, provides for A.R.S. references to be corrected to reflect the renumbering of definitions. Therefore the A.R.S. citation in subsection (A)(7)(a) was updated. Agency request filed July 12, 2012, Office File No. M12-242 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 1438, effective July 6, 2013 (Supp. 13-2).

**R4-19-506. Expiration of APRN Certificate; Practice Requirement; Renewal**

- A. An advanced practice certificate issued after July 1, 2004, expires when the certificate holder's RN license expires. Certificates issued on or before July 1, 2004, or those issued without proof of national certification under R4-19-505(B)(5) and (B)(2) do not expire unless the RN license expires under A.R.S. § 32-1642 or the nurse has not practiced advanced practice nursing at the applicable level of certification for a minimum of 960 hours in the five years before the date the application is received. This requirement is satisfied if the applicant verifies that the applicant has:
  - 1. Completed an advanced practice nursing education program within the past five years; or
  - 2. Practiced for a minimum of 960 hours within the past five years where the nurse:
    - a. Worked for compensation or as a volunteer, as an APRN and performed one or more acts under A.R.S. § 32-1601(6) for a CNS, A.R.S. § 32-1601(19) for an RNP or A.R.S. § 32-1634.04 for a CRNA; or
    - b. Held a position for compensation or as a volunteer that required, preferred or recommended, in the job description, the level of advanced practice certification being sought or renewed.
- B. A registered nurse requesting renewal of an advanced practice certificate or an RNP certificate issued after July 1, 2004 shall provide evidence of current national certification or recertification under R4-19-505(A)(2)(j). This provision does not apply to a CNS granted a waiver of certification.
- C. An advanced practice nurse who does not satisfy the practice requirement of subsection (A) shall complete coursework or continuing education activities at the graduate or advanced practice level that include, at minimum, 45 contact hours of advanced pharmacology and 45 contact hours in a subject or subjects related to the role and population focus of certification. Upon completion of the coursework, the nurse shall engage in a period of precepted clinical practice as specified in this subsection:
  - 1. Precepted clinical practice shall be directly supervised by an advanced practice nurse in the same role and population focus as the certification being renewed or a physician who engages in practice with the same population focus as the certification being renewed.
  - 2. Practice hours completed during the time-frame specified below may be applied to reduce the number of precepted clinical practice hours, except that in no case shall the hours be reduced by more than half the requirement. The nurse shall complete hours according to the following schedule:
    - a. 300 hours if the applicant has practiced less than 960 hours in only the last five years;
    - b. 600 hours if the applicant has not practiced 960 hours in the last five years, but has practiced at least 960 hours in the last six years;
    - c. 1000 hours if the applicant has not practiced at least 960 hours in the last six years, but has practiced 960 hours in the last seven to 10 years; or

- d. If the nurse has not practiced 960 hours of advanced practice nursing in the role and population focus being renewed in more than 10 years, complete a program of study as recommended by an approved advanced practice nursing program that includes, at minimum, 500 hours of faculty supervised clinical practice in the role and population focus of certification. An applicant who qualifies for any option in subsection (C)(2)(a) through (c) may complete the requirements of this subsection to satisfy the practice requirement.
- D. An applicant who, in addition to not meeting the requirements for continued APRN certification, does not meet the requirements for RN renewal, shall fulfill all RN renewal requirements before satisfying the requirements of this Section.
- E. The Board shall renew a certificate to practice as a registered nurse practitioner in a population focus, a clinical nurse specialist in a population focus, or a registered nurse anesthetist for a registered nurse who meets the criteria in this Section. An applicant who is denied renewal of a certificate may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying renewal of certification. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.
- c. For a CRNA, holds national certification according to R4-19-501.
- B. If an applicant fails to meet criteria for national advanced practice certification or has failed a certification exam, the applicant is not eligible for a temporary certificate.
- C. The Board may issue temporary prescribing and dispensing authority for RNP applicants, if the applicant:
  1. Meets all application requirements for temporary certification in this Section,
  2. Applies for and meets all requirements for prescribing and dispensing authority under R4-19-511,
  3. Has been certified or licensed as a nurse practitioner or nurse midwife with prescribing and dispensing authority in the same role and population focus in another state or territory of the United States,
  4. Either holds current national certification as a registered nurse practitioner or nurse midwife in the population focus of the application or is exempt from national certification under R4-19-505(B), and
  5. Meets the practice requirement of R4-19-506(A)(2).
- D. Temporary certification as an advanced practice nurse and temporary prescribing and dispensing authority expire in six months and may be renewed for an additional six months for good cause. Good cause means reasons beyond the control of the temporary certificate holder such as unavoidable delays in obtaining information required for certification.
- E. Notwithstanding subsection (D), the Board shall withdraw a temporary advanced practice certificate and temporary prescribing and dispensing authority under any one of the following conditions. The temporary certificate holder:
  1. Does not meet requirements for RN licensure in this state or the RN license is suspended or revoked,
  2. Fails to renew the RN license upon expiration,
  3. Loses the multistate compact privilege,
  4. Fails the national certifying examination, or
  5. Violates a statute or rule of the Board.
- F. An applicant who is denied a temporary certificate or temporary prescribing and dispensing authority may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the temporary certification or authority. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

#### Historical Note

Section R4-19-506 renumbered from R4-19-505 effective November 18, 1994 (Supp. 94-4). Former Section R4-19-506 renumbered to R4-19-510, new Section R4-19-506 adopted effective November 25, 1996 (Supp. 96-4). Former R4-19-506 renumbered to R4-19-510; new Section R4-19-506 made by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (Supp. 05-3). Amended by final rulemaking at 13 A.A.R. 1483, effective June 2, 2007 (Supp. 07-2). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2012, Ch. 152, § 1, provides for A.R.S. references to be corrected to reflect the renumbering of definitions. Therefore the A.R.S. citations in subsection (A)(2)(a) were updated. Agency request filed July 12, 2012, Office File No. M12-242 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 1438, effective July 6, 2013 (Supp. 13-2).

#### R4-19-507. Temporary Advanced Practice Certificate; Temporary Prescribing and Dispensing Authority

- A. Based on the registered nurse's qualifications, the Board may issue a temporary certificate to practice as a registered nurse practitioner or a clinical nurse specialist in a population focus or a registered nurse anesthetist. A registered nurse who is applying for a temporary certificate shall:
  1. Apply for certification as an advanced practice nurse;
  2. Submit an application for a temporary certificate;
  3. Demonstrate authorization to practice as a registered nurse in Arizona on either a permanent or temporary Arizona license in good standing or a multistate compact privilege;
  4. Meet all requirements of R4-19-505 or meet the requirements of R4-19-505 with the exception of national certification for RNP and CNS applicants unless exempt under R4-19-505(B); and
  5. Submit evidence that the applicant:
    - a. Has applied for and is eligible to take an approved national advanced practice certification exam in the role and population focus of the application;
    - b. Has requested that the certification program transmit all exam results directly to the Board; or

#### Historical Note

Adopted effective November 25, 1996 (Supp. 96-4). Amended by final rulemaking at 5 A.A.R. 4300, effective October 18, 1999 (Supp. 99-4). Section repealed; new Section made by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (Supp. 05-3). Amended by final rulemaking at 13 A.A.R. 1483, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 19 A.A.R. 1438, effective July 6, 2013 (Supp. 13-2).

#### R4-19-508. Standards Related to Registered Nurse Practitioner Scope of Practice

- A. An RNP shall refer a patient to a physician or another health care provider if the referral will protect the health and welfare of the patient and consult with a physician and other health care providers if a situation or condition occurs in a patient that is beyond the RNP's knowledge and experience.
- B. In addition to the scope of practice permitted a registered nurse, a registered nurse practitioner, under A.R.S. §§ 32-1601 (19) and 32-1606(B)(12), may perform the following acts within the limits of the population focus of certification:
  1. Examine a patient and establish a medical diagnosis by client history, physical examination, and other criteria.

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2. For a patient who requires the services of a health care facility:
    - a. Admit the patient to the facility,
    - b. Manage the care the patient receives in the facility, and
    - c. Discharge the patient from the facility.
  3. Order and interpret laboratory, radiographic, and other diagnostic tests, and perform those tests that the RNP is qualified to perform.
  4. Prescribe, order, administer and dispense therapeutic measures including pharmacologic agents and devices if authorized under R4-19-511, and non-pharmacological interventions including, but not limited to, durable medical equipment, nutrition, home health care, hospice, physical therapy and occupational therapy.
  5. Identify, develop, implement, and evaluate a plan of care for a patient to promote, maintain, and restore health.
  6. Perform therapeutic procedures that the RNP is qualified to perform.
  7. Delegate therapeutic measures to qualified assistive personnel including medical assistants under R4-19-509.
  8. Perform additional acts that the RNP is qualified to perform and that are generally recognized as being within the role and population focus of certification.
- C.** An RNP shall only provide health care services including prescribing and dispensing within the RNP's population focus and role and for which the RNP is educationally prepared and for which competency has been established and maintained. Educational preparation means academic coursework or continuing education activities that include both theory and supervised clinical practice.

**Historical Note**

Adopted effective February 25, 1987 (Supp. 87-1). Former Section R4-19-505 renumbered to R4-19-506, new Section R4-19-505 renumbered from R4-19-504 effective November 18, 1994 (Supp. 94-4). Former Section R4-19-505 repealed, new Section R4-19-505 renumbered from R4-19-504 and amended effective November 25, 1996 (Supp. 96-4). Amended by final rulemaking at 5 A.A.R. 4300, effective October 18, 1999 (Supp. 99-4). Former R4-19-508 renumbered to R4-19-513; new R4-19-508 renumbered from R4-19-505 and amended by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (Supp. 05-3). Amended by final rulemaking at 13 A.A.R. 1483, effective June 2, 2007 (Supp. 07-2). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2012, Ch. 152, § 1, provides for A.R.S. references to be corrected to reflect the renumbering of definitions. Therefore one of the A.R.S. citations in subsection (B) was updated. Agency request filed July 12, 2012, Office File No. M12-242 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 1438, effective July 6, 2013 (Supp. 13-2).

**R4-19-509. Delegation to Medical Assistants**

- A.** Under A.R.S. §§ 32-1456 and 32-1601(19)(d)(vii), an RNP may delegate patient care to a medical assistant in an office or outpatient setting. The RNP shall verify that a medical assistant to whom the RNP delegates meets at least one of the following qualifications:
1. Completed an approved medical assistant training program as defined in A.A.C. R4-16-101(3);
  2. If a graduate of an unapproved medical assistant training program, passed the medical assistant examination administered by either the American Association of Medical Assistants or the American Medical Technologists;

3. Completed an unapproved medical assistant training program and was employed as a medical assistant on a continuous basis since completion of the program before February 2, 2000;
  4. Was directly supervised by the same registered nurse practitioner for at least 2000 hours before February 2, 2000; or
  5. Completed a medical services training program of the Armed Forces of the United States.
- B.** An RNP may delegate the following acts to a medical assistant who is under the direct supervision of the RNP and demonstrates competency in the performance of the act:
1. Obtain vital signs;
  2. Perform venipuncture and draw blood;
  3. Perform capillary puncture;
  4. Perform pulmonary function testing;
  5. Perform electrocardiography;
  6. Perform patient screening using established protocols;
  7. Perform dosage calculations as applicable to written orders;
  8. Apply pharmacology principles to prepare and administer oral, inhaled, topical, otic, optic, rectal, vaginal and parenteral medications (excluding intravenous medications);
  9. Maintain medication and immunization records;
  10. Assist provider with patient care;
  11. Perform Clinical Laboratory Improvement Amendments (CLIA) waived hematology, chemistry, urinalysis, microbiological and immunology testing;
  12. Screen test results;
  13. Obtain specimens for microbiological testing;
  14. Obtain patient history;
  15. Instruct patients according to their needs to promote health maintenance and disease prevention;
  16. Prepare a patient for procedures or treatments;
  17. Document patient care and education;
  18. Perform first aid procedures;
  19. Perform whirlpool treatments;
  20. Perform diathermy treatments;
  21. Perform electronic galvany stimulation treatments;
  22. Perform ultrasound therapy;
  23. Perform massage therapy (subject to regulation by massage therapy board);
  24. Apply traction treatments;
  25. Apply Transcutaneous Nerve Stimulation unit treatments;
  26. Apply hot and cold pack treatments; and
  27. Administer small volume nebulizer treatments.

**Historical Note**

Adopted effective November 25, 1996 (Supp. 96-4). Section repealed by final rulemaking at 5 A.A.R. 4300, effective October 18, 1999 (Supp. 99-4). New Section made by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (Supp. 05-3). Amended by final rulemaking at 14 A.A.R. 4621, effective January 31, 2009 (Supp. 08-4). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2012, Ch. 152, § 1, provides for A.R.S. references to be corrected to reflect the renumbering of definitions. Therefore one of the A.R.S. citations in subsection (A) was updated. Agency request filed July 12, 2012, Office File No. M12-242 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 1438, effective July 6, 2013 (Supp. 13-2).

**R4-19-510. Expired****Historical Note**

Section renumbered from R4-19-506 and amended effective November 25, 1996 (Supp. 96-4). Section repealed

made by final rulemaking at 10 A.A.R. 792, effective April 3, 2004 (Supp. 04-1). Section R4-19-510 renumbered from R4-19-506 and amended by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (Supp. 05-3). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 1093, effective March 24, 2011 (Supp. 11-2).

#### **R4-19-511. Prescribing and Dispensing Authority; Prohibited Acts**

- A.** The Board shall authorize an RNP to prescribe and dispense (P&D) drugs and devices within the RNP's population focus only if the RNP does all of the following:
- Obtains authorization by the Board to practice as a registered nurse practitioner;
  - Applies for prescribing and dispensing privileges on the application for registered nurse practitioner certification;
  - Submits a completed verified application on a form provided by the Board that contains all of the following information:
    - Name, address, e-mail address and home telephone number;
    - Arizona registered nurse license number, or copy of compact license;
    - Nurse practitioner population focus;
    - Nurse practitioner certification number issued by the Board; and
    - Business address and telephone number;
  - Submits evidence of a minimum of 45 contact hours of education within the three years immediately preceding the application, covering one or both of the following topics consistent with the population focus of education and certification:
    - Pharmacology, or
    - Clinical management of drug therapy, and
  - Submits the required fee.
- B.** An applicant who is denied P & D authority may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the P & D authority. Board hearings shall comply with A.R.S. Title 41, Chapter 6, Article 10, and 4 A.A.C. 19, Article 6.
- C.** An RNP shall not prescribe or dispense drugs or devices without Board authority or in a manner inconsistent with law. The Board may impose an administrative or civil penalty for each violation, suspend the RNP's P & D authority, or impose other sanctions under A.R.S. § 32-1606(C). In determining the appropriate sanction, the Board shall consider factors such as the number of violations, the severity of each violation, and the potential for or existence of patient harm.
- D.** In addition to acts listed under R4-19-403, for a nurse who prescribes or dispenses a drug or device, a practice that is or might be harmful to the health of a patient or the public, includes one or more of the following:
- Prescribing a controlled substance to oneself or a member of the nurse's family;
  - Providing any controlled substance or prescription-only drug or device for other than accepted therapeutic purposes;
  - Delegating the prescribing and dispensing of drugs or devices to any other person;
  - Prescribing for a patient that is not in the registered nurse practitioner's population focus of education and certification except as authorized in subsection (D)(5)(d); and
  - Prescribing, dispensing, or furnishing a prescription drug or a prescription-only device to a person unless the nurse has examined the person and established a professional

relationship, except when the nurse is engaging in one or more of the following:

- Providing temporary patient care on behalf of the patient's regular treating and licensed health care professional;
- Providing care in an emergency medical situation where immediate medical care or hospitalization is required by a person for the preservation or health, life, or limb;
- Furnishing a prescription drug to prepare a patient for a medical examination; or
- Prescribing antimicrobials to a person who is believed to be at substantial risk as a contact of a patient who has been examined and diagnosed with a communicable disease by the prescribing RNP even if the contact is not in the population focus of the registered nurse practitioner's certification.

#### **Historical Note**

Adopted effective November 25, 1996 (Supp. 96-4). Section repealed; new Section made by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (Supp. 05-3). Amended by final rulemaking at 19 A.A.R. 1438, effective July 6, 2013 (Supp. 13-2).

#### **R4-19-512. Prescribing Drugs and Devices**

- A.** An RNP granted P & D authority by the Board may:
- Prescribe drugs and devices;
  - Provide for refill of prescription-only drugs and devices for one year from the date of the prescription.
- B.** An RNP with P & D authority who wishes to prescribe a controlled substance shall obtain a DEA registration number before prescribing a controlled substance. The RNP shall file the DEA registration number with the Board.
- C.** An RNP with a DEA registration number may prescribe:
- A Schedule II controlled substance as defined in the federal Controlled Substances Act, 21 U.S.C. § 801 et seq., or Arizona's Uniform Controlled Substances Act, A.R.S. Title 36, Chapter 27, but shall not prescribe refills of the prescription;
  - A Schedule III or IV controlled substance, as defined in the federal Controlled Substances Act or Arizona's Uniform Controlled Substances Act, and may prescribe a maximum of five refills in six months; and
  - A Schedule V controlled substance, as defined in the federal Controlled Substances Act or Arizona's Uniform Controlled Substances Act, and may prescribe refills for a maximum of one year.
- D.** An RNP whose DEA registration is revoked or expires shall not prescribe controlled substances. An RNP whose DEA registration is revoked or limited shall report the action to the Board.
- E.** In all outpatient settings or at the time of hospital discharge, an RNP with P & D authority shall personally provide a patient or the patient's representative with the name of the drug, directions for use, and any special instructions, precautions, or storage requirements necessary for safe and effective use of the drug if any of the following occurs:
- A new drug is prescribed or there is a change in the dose, form, or direction for use in a previously prescribed drug;
  - In the RNP's professional judgment, these instructions are warranted; or
  - The patient or patient's representative requests instruction.
- F.** An RNP with P & D authority shall ensure that all prescription orders contain the following:

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1. The RNP's name, address, telephone number, and population focus;
2. The prescription date;
3. The name of the patient and either the address of the patient or a blank for the address if the prescription is not being dispensed by the RNP;
4. The full name of the drug, strength, dosage form, and directions for use;
5. The letters "DAW", "dispense as written", "do not substitute", "medically necessary" or any similar statement on the face of the prescription form if intending to prevent substitution of the drug;
6. The RNP's DEA registration number, if applicable; and
7. The RNP's signature.

**Historical Note**

Former R4-19-512 renumbered to R4-19-514; new R4-19-512 made by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (05-3). Amended by final rulemaking at 19 A.A.R. 1438, effective July 6, 2013 (Supp. 13-2).

**R4-19-513. Dispensing Drugs and Devices**

- A.** A registered nurse practitioner (RNP) granted prescribing and dispensing authority by the Board may:
1. Dispense drugs and devices to patients;
  2. Dispense samples of drugs packaged for individual use without a prescription order or additional labeling;
  3. Only dispense drugs and devices obtained directly from a pharmacy, manufacturer, wholesaler, or distributor; and
  4. Allow other personnel to assist in the delivery of medications provided that the RNP retains responsibility and accountability for the dispensing process.
- B.** If dispensing a drug or device, an RNP with dispensing authority shall:
1. Ensure that the patient has a written prescription that complies with R4-19-512(F) and contains the address of the patient and inform the patient that the prescription may be filled by the prescribing RNP or by a pharmacy of the patient's choice;
  2. Affix a prescription number to each prescription that is dispensed;
  3. Ensure that all original prescriptions are preserved for a minimum of seven years and make the original prescriptions available at all times for inspection by the Board of Nursing, Board of Pharmacy, and law enforcement officers in performance of their duties; and
  4. Report the dispensing of controlled substances to the Board of Pharmacy's Controlled Substance Prescription Monitoring Program as required in A.R.S. § 36-2608.
- C.** An RNP practicing in a public health facility operated by this state or a county or in a qualifying community health center under A.R.S. § 32-1921(D) and (F) may dispense drugs or devices to patients without a written prescription if the public health facility or the qualifying community health center adheres to all storage, labeling, safety, and recordkeeping rules of the Board of Pharmacy.
- D.** An RNP who dispenses a drug shall ensure that a label is affixed that contains all of the following information:
1. Dispensing RNP's name and population focus;
  2. Address and telephone number of the location from which the drug is dispensed;
  3. Date dispensed;
  4. Patient's name and address;
  5. Name and strength of the drug, quantity in the container, directions for use, and any cautionary statements necessary for the safe and effective use of the drug;
  6. Manufacturer and lot number; and
  7. Prescription order number.
- E.** An RNP who dispenses a drug or device shall ensure that the following information about the drug or device is entered into the patient's medical record:
1. Name of the drug, strength, quantity, directions for use, and number of refills;
  2. Date dispensed;
  3. Therapeutic reason;
  4. Manufacturer and lot number; and
  5. Prescription order number.
- F.** An RNP with dispensing authority shall:
1. Keep all drugs in a locked cabinet or room in an area that is not accessible to patients;
  2. If dispensing a controlled substance:
    - a. Control access by a written policy that specifies:
      - i. Those persons allowed access, and
      - ii. Procedures to report immediately the discovery of a shortage or illegal removal of drugs to a local law enforcement agency and provide that agency and the DEA with a written report within seven days of the discovery.
    - b. Maintain and make available to the Board upon request an ongoing inventory and record of:
      - i. A Schedule II controlled substance, as defined in the federal Controlled Substances Act or Arizona's Uniform Controlled Substances Act, separately from all other records, and a prescription for a Schedule II controlled substance in a separate prescription file; and
      - ii. A Schedule III, IV, or V controlled substance, as defined in the federal Controlled Substances Act or Arizona's Uniform Controlled Substances Act, in a form that is readily retrievable from other records.
- G.** If a prescription order is refilled, an RNP with P & D authority shall record the following information on the back of the prescription order or in the patient's medical record:
1. Date refilled,
  2. Quantity dispensed if different from the full amount of the original prescription,
  3. RNP's name or identifiable initials, and
  4. Manufacturer and lot number.
- H.** Under the supervision of an RNP with P & D authority, other personnel may:
1. Receive and record a prescription refill request from a patient or a patient's representative;
  2. Receive and record a verbal refill authorization from the RNP including:
    - a. The RNP's name;
    - b. Date of refill;
    - c. Name, directions for use, and quantity of drug; and
    - d. Manufacturer and lot number;
  3. Prepare and affix a prescription label; and
  4. Prepare a drug or device for delivery, provided that the dispensing RNP:
    - a. Inspects the drug or device and initials the label before issuing to the patient to ensure compliance with the prescription; and
    - b. Ensures that the patient is informed of the name of the drug or device, directions for use, precautions, and storage requirements.

**Historical Note**

Adopted effective November 25, 1996 (Supp. 96-4).  
Amended by final rulemaking at 5 A.A.R. 4300, effective October 18, 1999 (Supp. 99-4). Former R4-19-513

renumbered to R4-19-515; new R4-19-513 renumbered from R4-19-508 and amended by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (Supp. 05-3). Amended by final rulemaking at 19 A.A.R. 1438, effective July 6, 2013 (Supp. 13-2).

#### **R4-19-514. Standards Related to Clinical Nurse Specialist Scope of Practice**

In addition to the functions of a registered nurse, a CNS, under A.R.S. § 32-1601(6), may perform one or more of the following for an individual, family, or group within the population focus of certification and for which competency has been maintained:

1. Conduct an advanced assessment, analysis, and evaluation of a patient's complex health needs;
2. Establish primary and differential health status diagnoses;
3. Direct health care as an advanced clinician;
4. Develop, implement, and evaluate a treatment plan according to a patient's need for specialized nursing care;
5. Establish nursing standing orders, algorithms, and practice guidelines related to interventions and specific plans of care;
6. Manage health care according to written protocols;
7. Facilitate system changes on a multidisciplinary level to assist a health care facility and improve patient outcomes cost-effectively;
8. Consult with the public and professionals in health care, business, and industry in the areas of research, case management, education, and administration;
9. Perform psychotherapy if certified as a clinical nurse specialist in psychiatric and mental health nursing;
10. Prescribe and dispense durable medical equipment; or
11. Perform additional acts that the clinical nurse specialist is qualified to perform.

##### **Historical Note**

Adopted effective November 25, 1996 (Supp. 96-4). Section R4-19-514 renumbered from R4-19-512 and amended by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (Supp. 05-3). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2012, Ch. 152, § 1, provides for A.R.S. references to be corrected to reflect the renumbering of definitions. Therefore the A.R.S. citation in the opening subsection was updated. Agency request filed July 12, 2012, Office File No. M12-242 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 1438, effective July 6, 2013 (Supp. 13-2).

#### **R4-19-515. Repealed**

##### **Historical Note**

Section adopted by final rulemaking at 6 A.A.R. 335, effective December 20, 1999 (Supp. 99-4). Section R4-19-515 renumbered from R4-19-513 by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (Supp. 05-3). Repealed by final rulemaking at 18 A.A.R. 2140, effective August 8, 2012 (Supp. 12-3).

#### **R4-19-516. Repealed**

##### **Historical Note**

New Section made by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (Supp. 05-3). Repealed by final rulemaking at 18 A.A.R. 2140, effective August 8, 2012 (Supp. 12-3).

### **ARTICLE 6. RULES OF PRACTICE AND PROCEDURE**

#### **R4-19-601. Expired**

##### **Historical Note**

Adopted effective October 10, 1996 (Supp. 96-4). Section

expired under A.R.S. § 41-1056(E) at 8 A.A.R. 618, effective December 31, 2001 (Supp. 02-1). Section R4-19-601 renumbered from R4-19-602 and amended by final rulemaking at 9 A.A.R. 1288, effective June 3, 2003 (Supp. 03-2). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 2692, effective August 31, 2011 (Supp. 11-4).

#### **R4-19-602. Letter of Concern**

A letter of concern issued by the Board is not an appealable agency action as defined in A.R.S. § 41-1092.

##### **Historical Note**

Adopted effective October 10, 1996 (Supp. 96-4). Former Section R4-19-602 renumbered to R4-19-601; new Section R4-19-602 made by final rulemaking at 9 A.A.R. 1288, effective June 3, 2003 (Supp. 03-2).

#### **R4-19-603. Representation**

Any person subject to a hearing may participate in the hearing and may be represented by legal counsel. The Board shall not pay for the person's legal counsel.

##### **Historical Note**

Adopted effective October 10, 1996 (Supp. 96-4). Former Section R4-19-603 repealed; new Section R4-19-603 renumbered from R4-19-604 and amended by final rulemaking at 9 A.A.R. 1288, effective June 3, 2003 (Supp. 03-2).

#### **R4-19-604. Notice of Hearing; Response**

- A. The Board, in consultation with the Office of Administrative Hearings, as necessary shall prepare and serve a written notice of hearing on all parties under A.R.S. § 41-1092.05.
- B. In addition to the notice requirements in A.R.S. § 41-1092.05(D), the Board shall include the following in the notice:
  1. The full name, address, and license number, if any, of the licensee, certificate holder, program, or applicant;
  2. The name, mailing address, and telephone number of the Board's executive director or Board designee if the hearing is to be conducted by the Board;
  3. A statement that a hearing will proceed without a party's presence if a party fails to attend or participate in the hearing;
  4. The names and mailing addresses of persons to whom notice is being given, including the Attorney General representing the state at the hearing; and
  5. Any other matters relevant to the proceedings.
- C. The party named in the notice of hearing shall file a written response under A.R.S. § 32-1664 within 30 days after service of the notice of hearing. The response shall contain:
  1. The party's name, address, and telephone number;
  2. Whether the party has legal representation and, if so, the name and address of the attorney;
  3. A response to the allegations contained in the notice of hearing; and
  4. Any other matters relevant to the proceedings.

##### **Historical Note**

Adopted effective October 10, 1996 (Supp. 96-4). Former Section R4-19-604 renumbered to R4-19-603; new Section R4-19-604 renumbered from R4-19-605 and amended by final rulemaking at 9 A.A.R. 1288, effective June 3, 2003 (Supp. 03-2).

#### **R4-19-605. Expired**

##### **Historical Note**

Adopted effective October 10, 1996 (Supp. 96-4). Former



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Section R4-19-605 renumbered to R4-19-604; new Section R4-19-605 renumbered from R4-19-606 and amended by final rulemaking at 9 A.A.R. 1288, effective June 3, 2003 (Supp. 03-2). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 2692, effective August 31, 2011 (Supp. 11-4).

**R4-19-606. Expired****Historical Note**

Adopted effective October 10, 1996 (Supp. 96-4). Former Section R4-19-606 renumbered to R4-19-605; new Section R4-19-606 renumbered from R4-19-607 and amended by final rulemaking at 9 A.A.R. 1288, effective June 3, 2003 (Supp. 03-2). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 2692, effective August 31, 2011 (Supp. 11-4).

**R4-19-607. Recommended Decision**

The Administrative Law Judge who conducts the hearing shall make a recommended decision under A.R.S. § 41-1092.08. The Board shall immediately transmit a copy of the recommended decision to each party. Each party may file a memorandum of objections for consideration at the next Board meeting that contains the reasons why the recommended decision is in error or requires correction, and includes appropriate citations to the record, statutes, or rules in support of each objection.

**Historical Note**

Adopted effective October 10, 1996 (Supp. 96-4). Former Section R4-19-607 renumbered to R4-19-606; new Section R4-19-607 renumbered from R4-19-612 and amended by final rulemaking at 9 A.A.R. 1288, effective June 3, 2003 (Supp. 03-2).

**R4-19-608. Rehearing or Review of Decision**

- A. A party may file a motion for rehearing or review of a decision under A.R.S. §§ 41-1092.09 and 32-1665.
- B. The Board may grant a rehearing or review of the decision for any of the following causes materially affecting the moving party's rights:
  - 1. Irregularity in the administrative proceedings of the Board or the administrative law judge, or any order, or abuse of discretion, which deprived the moving party of a fair hearing;
  - 2. Misconduct of the Board, the 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 original hearing;
  - 5. Excessive or insufficient penalties;
  - 6. Error in the admission or exclusion of evidence or other errors of law occurring during the pendency of the proceeding or at the administrative hearing; or
  - 7. The decision is not justified by the evidence or is contrary to law.
- C. Upon the Board's receipt of a motion for rehearing or review, the Board may affirm or modify the 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 (B). An order granting a rehearing shall specify with particularity the grounds for the order. Any rehearing shall cover only those specified matters.
- D. Within the time limits of A.R.S. § 41-1092.09, the Board may order a rehearing or review on its own initiative for any of the reasons in subsection (B). The Board shall specify the grounds for the rehearing or review in the order.

- E. When a motion for rehearing is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days of such service, serve opposing affidavits.

**Historical Note**

Adopted effective October 10, 1996 (Supp. 96-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 491, effective December 31, 2001 (Supp. 02-1). Section R4-19-608 renumbered from R4-19-614 and amended by final rulemaking at 9 A.A.R. 1288, effective June 3, 2003 (Supp. 03-2).

**R4-19-609. Effectiveness of Orders**

- A. Except as provided in subsection (B), a decision is final upon expiration of the time for filing a request for rehearing or review or upon denial of such a request, whichever is later. If the Board grants a rehearing or review, the decision is stayed until another order is issued.
- B. If it finds that the public health, safety, or welfare imperatively requires emergency action, the Board may proceed under A.R.S. § 41-1092.11(B), ordering summary suspension of a license while other proceedings are pending. If the Board orders a summary suspension, a party shall exhaust the party's administrative remedies by filing a motion for rehearing or review under A.R.S. § 41-1092.09(B) before seeking judicial review of the decision.

**Historical Note**

Adopted effective October 10, 1996 (Supp. 96-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 491, effective December 31, 2001 (Supp. 02-1). Section R4-19-609 renumbered from R4-19-615 and amended by final rulemaking at 9 A.A.R. 1288, effective June 3, 2003 (Supp. 03-2).

**R4-19-610. Expired****Historical Note**

Adopted effective October 10, 1996 (Supp. 96-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 491, effective December 31, 2001 (Supp. 02-1).

**R4-19-611. Expired****Historical Note**

Adopted effective October 10, 1996 (Supp. 96-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 491, effective December 31, 2001 (Supp. 02-1).

**R4-19-612. Renumbered****Historical Note**

Adopted effective October 10, 1996 (Supp. 96-4). Section renumbered to R4-19-607 by final rulemaking at 9 A.A.R. 1288, effective June 3, 2003 (Supp. 03-2).

**R4-19-613. Expired****Historical Note**

Adopted effective October 10, 1996 (Supp. 96-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 491, effective December 31, 2001 (Supp. 02-1).

**R4-19-614. Renumbered****Historical Note**

Adopted effective October 10, 1996 (Supp. 96-4). Section renumbered to R4-19-608 by final rulemaking at 9 A.A.R. 1288, effective June 3, 2003 (Supp. 03-2).

**R4-19-615. Renumbered****Historical Note**

Adopted effective October 10, 1996 (Supp. 96-4). Section

renumbered to R4-19-609 by final rulemaking at 9 A.A.R. 1288, effective June 3, 2003 (Supp. 03-2).

## ARTICLE 7. PUBLIC PARTICIPATION PROCEDURES

### R4-19-701. Expired

#### Historical Note

Adopted effective October 10, 1996 (Supp. 96-4). Amended by final rulemaking at 9 A.A.R. 1288, effective June 3, 2003 (Supp. 03-2). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 2692, effective August 31, 2011 (Supp. 11-4).

### R4-19-702. Petition for Rulemaking; Review of Agency Practice or Substantive Policy Statement; Objection to Rule Based Upon Economic, Small Business, or Consumer Impact

A person may petition the Board, requesting the making of a final rule, or a review of an existing agency practice or substantive policy statement that the petitioner alleges to constitute a rule under A.R.S. § 41-1033, or objecting to a rule under A.R.S. § 41-1056.01, by filing a petition which contains the following:

1. The name, current address, and telephone number of the person submitting the petition.
2. For the making of a new rule, the specific language of the proposed rule.
3. For amendment of a current rule, the *Arizona Administrative Code* (A.A.C.) Section number, the Section heading, and the specific language of the current rule, with any language to be deleted stricken through but legible, and any new language underlined.
4. For repeal of a current rule, the A.A.C. Section number and Section heading proposed for repeal.
5. The reasons the rule should be made, specifically stating in reference to an existing rule, why the rule is inadequate, unreasonable, unduly burdensome, or otherwise not acceptable. The petitioner may provide additional supporting information including:
  - a. Any statistical data or other justification, with clear references to attached exhibits;
  - b. An identification of any person or segment of the public that would be affected and how they would be affected; and
  - c. If the petitioner is a public agency, a summary of relevant issues raised in any public hearing, or written comments offered by the public.
6. For a review of an existing agency practice or substantive policy statement alleged to constitute a rule, the reasons the existing agency practice or substantive policy statement constitutes a rule and the proposed action requested of the Board.
7. For an objection to a rule based upon the economic, small business, or consumer impact, evidence of any of the following grounds:
  - a. The actual economic, small business, or consumer impact significantly exceeded the impact estimated in the economic, small business, and consumer impact statement submitted during the making of the rule.
  - b. The actual economic, small business, or consumer impact was not estimated in the economic, small business, and consumer impact statement submitted during the making of the rule and that actual impact imposes a significant burden on persons subject to the rule.
  - c. The Board did not select the alternative that imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance

costs, necessary to achieve the underlying regulatory objective.

8. The signature of the person submitting the petition.

#### Historical Note

Adopted effective October 10, 1996 (Supp. 96-4). Amended by final rulemaking at 9 A.A.R. 1288, effective June 3, 2003 (Supp. 03-2). Amended by final rulemaking at 19 A.A.R. 1419, effective July 6, 2013 (Supp. 13-2).

### R4-19-703. Oral Proceedings

- A. The Board shall schedule an oral proceeding on all rulemakings and publish the notice as prescribed in A.R.S. § 41-1023. A Board member, the executive director, or a Board staff member shall serve as presiding officer at an oral proceeding.
- B. The Board shall record all oral proceedings either by an electronic recording device or stenographically, and any resulting cassette tapes or transcripts, registers, and all written comments received shall become part of the official record.
- C. The presiding officer shall conduct an oral proceeding according to A.R.S. § 41-1023; and
  1. Request each person in attendance register;
  2. Obtain the following information from any person who intends to speak:
    - a. Name and whether the person represents another;
    - b. Position with regard to the proposed rule; and
    - c. Approximate length of time needed to speak;
  3. Open the proceeding by identifying the subject matter of the rules under consideration and the purpose of the proceeding;
  4. Present the agenda;
  5. Ensure that a Board representative explains the background and general content of the proposed rules;
  6. Limit comments to a reasonable period, and prevent undue repetition of comments;
  7. Announce the address for written public comments and the date and time for the close of record; and
  8. Close the proceeding if there are no persons in attendance within 15 minutes after the posted meeting time.

#### Historical Note

Adopted effective October 10, 1996 (Supp. 96-4). Former Section R4-19-703 repealed; new Section R4-19-703 renumbered from R4-19-704 and amended by final rulemaking at 9 A.A.R. 1288, effective June 3, 2003 (Supp. 03-2).

### R4-19-704. Petition for Altered Effective Date

- A. A person wishing to alter the effective date of a rule shall file a written petition that contains:
  1. The name, current address, and telephone number of the person submitting the petition;
  2. Identification of the proposed rule;
  3. If the person is petitioning for an immediate effective date, a demonstration that the immediate date is necessary for one or more of the reasons in A.R.S. § 41-1032(A);
  4. If the person is petitioning for a later effective date, more than 60 days after filing of the rule, a demonstration under A.R.S. § 41-1032(B) that good cause exists for, and the public interest will not be harmed by, the later effective date; and
  5. The signature of the person submitting the petition.
- B. The Board shall make a decision and notify the petitioner of the decision within 60 days of receipt of the petition.

#### Historical Note

Adopted effective October 10, 1996 (Supp. 96-4). Former Section R4-19-704 renumbered to R4-19-703; new Sec-

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tion R4-19-704 renumbered from R4-19-705 and amended by final rulemaking at 9 A.A.R. 1288, effective June 3, 2003 (Supp. 03-2).

**R4-19-705. Written Criticism of an Existing Rule**

- A.** Any person may file with the Board a written criticism of an existing rule that contains:
1. The rule addressed, and
  2. The reason the existing rule is inadequate, unduly burdensome, unreasonable, or improper.
- B.** The Board shall acknowledge receipt of any criticism within 10 working days and shall place the criticism in the official record for review by the Board under A.R.S. § 41-1056.

**Historical Note**

Adopted effective October 10, 1996 (Supp. 96-4). Former Section R4-19-705 renumbered to R4-19-704; new Section R4-19-705 renumbered from R4-19-706 and amended by final rulemaking at 9 A.A.R. 1288, effective June 3, 2003 (Supp. 03-2).

**R4-19-706. Renumbered****Historical Note**

Adopted effective October 10, 1996 (Supp. 96-4). Renumbered to R4-19-705 by final rulemaking at 9 A.A.R. 1288, effective June 3, 2003 (Supp. 03-2).

**ARTICLE 8. CERTIFIED NURSING ASSISTANTS AND CERTIFIED MEDICATION ASSISTANTS****R4-19-801. Common Standards for Certified Nursing Assistant (CNA) and Certified Medication Assistant (CMA) Training Programs****A. Program Administrative Responsibilities**

1. Any person or entity offering a training program under this Article shall, before accepting tuition from prospective students, and at all times thereafter, provide program personnel including a coordinator and instructors, as applicable, who meet the requirements of this Article.
2. If at any time, a person or entity offering a training program cannot provide a qualified instructor for its students, it shall immediately cease instruction and, if the training program cannot provide a qualified instructor within 5 business days, the training program shall offer all enrolled students a refund of all tuition and fees the students have paid to the program.
3. A training program shall obtain and maintain Board approval or re-approval as specified in this Article and A.R.S. § 32-1650.01(B) before advertising the program, accepting any tuition, fees, or other funds from prospective students, or enrolling students.
4. A training program that uses external clinical facilities shall execute a written agreement with each external clinical facility that:
  - a. Provides the program instructor the ability to assign patient care experiences to students after consultation with facility staff, and
  - b. Contains a termination clause that provides sufficient time for enrolled students to complete their clinical training upon termination of the agreement.
5. A training program that requires students to pay tuition for the program shall:
  - a. Make all program costs readily accessible on the school's website with effective dates,
  - b. Publicly post any increases in costs on the school's website 30 days in advance of the increase;
  - c. Include in the cost calculation and public posting, all fees directly paid to the program including but not

limited to tuition, lab fee, clinical fee, enrollment fee, insurance, books, uniform, health screening, credit card fee and state competency exam fee; and

- d. Provide a description of all program costs to the student that are not directly paid to the program.
6. Before collecting any tuition or fees from a student, a training program shall notify each prospective student of Board requirements for certification including legal presence in the United States, criminal background check requirements, and ineligibility for certification under A.R.S. § 32-1606(B)(17).
  7. Within the first 14 days of the program and before 50% of program instruction occurs, a training program shall transmit to the Board-approved test vendor, accurate and complete information regarding each enrolled student for the purposes of tracking program enrollment, attrition and completion. Upon receipt of accurate completion information, the vendor shall issue a certificate of completion to the program for each successful graduate.
  8. A training program shall provide the Board, or its designee, access to all training program records, students and staff at any time, including during an announced or unannounced visit. A program's refusal to provide such access is grounds for withdrawal of Board approval.
  9. A training program shall provide each student with an opportunity to anonymously and confidentially evaluate the course instructor, curriculum, classroom environment, clinical instructor, clinical setting, textbook and resources of the program.
  10. A training program shall provide and implement a plan to evaluate the program that includes the frequency of evaluation, the person responsible, the evaluative criteria, the results of the evaluation and actions taken to improve the program. The program shall evaluate the following elements at a minimum every two years:
    - a. Student evaluations consistent with subsection (A)(9);
    - b. First-time pass rates on the written and manual skills certification exams for each admission cohort;
    - c. Student attrition rates for each admission cohort;
    - d. Resolution of student complaints and grievances in the past two years; and
    - e. Review and revision of program policies.
  11. A training program shall submit written documentation and information to the Board regarding the following program changes within 30 days of instituting the change:
    - a. For a change or addition of an instructor or coordinator, the name, RN license number, and documentation that the coordinator or instructor meets the applicable requirements of R4-19-802(B) and (C) for CNA programs and R4-19-803(B) for CMA programs;
    - b. For a change in classroom location, the previous and new location, and a description of the new classroom;
    - c. For a change in a clinical facility, the name and address of the new facility and a copy of the signed clinical contract;
    - d. For a change in the name or ownership of the training program, the former name or owners and the new name or owners; and
    - e. For a decrease in hours of the program, a written revised curriculum document that clearly highlights new content, strikes out deleted content and includes revised hours of instruction, as applicable.

**B. Policies and Procedures**

1. A training program shall promulgate and enforce written policies and procedures that comply with state and federal requirements, and are consistent with the policies and procedures of the parent institution, if any. The program shall provide effective and review dates for each policy or procedure.
  2. A training program shall provide a copy of its policies and procedures to each student on or before the first day the student begins the program.
  3. The program shall promulgate and enforce the following policies with accompanying procedures:
    - a. Admission requirements including:
      - i. Criminal background, health and drug screening either required by the program or necessary to place a student in a clinical agency; and
      - ii. English language, reading and math skills necessary to comprehend course materials and perform duties safely.
    - b. Student attendance policy, ensuring that a student receives the hours and types of instruction as reported to the Board in the program's most recent application to the Board and as required in this Article. If absences are permitted, the program shall ensure that each absence is remediated by providing and requiring the student to complete learning activities that are equivalent to the missed curriculum topics, clinical experience or skill both in substance and in classroom or clinical time.
    - c. A final examination policy that includes the following provisions:
      - i. Require that its students score a minimum 75% correct answers on a comprehensive secure final examination with no more than one retake. The program may allow an additional retake following documented, focused remediation based on past test performance. Any retake examination must contain different items than the failed exam, address all course competencies, and be documented with score, date administered and proctor in the student record; and
      - ii. Require that each student demonstrate, to program faculty, satisfactory performance of each practical skill as prescribed in the curriculum before performance of that skill on patients or residents without the instructor's presence, direct observation, and supervision;
    - d. Student record maintenance policies consistent with subsection (D) including the retention period, the location of records and the procedure for students to access to their records.
    - e. Clinical supervision policies consistent with clinical supervision provisions of this Section, and:
      - i. R4-19-802(C) and (D) for CNA programs, or
      - ii. R4-19-803(B) and (C) for CMA programs;
    - f. Student conduct policies for expected and unacceptable conduct in both classroom and clinical settings;
    - g. Dismissal and withdrawal policies;
    - h. Student grievance policy that includes a chain of command for grade disputes and ensures that students have the right to contest program actions and provide evidence in support of their best interests including the right to a third party review by a person or committee that has no stake in the outcome of the grievance;
    - i. Program progression and completion criteria.
- C. Classroom and clinical instruction
    1. During clinical training sessions, a training program shall ensure that each student is identified as a student by a name badge or another means readily observable to staff, patients, and residents.
    2. A training program shall not utilize, or allow the clinical facility to utilize, students as staff during clinical training sessions.
    3. A training program shall provide a clean, comfortable, distraction-free learning environment for didactic teaching and skill practice.
    4. A training program shall provide, in either electronic or paper format, a written curriculum to each student on or before the first day of class that includes a course description, course hours including times of instruction and total course hours, instructor information, passing requirements, course goals, and a topical schedule containing date, time and topic for each class session.
    5. For each unit or class session the program shall provide, to its students, written:
      - a. Measurable learner-centered objectives,
      - b. An outline of the material to be taught, and
      - c. The learning activities or reading assignment.
    6. A training program shall utilize an electronic or paper textbook corresponding to the certification level of the course that has been published within the previous five years. Unless granted specific permission by the publisher, a training program shall not utilize copies of published materials in lieu of an actual textbook.
    7. A training program shall provide, to all program instructors and enrolled students, access to the following instructional and educational resources:
      - a. Reference materials, corresponding to the level of the curriculum; and
      - b. Equipment and supplies necessary to practice skills.
    8. A training program instructor shall:
      - a. Plan each learning experience;
      - b. Ensure that the curriculum meets the requirements of this Section;
      - c. Prepare written course goals, lesson objectives, class content and learning activities;
      - d. Schedule and achieve course goals and objectives by the end of the course; and
      - e. Require satisfactory performance of all critical elements of each skill under R4-19-802(H) for nursing assistant and R4-19-803(D)(4) for medication assistant before allowing a student to perform the skill on a patient or resident without the instructor's presence at the bedside.
    9. A qualified RN instructor shall be present at all times and during all scheduled classroom, skills laboratory and clinical sessions. In no instance shall a nursing assistant or other unqualified person provide any instruction, reinforcement, evaluation or independent activities in the classroom or skills laboratory.
    10. A qualified RN instructor shall supervise any student who provides care to patients or residents by:
      - a. Remaining in the clinical facility and focusing attention on student learning needs during all student clinical experiences;
      - b. Providing the instructor's current and valid contact information to students and facility staff during the instructor's scheduled teaching periods;
      - c. Observing each student performing tasks taught in the training program;

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- d. Documenting each student's performance each day, consistent with course skills and clinical objectives;
- e. During the clinical session, engaging exclusively in activities related to the supervision of students; and
- f. Reviewing all student documentation.

**D. Records**

1. A training program shall maintain the following program records either electronically or in paper form for a minimum of three years for CNA programs and five years for CMA programs:
  - a. Curriculum and course schedule for each admission cohort;
  - b. Results of state-approved written and manual skills testing;
  - c. Documentation of program evaluation under subsection (A)(10);
  - d. A copy of any Board reports, applications, or correspondence, related to the program; and
  - e. A copy of all clinical contracts, if using outside clinical agencies.
2. A training program shall maintain the following student records either electronically or in paper form for a minimum of three years for CNA programs and five years for CMA programs:
  - a. A record of each student's legal name, date of birth, address, telephone number, e-mail address and Social Security number, if available;
  - b. A completed skill checklist containing documentation of student level of competency performing the skills in R4-19-802(F) for nursing assistant, and in R4-19-803(D)(4) for medication assistants;
  - c. An accurate attendance record, which describes any make-up class sessions and reflects whether the student completed the required number of hours in the course; and
  - d. Scores for each test, quiz, or exam and whether such test, quiz, or exam was retaken.

**E. Certifying Exam Passing Standard:** A training program and each site of a consolidated program under R4-19-802(E) shall attain, at a minimum, an annual first-time passing rate on the manual skill and written certifying examinations that is equal to the Arizona average pass rate for all candidates on each examination minus 20 percentage points. The Board may waive this requirement for programs with less than five students taking the exam during the year. The Board shall issue a notice of deficiency under A.A.C. R4-19-805 to any program with five or more students taking the exam that fails to achieve the minimum passing standard in any calendar year.

**F. Distance Learning; Innovative Programs**

1. A training program may be offered using real-time interactive distance technologies such as interactive television and web based conferencing if the program meets the requirements of this Article.
2. Before a training program may offer, advertise, or recruit students for an on-line, innovative or other non-traditional program, the program shall submit an application for innovative applications in education under R4-19-214 and receive Board approval.

**G. Site visits:** A training program shall permit the Board, and its designee, including another state agency, to conduct an onsite scheduled evaluation for initial Board approval and renewal of approval in accordance with R4-19-804 and announced or unannounced site visits at any other time the Board deems necessary.

757, effective February 4, 2000 (Supp. 00-1). Amended by final rulemaking at 11 A.A.R. 4254, effective December 5, 2005 (Supp. 05-4). Section repealed; new Section made by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3).

**R4-19-802. CNA Program Requirements****A. Organization and Administration**

1. A nursing assistant program may be offered by:
  - a. An educational institution licensed by the State Board for Private Postsecondary Education,
  - b. A public educational institution or a program funded by a local, state or federal governmental agency,
  - c. A health care institution licensed by the Arizona Department of Health Services or a federally authorized health care institution,
  - d. A private business that meets the requirements of this Article and all other legal requirements to operate a business in Arizona.
2. If a nursing assistant program is offered by a private business, the program shall meet the following requirements.
  - a. Hold a surety bond from a surety company with a financial strength rating of "A-" or better by Best's Credit Ratings, Moody's Investors Service, Standard and Poor's rating service or another comparable rating service as determined by the Board in the amount of a minimum of \$15,000. The program shall ensure that:
    - i. Bond distributions are limited to students or former students with a valid claim for instructional or program deficiencies;
    - ii. The amount of the bond is sufficient to reimburse the full amount of collected tuition and fees for all students during all enrollment periods of the program; and
    - iii. The bond is maintained for an additional 24 months after program closure; and
  - b. Upon initial use and remodeling, provide the Board with a fire inspection report from the Office of the State Fire Marshal or the local authority with jurisdiction, indicating that each program classroom and skill lab location is in compliance with the applicable fire code.
3. Programs approved by the Board before the effective date of this Section shall comply with subsection (A)(2) within one year of the effective date. If a program does not charge tuition or fees, the bond requirement is waived.
4. A Medicare or Medicaid certified long-term care facility-based certified nursing assistant program shall not require a student to pay a fee for any portion of the program including the initial attempt on the state competency exam.
5. In addition to the policies required in R4-19-801(B), the Board may approve a nursing assistant program to offer an advanced placement option to a student with a background in health care. A nursing assistant program wishing to offer an advance placement option shall submit their advanced placement policy to the Board and receive approval before implementing the policy. The program shall include, at a minimum, the following provisions in its policy:
  - a. Advanced placement is limited to students with at least one year full-time employment in the direct provision of health care within the past five years or students who have successfully completed course work that included direct patient care experiences in

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New Section adopted by final rulemaking at 6 A.A.R.

- allied health, medicine or nursing in the past five years.
- b. The program, at a minimum, shall require an advanced placement student to meet the same outcomes as regular students on all examinations and skill performance demonstrations.
  - c. The program shall require an advanced placement student to successfully accomplish all clinical objectives during a minimum of 16 hours of clinical practice under the direct supervision and observation of a qualified instructor and in a long-term care facility.
  - d. Upon successful completion of advanced placement and any other program requirements, the program shall credit the graduate with the same number of didactic, laboratory and clinical hours as the regular graduate.
- B. Program coordinator qualifications and responsibilities**
1. Program coordinator qualifications include:
    - a. Holding a current, registered nurse license that is active and in good standing or multistate privilege to practice as an RN under A.R.S. Title 32, Chapter 15; and
    - b. Possessing at least two years of nursing experience at least one year of which is in the provision of long-term care facility services.
  2. A director of nursing in a health care facility may assume the role of a program coordinator for a nursing assistant training program that is housed in the facility but shall not function as a program instructor.
  3. A program coordinator's responsibilities include:
    - a. Supervising and evaluating the program;
    - b. Ensuring that instructors meet Board qualifications and there are sufficient instructors to provide for a clinical ratio not to exceed 10 students per instructor;
    - c. Ensuring that the program meets the requirements of this Article; and
    - d. Ensuring that the program meets federal requirements regarding clinical facilities under 42 CFR 483.151.
  4. Other than the director of nursing in a long-term care facility, a program coordinator may also serve as a program instructor.
- C. Program instructor qualifications and duties**
1. Program instructor qualifications include:
    - a. Holding a current, registered nurse license that is active and in good standing under A.R.S. Title 32, Chapter 15 and provide documentation of a minimum of one year full time or 1500 hours employment providing direct care as a registered nurse in any setting; and
    - b. At a minimum, one of the following:
      - i. Successful completion of a three semester credit course on adult teaching and learning concepts offered by an accredited post-secondary educational institution,
      - ii. Completion of a 40 hour continuing education program in adult teaching and learning concepts that was awarded continuing education credit by an accredited organization,
      - iii. One year of full-time or 1500 hours experience teaching adults as a faculty member or clinical educator, or
      - iv. One year of full time or 1500 hours experience supervising nursing assistants, either in addition to or concurrent with the one year of experience required in subsection (C)(1)(a).
  2. In addition to the program instruction requirements in R4-19-801(C), a nursing assistant program instructor shall provide on-site supervision for each student placed in a health care facility not to exceed 10 students per instructor;
- D. Clinical and classroom hour requirements and resources**
1. A nursing assistant training program shall ensure each graduate receives a minimum of 120 hours of total instruction consisting of:
    - a. Instructor-led teaching in a classroom setting for a minimum of 40 hours;
    - b. Instructor-supervised skills practice and testing in a laboratory setting for a minimum of 20 hours; and
    - c. Instructor-supervised clinical experiences for a minimum of 40 hours, consistent with the goals of the program. Clinical requirements include the following:
      - i. The program shall provide students with clinical orientation to any clinical setting utilized.
      - ii. The program shall provide a minimum of 20 hours of direct resident care in a long-term care facility licensed by the Department of Health Services, except as provided in subsection (iv). Direct resident care does not include orientation and clinical pre and post conferences.
      - iii. If another health care facility is used for additional required hours, the program shall ensure that the facility provides opportunities for students to apply nursing assistant skills similar to those provided to long-term care residents.
      - iv. If a long-term care facility licensed by the Department of Health Services is not available within 50 miles of the training program's classroom, the program may provide the required clinical hours in a facility or unit that cares for residents or patients similar to those residing in a long-term care facility.
    - d. To meet the 120 hour minimum program hour requirement, a CNA program shall designate an additional 20 hours to classroom, skill or clinical instruction based upon the educational needs of the program's students and program resources.
  2. A nursing assistant training program shall ensure that equipment and supplies are in functional condition and sufficient in number for each enrolled student to practice required skills. At a minimum, the program shall provide:
    - a. Hospital-type bed, over-bed table, linens, linen protectors, pillows, privacy curtain, call-light and night-stand;
    - b. Thermometers, stethoscopes, including a teaching stethoscope, aneroid blood pressure cuffs, and a scale;
    - c. Realistic skill training equipment, such as a manikin or model, that provides opportunity for practice and demonstration of perineal care;
    - d. Personal care supplies including wash basin, towels, washcloths, emesis basin, rinse-free wash, tooth brushes, disposable toothettes, dentures, razor, shaving cream, emery board, orange stick, comb, shampoo, hair brush, and lotion;
    - e. Clothes for dressing residents including undergarments, socks, hospital gowns, shirts, pants and shoes or non-skid slippers;

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- f. Elimination equipment including fracture bed pans, bed pans, urinals, ostomy supplies, adult briefs, specimen cups, graduate cylinder, and catheter supplies;
  - g. Aseptic and protective equipment including running water, sink, soap, paper towels, clean disposable gloves, surgical masks, particulate respirator mask for demonstration purposes, gowns, hair protectors and shoe protectors;
  - h. Restorative equipment including wheelchair, gait belt, walker, anti-embolic hose, adaptive equipment, and cane;
  - i. Feeding supplies including cups, glasses, dishes, straws, standard utensils, adaptive utensils and clothing protectors;
  - j. Clean dressings, bandages and binders; and
  - k. Documentation forms.
- E. Consolidated Programs**
1. A nursing assistant program may request, in writing, to consolidate more than one site of a program under one program approval for convenience of administration. The site of a program is where didactic instruction occurs. The Board may approve the request for a consolidated program if all the following conditions are met:
    - a. The program is not based in a long-term care facility;
    - b. The program does not offer an innovative program as defined in R4-19-214 at any consolidated site;
    - c. A single RN administrator has authority and responsibility for all sites including hiring, retention and evaluation of all program personnel;
    - d. Curriculum and policies are identical for all sites;
    - e. Instructional delivery methods are substantially similar at all sites;
    - f. Didactic, lab practice and clinical hours are identical for all sites;
    - g. The program presents sufficient evidence that all sites have comparable resources, including classroom, skill lab, clinical facilities and staff. Evidence may include pictures, videos, documentation of equipment purchase and instructor resumes;
    - h. The program provides an application to the Board a minimum of 30 days before consolidation of the program or use of the new site;
    - i. The site is fully staffed before accepting students;
    - j. The program evaluates each site separately under R4-19-801(A)(9);
    - k. The program arranges for the test vendor to provide a separate program number for each site;
  2. There have been no substantiated complaints against the program or failure to follow the provisions of this Article in the past two years.
  3. The program shall notify the Board if a site is closed or has not been used in two years.
  4. A program that has been Board-approved as a consolidated program may request to add additional sites 30 days in advance of site utilization. The Board may approve the new site if the site meets the criteria in subsection (E)(1).
  5. The Board may deny a request to consolidate programs or add a site if the requirements of this section are not met. Denial of such a request is not a disciplinary action and does not affect the program's approval status.
  6. The Board shall not renew or visit any site that was not used in the previous approval period.
- F. Curriculum:** a nursing assistant training program shall provide classroom and clinical instruction regarding each of the following subjects:
1. Communication, interpersonal skills, and documentation;
  2. Infection control;
  3. Safety and emergency procedures, including abdominal thrusts for foreign body airway obstruction and cardiopulmonary resuscitation;
  4. Patient or resident independence;
  5. Patient or resident rights, including the right to:
    - a. Confidentiality;
    - b. Privacy;
    - c. Be free from abuse, mistreatment, and neglect;
    - d. Make personal choices;
    - e. Obtain assistance in resolving grievances and disputes;
    - f. Security of a patient's or resident's personal property; and
    - g. Be free from restraints;
  6. Recognizing and reporting abuse, mistreatment or neglect to a supervisor;
  7. Basic nursing assistant skills, including:
    - a. Taking vital signs, height, and weight using standing, wheelchair and bed scales;
    - b. Maintaining a patient's or resident's environment;
    - c. Observing and reporting pain;
    - d. Assisting with diagnostic tests including obtaining specimens;
    - e. Providing care for patients or residents with drains and tubes including catheters and feeding tubes;
    - f. Recognizing and reporting abnormal patient or resident physical, psychological, or mental changes to a supervisor;
    - g. Applying clean bandages;
    - h. Providing peri-operative care; and
    - i. Assisting in admitting, transferring, or discharging patients or residents.
  8. Personal care skills, including:
    - a. Bathing, skin care, and dressing;
    - b. Oral and denture care;
    - c. Shampoo and hair care;
    - d. Fingernail care;
    - e. Toileting, perineal, and ostomy care;
    - f. Feeding and hydration, including proper feeding techniques and use of assistive devices in feeding; and
  9. Age specific, mental health, and social service needs, including:
    - a. Modifying the nursing assistant's behavior in response to patient or resident behavior,
    - b. Demonstrating an awareness of the developmental tasks and physiologic changes associated with the aging process,
    - c. Responding to patient or resident behavior,
    - d. Allowing the resident or patient to make personal choices and providing and reinforcing other behavior consistent with the individual's dignity,
    - e. Providing culturally sensitive care,
    - f. Caring for the dying patient or resident, and
    - g. Using the patient's or resident's family as a source of emotional support for the resident or patient;
  10. Care of the cognitively impaired patient or resident including:
    - a. Understanding and addressing the unique needs and behaviors of patients or residents with dementia or other cognitive impairment,

- b. Communicating with cognitively impaired patients or residents;
  - c. Reducing the effects of cognitive impairment; and
  - d. Appropriate responses to the behavior of cognitively impaired individuals.
- 11. Skills for basic restorative services, including:
  - a. Body mechanics;
  - b. Resident self-care;
  - c. Assistive devices used in transferring, ambulating and dressing;
  - d. Range of motion exercises;
  - e. Bowel and bladder training;
  - f. Care and use of prosthetic and orthotic devices; and
  - g. Turning and positioning a resident in bed, transferring a resident between bed and chair and positioning a resident in a chair.
- 12. Health care team member skills including the role of the nursing assistant and others on the health care team, time management and prioritizing work; and
- 13. Legal aspects of nursing assistant practice, including:
  - a. Board-prescribed requirements for certification and re-certification including criminal background checks, testing, Board application, felony bar under A.R.S. § 32-1606 (B)(17), proof of legal presence, allotted time to certify and practice requirement for re-certification;
  - b. Delegation of nursing tasks;
  - c. Ethics;
  - d. Advance directives and do-not-resuscitate orders; and
  - e. Standards of conduct under R4-19-814.
- 14. Body structure and function, together with common diseases and conditions.
- G.** Curriculum sequence: A nursing assistant training program shall provide a student with a minimum of 16 hours instruction in the subjects identified in subsections (F)(1) through (F)(6) before allowing a student to care for patients or residents.
- H.** Skills: A nursing assistant instructor shall verify and document that the following skills are satisfactorily performed by each student before allowing the student to perform the skill on a patient or resident without the instructor present:
  - 1. Hand hygiene, gloving and gowning; and
  - 2. Skills in subsection (F)(7), (8) and (11)(a), (c), (d), (f), and (g).
- I.** One-year approval: following receipt and review of a complete initial application as specified in R4-19-804 the Board may approve the program for a period that does not exceed one year, if requirements are met, without a site visit.
- J.** A Medicare or Medicaid certified long-term care facility-based program shall provide in its initial and each renewal application, a signed, sworn, and notarized document, executed by the program coordinator, affirming that the program does not require a nursing assistant student to pay a fee for any portion of the program including the initial attempt on the state competency exam.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1). Amended by final rulemaking at 11 A.A.R. 4254, effective December 5, 2005 (Supp. 05-4). Section repealed; new Section made by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3).

#### R4-19-803. Certified Medication Assistant Program Requirements

- A.** Organization and Administration: A certified medication assistant (CMA) program may only be offered by those entities identified in A.R.S. § 32-1650.01(A).
- B.** Instructor qualifications and duties
  - 1. A medication assistant program instructor shall:
    - a. Hold a current, registered nurse license that is active and in good standing or multistate privilege to practice as an RN under A.R.S. Title 32, Chapter 15;
    - b. Possess at least two years or 3,000 hours of direct care nursing experience; and
    - c. Have administered medications to residents of a long-term care facility for a minimum of 40 hours.
  - 2. Duties of a medication assistant instructor include, but are not limited to:
    - a. Ensuring that the program meets the requirements of this Article;
    - b. Planning each learning experience;
    - c. Teaching a curriculum that meets the requirements of this Section;
    - d. Implementing student and program evaluation policies that meet or exceed the requirements R4-19-801(A)(9) and (10);
    - e. Administering not less than three secure unit examinations and one comprehensive final exam consistent with the course curriculum and the requirements of R4-19-801(B)(3)(c) and;
    - f. Requiring each student to demonstrate satisfactory performance of all critical elements of each skill in subsection (D)(4) before allowing a student to perform the skill on a patient or resident without the instructor's presence and direct observation;
    - g. Being physically present and attentive to students in the classroom and clinical setting at all times during all sessions;
  - 3. A program instructor shall supervise only one student for the first 12 hours of each student's clinical experience; no more than three students for the next 12 hours of each student's clinical experience; and no more than five students for the next 16 hours of each student's clinical experience;
- C.** Clinical and classroom hour requirements and resources
  - 1. A medication assistant training program shall ensure each graduate received a minimum of 100 hours of total instruction consisting of:
    - a. Instructor-led didactic instruction for a minimum of 45 hours;
    - b. Instructor supervised skill practice and testing for a minimum of 15 hours;
    - c. Instructor supervised medication administration for a minimum of 40 hours in a long-term care facility licensed by the Department of Health Services.
  - 2. A medication assistant program shall ensure that equipment and supplies are in functional condition and sufficient in number for each enrolled student to practice required skills in subsection (D)(3) and (D)(4). At a minimum, the program shall provide the following:
    - a. A medication cart similar to one used in the clinical practice facility;
    - b. Simulated medications and packaging consistent with resident medications;
    - c. Pill crushers, pill splitters, medication cups and hand hygiene supplies;
    - d. Medication administration record forms; and



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- e. Current drug references, calculator and any other equipment used to administer medications safely.
- D.** Curriculum: a medication assistant training program shall provide classroom and clinical instruction in each of the following subjects.
  - 1. Role of certified medication assistant (CMA) in Arizona including allowable acts, conditions, delegation and restrictions;
  - 2. Principles of medication administration including:
    - a. Terminology,
    - b. Laws affecting drug administration,
    - c. Drug references,
    - d. Medication action,
    - e. Medication administration across the human life-span,
    - f. Dosage calculation,
    - g. Medication safety,
    - h. Asepsis, and
    - i. Documentation.
  - 3. Medication properties, uses, adverse effects, administration and care implications for the following types of medications:
    - a. Vitamins, minerals, and herbs,
    - b. Antimicrobials,
    - c. Eye and ear medications,
    - d. Skin medications,
    - e. Cardiovascular medications,
    - f. Respiratory medications,
    - g. Gastrointestinal medications,
    - h. Urinary system medications and medications to attain fluid balance,
    - i. Endocrine/reproductive medications,
    - j. Musculoskeletal medications,
    - k. Nervous system/sensory system medications and
    - l. Psychotropic medications.
  - 4. Medication administration theory and skill practice in administration of:
    - a. Oral tablets, capsules, and solutions;
    - b. Ear drops, eye drops and eye ointments;
    - c. Topical lotions, ointments and solutions;
    - d. Rectal suppositories; and
    - e. Nasal drops and sprays.
  - 5. Any other topics deemed by the program or the Board as necessary and pertinent to the safe administration of medications.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1). Amended by final rulemaking at 11 A.A.R. 4254, effective December 5, 2005 (Supp. 05-4). Section repealed; new Section made by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3).

**R4-19-804. Initial Approval and Re-approval Training Programs**

- A.** An applicant for initial training program approval shall submit an application packet to the Board at least 90 days before the expected starting date of the program. An applicant shall submit application documents that are unbound, typed or word processed, single-sided, and on white, letter-size paper plus one electronic copy of the entire packet. The Board does not accept notebooks, spiral bound documents, manuals or books.
- B.** The Board may impose disciplinary action including denial on any training program that has advertised, conducted classes, recruited or collected money from potential students before receiving Board approval or after expiration of approval

except for completing instruction to students who enrolled before the expiration date.

- C.** A program applying for initial approval shall include all of the following in their application packet:
  - 1. Name, address, web address, telephone number, e-mail address and fax number of the program;
  - 2. Identity of all program owners or sponsoring institutions;
  - 3. Name, license number, telephone number, e-mail address and qualifications of the program coordinator as required in R4-19-802;
  - 4. Name, license number, telephone number, e-mail address and qualifications of each program instructor including clinical instructors as required in either R4-19-802 for CNA programs or R4-19-803 for CMA programs;
  - 5. Name, telephone number, e-mail address and qualifications any person with administrative oversight of the training program, such as an owner, supervisor or director;
  - 6. Accreditation status of the training program, if any, including the name of the accrediting body and date of last review;
  - 7. Name, address, telephone number and contact person, for all health care institutions which will be clinical sites for the program;
  - 8. Medicare certification status of all clinical sites, if any;
  - 9. Evidence of program compliance with this Article including all of the following:
    - a. Program description that includes the length of the program, number of hours of clinical, laboratory and classroom instruction, and program goals consistent with federal, state, and if applicable, private postsecondary requirements;
    - b. A list and description of classroom facilities, equipment, and instructional tools the program will provide;
    - c. Written curriculum and course schedule according to the provisions of this Article;
    - d. A copy of the documentation that the program will use to verify student attendance, instructor presence and skills;
    - e. Copy of signed, current clinical contracts;
    - f. The title, author, name, year of publication, and publisher of all textbooks the program will require students to use;
    - g. A copy of course policies and any other materials that demonstrate compliance with this Article and the statutory requirements in Title 32, Chapter 15;
    - h. A plan to evaluate the program that meets requirements in R4-19-801(A)(10);
    - i. An implementation plan including start date and a description of how the program will provide oversight to ensure all requirements of this Article are met;
    - j. A self-assessment checklist of the application contents and their location in the application, on a form provided by the Board; and
    - k. Other requirements as requested consistent with R4-19-802 for nursing assistant programs and R4-19-803 for medication assistant programs.
- D.** Re-approval of Training Programs
  - 1. A training program applying for re-approval shall submit a paper and electronic application and accompanying materials to the Board before expiration of the current approval. The applicant program shall ensure that all documents submitted are unbound, typed or word processed, single-sided, and on white, letter-size paper. The Board

does not accept notebooks, spiral bound documents, manuals or books. A program or site of a consolidated program that did not hold any classes in the previous approval period is not eligible for renewal of approval.

2. The program shall include the following with the renewal application:
  - a. A program description and course goals;
  - b. Name, license number, and qualifications of current program personnel
  - c. A copy of the current curriculum which meets the applicable requirements in either R4-19-802 or R4-19-803;
  - d. The dates of each program offering, number of students who have completed the program, and the results of the state-approved written and manual skills tests, including first-time pass rates since the last program review;
  - e. A copy of current program policies, consistent with R4-19-801;
  - f. Any change in resources, contracts, or clinical facilities since the previous approval or changes that were not previously reported to the Board;
  - g. The program evaluation plan with findings regarding required evaluation elements under R4-19-801(A)(10);
  - h. The title, author, year of publication, and publisher of the textbook used by the program;
  - i. Copies of the redacted records of one program graduate;
  - j. The total number of enrolled students and graduates for each year since the last approval;
  - k. The total number of persons taking the state-approved exam in the past two years; if the number is less than 10, a comprehensive plan to increase program enrollment;
  - l. A self-assessment checklist of the application contents and their location in the application, on a form provided by the Board; and
  - m. Other requirements as requested consistent with R4-19-802 for nursing assistant programs and R4-19-803 for medication assistant programs.
- E. Upon determination of administrative completeness of either an initial or renewal application, the Board, through its authorized representative, shall schedule and conduct a site visit of a CNA program, unless one year only approval is granted on an initial application. The Board may conduct a site visit of a CMA program. Site visits are for the purpose of verifying compliance with this Article. Site visits may be conducted in person or through the use of distance technology.
- F. Following an evaluation of the program application and a site visit, if applicable, the Board may approve or renew the approval of the program for two years for a nursing assistant program and up to four years for a medication assistant program, if the program renewal application and site visit findings, as applicable, meet the requirements of this Article, and A.R.S. Title 32, Chapter 15 and renewal is in the best interest of the public. If the program does not meet these requirements, the Board may issue a notice of deficiency under R4-19-805 or take disciplinary action.
- G. A program may request an administrative hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for program approval or renewal of approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

- H. The owner, operator, administrator or coordinator of a program that is denied approval or renewal of approval shall not be eligible to conduct, own or operate a new or existing program for a period of two years from the date of denial.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1). Amended by final rulemaking at 11 A.A.R. 4254, effective December 5, 2005 (Supp. 05-4). Section repealed; new Section made by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3).

#### **R4-19-805. Deficiencies and Rescission of Program Approval, Unprofessional Program Conduct, Voluntary Termination, Disciplinary Action, and Reinstatement**

##### **A. Deficiencies**

1. Upon determining that a training program has not complied with this Article, the Board s may issue a written notice of deficiency to the program. The Board shall establish a reasonable period of time, based upon the number and severity of deficiencies, for correction of the deficiencies. Under no circumstances, however, shall the period for correction of deficiencies exceed six months.
  - a. Within ten days from the date that the notice of deficiency is served, the program shall submit a plan of correction to the Board.
  - b. The Board, through its authorized representative, may approve the plan of correction or require modifications to the plan if the plan does not adequately address the deficiencies.
  - c. The Board may conduct periodic evaluations and site visits during the period of correction to ascertain the program's progress toward correcting the deficiencies.
  - d. The Board shall evaluate the program's compliance, at a regularly scheduled Board meeting following the period of correction to determine whether the program has corrected the deficiencies.
2. The Board may rescind the approval of a training program or take other disciplinary action under A.R.S. § 32-1663, based on the number and severity of violations if the program engages in any of the following:
  - a. Failure to submit a plan of correction to the Board within ten days of service of a notice of deficiency.
  - b. Failure to comply with the requirements of this Article within the period set by the Board in the notice of deficiency;
  - c. Noncompliance with federal, state, or, if applicable, private postsecondary requirements;
  - d. Failure to permit a scheduled or unannounced Board site visit or failure to allow a Board representative access to program documents, staff or students during a site visit or investigation;
  - e. Loaning or transferring Board program approval to another entity or facility, including a facility with the same ownership;
  - f. Offering, advertising, recruiting, or enrolling students in a training program before Board approval is granted;
  - g. Conducting a training program after expiration of Board approval without filing an application for renewal of approval before the expiration date;
  - h. For a long-term care based nursing assistant program, charging for any portion of the program;
  - i. Committing an act of unprofessional program conduct.

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- B. Unprofessional program conduct.** A notice of deficiency or a disciplinary action including denial of approval or rescission of approval may be issued against a training program for any of the following acts of unprofessional conduct:
1. Failing to maintain minimum standards of acceptable and prevailing educational practice;
  2. Any violation of this Article;
  3. Utilization of students as labor rather than for educational purposes in a health care facility;
  4. Failing to follow the program's or parent institution's mission or goals, program design, objectives, or policies;
  5. Failing to provide the classroom, laboratory or clinical teaching hours required by this Article or described in the program description;
  6. Enrolling students in a program without adequate faculty, facilities, or clinical experiences, as required by this Article;
  7. Permitting unqualified persons to supervise teaching-learning experiences in any portion of the program;
  8. Failing to comply with Board requirements within designated timeframes;
  9. Engaging in fraud, misrepresentation or deceit in advertising, recruiting, promoting or implementing the program;
  10. Making a false, inaccurate or misleading statement to the Board or the Board's designee in the course of an investigation, or on any application or information submitted to the Board or on the program's public website;
  11. Failing to supervise students in the clinical setting in accordance with this Article or allowing more than the maximum students per clinical instructor prescribed in this Article;
  12. Engaging in any other conduct that gives the Board reasonable cause to believe the program's conduct may be a threat to the safety or welfare of students, faculty, patients or the public.
  13. Failing to:
    - a. Furnish in writing a full and complete explanation of a matter reported pursuant to A.R.S. § 32-1664, or
    - b. Respond to a subpoena issued by the Board;
  14. Failing to take appropriate action to safeguard a patient's or resident's welfare or follow policies and procedures of the program or clinical site designed to safeguard the patient or resident;
  15. Failing to promptly provide make-up classroom, laboratory, or clinical hours, with adequate notice to students, equivalent educational content, and reasonable scheduling, when shortages of hours were caused by the program or program instructors;
  16. Failing to promptly remove, or adequately discipline or train, program instructors whose conduct violates this Article or may be a threat to the safety or welfare of students, patients, residents, or the public.
  17. Engaging in retaliatory, threatening, or intimidating conduct toward current, prospective or former program students, instructors, other staff, or the public, who make complaints about any aspect of the program to program staff or the Board.
- C. Disciplinary Action.** If the Board issues disciplinary action against the approval of a nursing assistant or medication assistant training program, the program may request a hearing by filing a written request with the Board within 30 days of service of the Board's order. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10, and 4 A.A.C. 19, Article 6.
- D. Voluntary termination**
1. If a training program is voluntarily terminating before renewal, the program shall submit a written notice of termination to the Board.
  2. The program coordinator shall continue the training program, including retaining necessary instructors, until the last student is transferred or has completed the training program.
  3. Within 15 days after the termination of a training program, the administrator or a program representative shall notify the Board in writing of the permanent location and availability of all program records.
  4. A program that fails to renew its approval with the Board shall be considered voluntarily terminated unless there is a complaint against the program.
- E. Re-issuance of approval**
1. If the Board revokes the approval of a training program, the owner, administrator or coordinator of the revoked program may apply for re-issuance of program approval after a period of two years by complying with the requirements of this Article. The owner, administrator and coordinator of a program that had its approval revoked shall not own, administer or coordinate a training program for a period of two years from the date of program revocation.
  2. If the Board, in lieu of revocation, accepts a voluntarily surrender of a program's approval, the program's owner, administrator or coordinator may apply for reissuance of the program's approval after a period of two years. The owner, administrator and coordinator of a program that voluntarily surrendered its approval shall not own, administer or coordinate a training program for a period of two years from the date of the surrender of approval.
  3. A training program owner, administrator or coordinator whose program approval was voluntarily surrendered or that had its approval rescinded or revoked shall submit a complete reissuance application packet in writing that contains all of the information and documentation required of programs applying for initial approval. In addition, the program shall provide substantial evidence that the basis for revocation or voluntary surrender no longer exist and that reissuance of program approval is in the best interest of the public.
  4. The Board may reissue approval to a training program that meets the requirements of this Article. A program that is denied reissuance of approval may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying reissuance. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1). Amended by final rulemaking at 11 A.A.R. 4254, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3).

**R4-19-806. Nursing Assistant and Medication Assistant Certification by Examination**

- A.** An applicant for certification by examination shall submit the following to the Board:
1. A verified application on a form furnished by the Board that provides the following information about the applicant:
    - a. Full legal name and any and all former names used by the applicant;

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- b. Current mailing address, including county of residence, e-mail address and telephone number;
  - c. Place and date of birth;
  - d. Social Security number;
  - e. Ethnic category and marital status at the applicant's discretion;
  - f. Educational background, including the name of the training program attended, and date of graduation and for medication assistant, proof of high school or equivalent education completion as required in A.R.S. § 32-1650-02(A)(4);
  - g. Current employer, including address and telephone number, type of position, and dates of employment, if employed in health care;
  - h. A list of all states in which the applicant is or has been registered as a nursing assistant or medication assistant and the certificate number, if any;
  - i. For medication assistant, proof of CNA certification and 960 hours or 6 months full time employment as a CNA in the past year, as required in A.R.S. § 32-1650.02;
  - j. Responses to questions regarding the applicant's background on the following subjects:
    - i. Current investigation or pending disciplinary action by a nursing, nursing assistant or medication assistant regulatory agency in the United States or its territories;
    - ii. Action taken on a nursing assistant or medication assistant license, certification or registry designation in any other state;
    - iii. Felony conviction or conviction of an undesignated or other similar offense and the date of absolute discharge of sentence;
    - iv. Unprofessional conduct as defined in A.R.S. § 32-1601;
    - v. Explanation and supporting documentation for each affirmative answer to questions regarding the applicant's background;
  - 2. Proof of satisfactory completion of a nursing assistant or medication assistant training program that meets the requirements of this Article;
  - 3. Proof of United States citizenship or alien status as specified in A.R.S. § 41-1080;
  - 4. For CNA applicants, one or more fingerprint cards or fingerprints, if required by A.R.S. § 32-1606(B)(16);
  - 5. For CMA applicants, one or more fingerprint cards or fingerprints, as required by A.R.S. § 32-1606(B)(15) if a fingerprint background report has not been received by the Board in the past two years; and
  - 6. Applicable fees under A.R.S. § 32-1643 and R4-19-808.
- B.** An applicant for certification as a nursing assistant shall submit a passing score on a Board-approved nursing assistant examination and provide one of the following criteria:
- 1. Proof that the applicant has completed a Board-approved nursing assistant training program within the past two years;
  - 2. Proof that the applicant has completed a nursing assistant training program approved in another state or territory of the United States consisting of at least 120 hours within the past two years;
  - 3. Proof that the applicant has completed a nursing assistant program approved in another state or territory of the United States of at least 75 hours of instruction in the past two years and proof of working as a nursing assistant for an additional number of hours in the past two years that together with the hours of instruction, equal at least 120 hours;
- 4. Proof that the applicant either holds a nursing license in good standing in the U.S. or territories, has graduated from an approved nursing program, or otherwise meets educational requirements for a registered or practical nursing license in Arizona;
  - 5. Documentation sent directly from the program that the applicant successfully completed a nursing course or courses as part of an RN or LPN program approved in either this or another state in the last 2 years that included:
    - a. Didactic content regarding long-term care clients; and
    - b. Forty hours of instructor-supervised direct patient care in a long-term care or comparable facility; or
  - 6. Documentation of a minimum of 100 hours of military health care training, as evidenced by military records, and proof of working in health care within the past 2 years.
- C.** An applicant for medication assistant shall meet the qualifications of A.R.S. §§ 32-1650.02 and 32-1650.03. An applicant who wishes to use part of a nursing program in lieu of completion of a Board approved medication assistant training program under A.R.S. § 32-1650.02 shall submit the following:
- 1. An official transcript from a Board approved nursing program showing a grade of C or higher in a 45 hour or 3 semester credit, or equivalent, pharmacology course; and
  - 2. A document signed by both the applicant's clinical instructor and the nursing program administrator verifying that the applicant completed 40 hours of supervised medication administration in a long-term care facility.
- D.** Certifying Exam
- 1. A CNA applicant shall take and pass both portions of the certifying exam within 2 years:
    - a. Of program completion for graduates of nursing assistant programs approved in Arizona or another state, or
    - b. Of the date of the first test for all other applicants.
  - 2. A CMA applicant shall take and pass both portions of the certifying exam within one year:
    - a. Of program completion for graduates of Board-approved programs, or
    - b. Of the date of the first test for all other applicants.
  - 3. An applicant may re-take the failed portion or portions of a certifying exam, under conditions prescribed in written policy by the exam vendor, until a passing score is achieved or their time expires under subsections (D)(1) or (2).
- E.** An applicant who does not take or pass an examination within the time period specified in subsection (D) shall enroll in and successfully complete a Board approved training program in the certification category before being permitted to retake an examination.
- F.** The Board may certify an applicant who meets the applicable criteria in this Article and A.R.S. Title 32, Chapter 15 if certification is in the best interest of the public. A CNA who qualifies for a CMA certificate shall be issued a combined CNA-CMA certificate.
- G.** An applicant who is denied certification may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for certification. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.
- H.** Medication assistant certification expires when nursing assistant certification expires. CMA applicants whose nursing assistant certification will expire within 12 months of initial

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issuance, shall pay a prorated fee for medication assistant certification.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1). Amended by final rulemaking at 11 A.A.R. 4254, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3).

**R4-19-807. Nursing Assistant and Medication Assistant Certification by Endorsement**

- A. An applicant for certification by endorsement shall submit all of the information, documentation, and fees required in R4-19-806.
- B. An applicant who has been employed for less than one year shall list all employers during the past two years.
- C. An applicant for nursing assistant certification by endorsement shall meet the training program criteria in R4-19-806(B). An applicant for combined nursing assistant and medication assistant endorsement shall, in addition, provide evidence of satisfactory completion of a training program that meets the requirements of A.R.S. § 32-1650.04 and pass a competency examination as prescribed in A.R.S. § 32-1650.03.
- D. In addition to the other requirements of this Section, an applicant for certification by endorsement shall provide evidence that the applicant:
  1. Is or has been, within the last 2 years, listed as active on a nursing assistant register or a substantially equivalent register by another state or territory of the United States with no substantiated complaints or discipline; and
  2. For nursing assistant, meets one or more of the following criteria:
    - a. Regardless of job title or description, performed nursing assistant activities for a minimum of 160 hours for an employer or as part of a nursing or allied health program in the past two years; or
    - b. Has completed a nursing assistant training program and passed the required examination within the past two years.
  3. In addition to the above requirements, for combined nursing assistant and medication assistant certification, meets the practice requirements of A.R.S. § 32-1650.04 and pays applicable fees under R4-19-808.
- E. The Board may certify an applicant who meets the applicable criteria in this Article if certification is in the best interest of the public.
- F. An applicant who is denied certification may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for certification. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1). Amended by final rulemaking at 11 A.A.R. 4254, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3).

**R4-19-808. Fees Related to Certified Medication Assistant**

- A. The Board shall collect the following fees related to medication assistant certification:
  1. Initial application for certification by exam, \$50.00.
  2. Fingerprint processing, \$50.00.
  3. Renewal CNA-CMA certificate, \$50.00.

4. Renewal fee after expiration of CNA-CMA certificate, \$25.00 plus an additional \$25.00 for each month lapsed.
  5. Application for certification by endorsement, \$50.00.
- B. If an individual or entity submits a dishonored check, draft order or note, the Board may collect, from the provider of the instrument, the amount allowed under A.R.S. § 44-6852.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 5004, effective November 15, 2002 (Supp. 02-4). Amended by final rulemaking at 11 A.A.R. 4254, effective December 5, 2005 (Supp. 05-4). Section repealed; new Section made by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3).

**R4-19-809. Nursing Assistant and Medication Assistant Certificate Renewal**

- A. An applicant for renewal of a CNA certificate or a combined CNA and CMA certificate shall:
  1. Submit a verified application to the Board on a form furnished by the Board that provides all of the following information about the applicant:
    - a. Full legal name, mailing address including county of residence, e-mail address and telephone number;
    - b. Marital status and ethnicity at the applicant's discretion;
    - c. Current health care employer including name, address, telephone number, dates of employment and type of setting;
    - d. If the applicant fails to meet the practice requirements in subsections (A)(2) for nursing assistant or (A)(3) for combined nursing assistant and medication assistant renewal, documentation that the applicant has completed a Board-approved training program for the certification sought and passed both the written and manual skills portions of the competency examination within the past two years;
    - e. Responses to questions that address the applicant's background:
      - i. Any investigation or disciplinary action by a nursing regulatory agency or nursing assistant regulatory agency in the United States or its territories not previously disclosed by the applicant to the Board;
      - ii. Felony conviction or conviction of undesigned offense and date of absolute discharge of sentence since certified or last renewed, and
      - iii. Unprofessional conduct committed by the applicant as defined in A.R.S. § 32-1601 since the time of last renewal and not previously disclosed by the applicant to the Board;
      - iv. Any disciplinary action or investigation related to the applicant's nursing license or nursing assistant or medication assistant license, certificate or registry listing by any other state regulatory agency since the last renewal and not previously disclosed to the Board.
      - v. Explanation and supporting documentation for each affirmative answer to questions regarding the applicant's background;
  2. For CNA renewal, employment as a nursing assistant, performing nursing assistant tasks for an employer or the applicant's performance of nursing assistant activities as part of a nursing or allied health program for a minimum

- of 160 hours every two years since the last certificate was issued, or
- 3. For combined CMA and CNA renewal, employment as a medication assistant for a minimum of 160 hours within the last 2 years, and
- 4. Applicable fees under A.R.S. § 32-1643 and R4-19-808.
- B.** A nursing assistant certificate and a combined medication assistant-nursing assistant certificate expire every 2 years on the last day of the certificate holder's birth date month. If a certificate holder fails to timely renew the certificate, the certificate holder shall:
  - 1. Not work or practice as a CNA or CMA until the Board issues a renewal certificate; and
  - 2. Pay any late fee imposed by the Board.
- C.** If an applicant holds a license or held a license or certificate that has been or is currently revoked, surrendered, denied, suspended or placed on probation in another jurisdiction, the applicant is not eligible to renew or reactivate the applicant's Arizona certificate until a review or investigation has been completed and a decision made by the Board.
- D.** The Board may renew the certificate of an applicant who meets the criteria established in statute and this Article. An applicant who is denied renewal of a certificate may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying renewal of the license. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1). Amended by final rulemaking at 11 A.A.R. 4254, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3).

#### R4-19-810. Certified Nursing Assistant Register

- A.** The Executive Director shall include the following information in the Register for each individual who receives Board certification:
  - 1. Full legal name and any other names used;
  - 2. Address of record;
  - 3. County of residence;
  - 4. The date of initial placement on the register;
  - 5. Dates and results of both the written and manual skills portions of the nursing assistant competency examination;
  - 6. Date of expiration of current certificate, if applicable;
  - 7. Existence of pending investigation, if applicable; and
  - 8. Status of certificate, such as active, denied, expired, or revoked, as applicable.
- B.** The Executive Director shall include the following information in the Register for an individual if the Board, or the United States Department of Health and Human Services (HHS), or the Arizona Department of Health Services finds that the individual has violated relevant law:
  - 1. For a finding by the Board or HHS, the Executive Director shall include:
    - a. The finding, including the date of the decision, and a reference to each statute, rule, or regulation violated; and
    - b. The sanction, if any, including the date of action and the duration of action, if time-limited.
  - 2. For a finding by the Arizona Department of Health Services, the Executive Director shall include:
    - a. The allegation;

- b. Documentation of the investigation, including the:
  - i. Nature of allegation, and
  - ii. Description of evidence supporting the finding;
- c. Date of hearing, if any, or the date that the complaint was substantiated;
- d. Statement disputing the allegation, if any;
- e. The finding, including the date of the decision and a reference to each statute or rule violated; and
- f. The sanction, including the dates of action and the duration of the sanction, if time-limited.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1). Amended by final rulemaking at 11 A.A.R. 4254, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3).

#### R4-19-811. Application for Duplicate Certificate

- A.** A certificate holder shall report a lost or stolen certificate to the Board in writing or electronically through the Board's web site, within 30 days of discovery of the loss.
- B.** An individual requesting a duplicate certificate shall file an application on a form provided by the Board for a duplicate certificate and pay the applicable fee under A.R.S. § 32-1643(A)(14).

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1). Amended by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3).

#### R4-19-812. Change of Name or Address

- A.** An applicant or a certificate holder shall notify the Board, in writing or electronically through the Board's website of any legal name change within 30 days of the change, and submit a copy of the official document verifying the name change.
- B.** An applicant or a certificate holder shall notify the Board in writing or electronically through the Board's website of any change of address within 30 days of the address change.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1). Amended by final rulemaking at 11 A.A.R. 4254, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3).

#### R4-19-813. Performance of Nursing Assistant Tasks; Performance of Medication Assistant Tasks

- A.** A certified nursing assistant may perform the following tasks as delegated by a licensed nurse:
  - 1. Tasks for which the nursing assistant has been trained through the curriculum identified in R4-19-802, and
  - 2. Tasks learned through inservice or educational training if the task meets the following criteria and the nursing assistant has demonstrated competence performing the task:
    - a. The task can be safely performed according to clear, exact, and unchanging directions;
    - b. The task poses minimal risk to the patient or resident and the consequences of performing the task improperly are not life-threatening or irreversible;
    - c. The results of the task are reasonably predictable; and

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- d. Assessment, interpretation, or decision-making is not required during the performance or at the completion of the task.
- B. A nursing assistant who is also certified as a medication assistant under A.R.S. § 32-1650.02 may administer medications under the conditions imposed by A.R.S. §§ 32-1650 through 32-1650.07.
- C. A certificate holder under this Article shall:
  - 1. Recognize the limits of the certificate holder's personal knowledge, skills, and abilities;
  - 2. Comply with laws relevant to nursing assistant and medication assistant practice;
  - 3. Inform the registered nurse, licensed practical nurse, or another person authorized to delegate the task about the certificate holder's ability to perform the task before accepting the assignment;
  - 4. Accept delegation, instruction, and supervision from a licensed nurse or another person authorized to delegate a task;
  - 5. Not perform any task that requires a judgment based on nursing knowledge;
  - 6. Acknowledge responsibility for personal actions necessary to complete an accepted assigned task;
  - 7. Follow the plan of care, if available;
  - 8. Observe, report, and record signs, symptoms, and changes in the patient or resident's condition in an ongoing and timely manner; and
  - 9. Retain responsibility for all assigned tasks without delegating any tasks to another person.
- 8. Failing to report signs, symptoms, and changes in patient or resident conditions to the immediate supervisor in an ongoing and timely manner;
- 9. Violating the rights or dignity of a patient or resident;
- 10. Violating a patient or resident's right of privacy by disclosing confidential information or knowledge concerning the patient or resident, unless disclosure is otherwise required by law;
- 11. Neglecting or abusing a patient or resident physically, verbally, emotionally, or financially;
- 12. Failing to immediately report to a supervisor and the Board any observed or suspected abuse or neglect, including a resident or patient's report of abuse or neglect;
- 13. Soliciting, or borrowing, property or money from a patient or resident, or any member of the patient's or resident's family, or the patient's or resident's guardian;
- 14. Soliciting or engaging in the sale of goods or services unrelated to the certificate holder's health care assignment with a patient or resident, or any member of the patient or resident's immediate family, or guardians;
- 15. Removing, without authorization, any money, property, or personal possessions, or requesting payment for services not performed from a patient, resident, employer, co-worker, or member of the public.
- 16. Repeated use or being under the influence of alcohol, medication, or any other substance to the extent that judgment may be impaired and practice detrimentally affected or while on duty in any work setting;
- 17. Accepting or performing patient or resident care tasks that the certificate holder lacks the education, competence or legal authority to perform;
- 18. Removing, without authorization, narcotics, drugs, supplies, equipment, or medical records from any work setting;
- 19. Obtaining, possessing, using, or selling any narcotic, controlled substance, or illegal drug in violation of any employer policy or any federal or state law;
- 20. Permitting or assisting another person to use the certificate holder's certificate or identity for any purpose;
- 21. Making untruthful or misleading statements in advertisements of the individual's practice as a certified nursing assistant or certified medication assistant;
- 22. Offering or providing certified nursing assistant or certified medication assistant services for compensation without a designated registered nurse supervisor;
- 23. Threatening, harassing, or exploiting an individual;
- 24. Using violent or abusive behavior in any work setting;
- 25. Failing to cooperate with the Board during an investigation by:
  - a. Not furnishing in writing a complete explanation of a matter reported under A.R.S. § 32-1664;
  - b. Not responding to a subpoena or written request for information issued by the Board;
  - c. Not completing and returning a Board-issued questionnaire within 30 days; or
  - d. Not informing the Board of a change of address or phone number within 10 days of each change;
- 26. Cheating on the certification exam or providing false information on an initial or renewal application for certification;
- 27. Making a false or inaccurate statement to the Board or the Board's designee during the course of an investigation;
- 28. Making a false or misleading statement on a nursing assistant, medication assistant or health care related employment or credential application;

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1). Amended by final rulemaking at 11 A.A.R. 4254, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3).

**R4-19-814. Standards of Conduct for Certified Nursing Assistants and Certified Medication Assistants**

For purposes of A.R.S. § 32-1601(22)(d), a practice or conduct that is or might be harmful or dangerous to the health of a patient or the public and constitutes a basis for disciplinary action on a certificate includes the following:

- 1. Failing to maintain professional boundaries or engaging in a dual relationship with a patient, resident, or any member of the patient's or resident's family;
- 2. Engaging in sexual conduct with a patient, resident, or any member of the patient's or resident's family who does not have a pre-existing relationship with the certificate holder, or any conduct while on duty or in the presence of a patient or resident that a reasonable person would interpret as sexual;
- 3. Leaving an assignment or abandoning a patient or resident who requires care without properly notifying the immediate supervisor;
- 4. Failing to accurately and timely document care and treatment provided to a patient or resident, including, for a CMA, medications administered or not administered;
- 5. Falsifying or making a materially incorrect entry in a health care record;
- 6. Failing to follow an employer's policies and procedures, designed to safeguard the patient or resident;
- 7. Failing to take action to protect a patient or resident whose safety or welfare is at risk from potential or actual incompetent health care practice, or to report the practice to the immediate supervisor or a facility administrator;
- 8. Failing to report signs, symptoms, and changes in patient or resident conditions to the immediate supervisor in an ongoing and timely manner;
- 9. Violating the rights or dignity of a patient or resident;
- 10. Violating a patient or resident's right of privacy by disclosing confidential information or knowledge concerning the patient or resident, unless disclosure is otherwise required by law;
- 11. Neglecting or abusing a patient or resident physically, verbally, emotionally, or financially;
- 12. Failing to immediately report to a supervisor and the Board any observed or suspected abuse or neglect, including a resident or patient's report of abuse or neglect;
- 13. Soliciting, or borrowing, property or money from a patient or resident, or any member of the patient's or resident's family, or the patient's or resident's guardian;
- 14. Soliciting or engaging in the sale of goods or services unrelated to the certificate holder's health care assignment with a patient or resident, or any member of the patient or resident's immediate family, or guardians;
- 15. Removing, without authorization, any money, property, or personal possessions, or requesting payment for services not performed from a patient, resident, employer, co-worker, or member of the public.
- 16. Repeated use or being under the influence of alcohol, medication, or any other substance to the extent that judgment may be impaired and practice detrimentally affected or while on duty in any work setting;
- 17. Accepting or performing patient or resident care tasks that the certificate holder lacks the education, competence or legal authority to perform;
- 18. Removing, without authorization, narcotics, drugs, supplies, equipment, or medical records from any work setting;
- 19. Obtaining, possessing, using, or selling any narcotic, controlled substance, or illegal drug in violation of any employer policy or any federal or state law;
- 20. Permitting or assisting another person to use the certificate holder's certificate or identity for any purpose;
- 21. Making untruthful or misleading statements in advertisements of the individual's practice as a certified nursing assistant or certified medication assistant;
- 22. Offering or providing certified nursing assistant or certified medication assistant services for compensation without a designated registered nurse supervisor;
- 23. Threatening, harassing, or exploiting an individual;
- 24. Using violent or abusive behavior in any work setting;
- 25. Failing to cooperate with the Board during an investigation by:
  - a. Not furnishing in writing a complete explanation of a matter reported under A.R.S. § 32-1664;
  - b. Not responding to a subpoena or written request for information issued by the Board;
  - c. Not completing and returning a Board-issued questionnaire within 30 days; or
  - d. Not informing the Board of a change of address or phone number within 10 days of each change;
- 26. Cheating on the certification exam or providing false information on an initial or renewal application for certification;
- 27. Making a false or inaccurate statement to the Board or the Board's designee during the course of an investigation;
- 28. Making a false or misleading statement on a nursing assistant, medication assistant or health care related employment or credential application;

29. If an applicant or certificate holder is charged with a felony or a misdemeanor, involving conduct that may affect patient safety, failing to notify the Board, in writing, within 10 working days of being charged under A.R.S. § 32-3208. The applicant or certificate holder shall include the following in the notification:
  - a. Name, current address, telephone number, Social Security number, and license number, if applicable;
  - b. Date of the charge; and
  - c. Nature of the offense;
30. Failing to notify the Board, in writing, of a conviction for a felony or an undesignated offense within 10 days of the conviction. The applicant or certificate holder shall include the following in the notification:
  - a. Name, current address, telephone number, Social Security number, and license number, if applicable;
  - b. Date of the conviction;
  - c. Nature of the offense;
31. For a medication assistant, performance of any acts associated with medication administration not specifically authorized by A.R.S. § 32-1650 et.seq; and
32. Practicing in any other manner that gives the Board reasonable cause to believe that the health of a patient, resident, or the public may be harmed.
33. Violation of any other state or federal laws, rules or regulations.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1). Amended by final rulemaking at 11 A.A.R. 4254, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 4621, effective January 31, 2009 (Supp. 08-4). Antiquated statute reference in opening subsection revised at the request of Board under A.R.S. § 41-1011(C), Office File No. M11-189, filed May 16, 2011 (Supp. 11-2). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2012, Ch. 152, § 1, provides for A.R.S. references to be corrected to reflect the renumbering of definitions. Therefore the A.R.S. citation in the opening subsection was updated. Agency request filed July 12,

2012, Office File No. M12-242 (Supp. 12-3). Amended by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3).

#### R4-19-815. Reissuance or Subsequent Issuance of a Nursing Assistant or Medication Assistant Certificate

An applicant whose application is denied or a certificate holder whose certificate is revoked in accordance with A.R.S. § 32-1663, may reapply to the Board after a period of five years from the date the certificate or application is revoked or denied. A certificate holder who voluntarily surrenders a certificate may reapply to the Board after no less than three years from the date the certificate is surrendered. The Board may issue or re-issue a nursing assistant certificate under the following terms and conditions:

1. An applicant shall submit documentation showing that the basis for denial, revocation or voluntary surrender has been removed and that the issuance or re-issuance of certification will no longer constitute a threat to the public health or safety. The Board may require an applicant to be tested for competency, or retake and successfully complete a Board approved training program and pass the required examination, all at the applicant's expense.
2. The Board shall consider the application, and may designate a time for the applicant to address the Board at a regularly scheduled meeting.
3. After considering the application, the Board may:
  - a. Grant certification, or
  - b. Deny the application.
4. An applicant who is denied issuance or reinstatement of certification may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying issuance or reinstatement of nursing assistant certification. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1). Amended by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3).



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**TITLE 4. PROFESSIONS AND OCCUPATIONS****CHAPTER 22. BOARD OF OSTEOPATHIC EXAMINERS IN MEDICINE AND SURGERY**

Authority: A.R.S. § 32-1801 et seq.

**ARTICLE 1. GENERAL PROVISIONS**

*New Article 1 consisting of Sections R4-22-101, R4-22-103, and R4-22-104 adopted and former rules R4-22-05 and R4-22-06 amended and renumbered as Sections R4-22-105 and R4-22-106 effective June 29, 1987.*

*Former Article 1 consisting of Sections R4-22-01, R4-22-02, R4-22-04 thru R4-22-07, R4-22-09, R4-22-10, and R4-22-12 repealed and Sections R4-22-08 and R4-22-11 amended and renumbered as R4-22-05 and R4-22-06 effective June 29, 1987.*

Section	
R4-22-101.	Definitions
R4-22-102.	Fees and Charges
R4-22-103.	Submitting Documents to the Board
R4-22-104.	Licensing Time-frames
Table 1.	Time-frames (in days)
R4-22-105.	Equivalents to an Approved Internship or Residency
R4-22-106.	Specialist Designation
R4-22-107.	Petition for Rulemaking or Review
R4-22-108.	Rehearing or Review of Decision
R4-22-109.	Renumbered
R4-22-110.	Renumbered
R4-22-111.	Renumbered
R4-22-112.	Renumbered
R4-22-113.	Repealed
R4-22-114.	Repealed
R4-22-115.	Renumbered

**ARTICLE 2. LICENSING**

R4-22-201.	Application Required
R4-22-202.	Determining Qualification for Licensure
R4-22-203.	Examination; Practice Equivalency to an Examination
R4-22-204.	License Issuance; Effective Date of License
R4-22-205.	License Renewal
R4-22-206.	Procedure for Application to Reenter Practice
R4-22-207.	Continuing Medical Education; Waiver; Extension of Time to Complete
R4-22-208.	Reserved
R4-22-209.	Reserved
R4-22-210.	Reserved
R4-22-211.	Reserved
R4-22-212.	Confidential Program for Treatment and Rehabilitation of Impaired Osteopathic Physicians

**ARTICLE 3. DISPENSING DRUGS**

Section	
R4-22-301.	Registration to Dispense Required
R4-22-302.	Packaging and Inventory
R4-22-303.	Prescribing and Dispensing Requirements
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R4-22-305.	Inspections; Denial and Revocation

**ARTICLE 4. MEDICAL ASSISTANTS**

Section	
R4-22-401.	Approval of Educational Programs for Medical Assistants
R4-22-402.	Medical Assistants – Authorized Procedures
R4-22-403.	Medical Assistant Training Requirement

**ARTICLE 5. OFFICE-BASED SURGERY**

Section	
R4-22-501.	Definitions
R4-22-502.	Health Care Institution License
R4-22-503.	Administrative Provisions
R4-22-504.	Procedure and Patient Selection
R4-22-505.	Sedation Monitoring Standards
R4-22-506.	Perioperative Period; Patient Discharge
R4-22-507.	Emergency Drugs; Equipment and Space Used for Office-based Surgery
R4-22-508.	Emergency and Transfer Provisions

**ARTICLE 1. GENERAL PROVISIONS****R4-22-101. Definitions**

In addition to the definitions in A.R.S. § 32-1800, in this Chapter:

“ABHES” means Accrediting Bureau of Health Education Schools.

“ABMS” means American Board of Medical Specialties.

“ACCME” means the Accreditation Council for Continuing Medical Education.

“ACGME” means the Accreditation Council on Graduate Medical Education.

“AOA” means the American Osteopathic Association.

“AOIA” means the American Osteopathic Information Association.

“Approved internship,” “approved preceptorship,” and “approved residency” mean training accredited by the AOA or ACGME.

“CAAHEP” means Commission on Accreditation of Allied Health Education Programs.

“CME” means continuing medical education.

“COMLEX” means Comprehensive Osteopathic Medical Licensing Examination.

“Continuing medical education” means a course, program, or other training that the Board approves for license renewal.

“Controlled substance” means a drug, substance, or immediate precursor, identified, defined, or listed in A.R.S. Title 36, Chapter 27, Article 2.

“FCVS” means Federal Credentials Verification Service.

“Licensee” means an individual who holds a current license issued under A.R.S. Title 32, Chapter 17.

“MAP” means Monitored Aftercare Program.

“NBME” means the National Board of Medical Examiners.

“NBOME” means the National Board of Osteopathic Medical Examiners.

“Post-graduate training program” means an approved internship or residency.

“USMLE” means United States Medical Licensing Examination.

**Historical Note**

Former Rule 1. Former Section R4-22-01 repealed, new Section R4-22-101 adopted effective June 29, 1987 (Supp. 87-2). Former Section R4-22-101 renumbered to

R4-22-109, new Section R4-22-101 adopted effective May 3, 1993 (Supp. 93-2). Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 583, effective November 30, 2004 (Supp. 05-1). New Section made by final rulemaking at 12 A.A.R. 2765, effective September 9, 2006 (Supp. 06-3). Amended by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

#### **R4-22-102. Fees and Charges**

- A.** Under the specific authority provided by A.R.S. §§ 32-1826(A) and 32-1871(A)(5), the Board establishes and shall collect the following fees for the Board's licensing activities:
  1. Application to practice osteopathic medicine, \$400;
  2. Issuance of initial license, \$180 (prorated);
  3. Biennial renewal of license, \$636 plus the penalty and reimbursement fees specified in A.R.S. § 32-1826(B), if applicable;
  4. Locum tenens registration, \$300;
  5. Annual registration of an approved internship, residency, or clinical fellowship program or short-term residency program, \$50;
  6. Teaching license, \$318;
  7. Five-day educational teaching permit, \$106; and
  8. Annual registration to dispense drugs and devices, \$240 (initial registration fee is prorated).
- B.** Under the specific authority provided by A.R.S. § 32-1826(C), the Board establishes and shall collect the following charges for services provided by the Board:
  1. Verification of a license to practice osteopathic medicine issued by the Board and copy of licensee's complaint history, \$10;
  2. Issuance of a duplicate license, \$10;
  3. List of physicians licensed by the Board, \$25.00 if for non-commercial use or \$100 if for commercial use;
  4. Copying records, documents, letters, minutes, applications, and files, 25¢ per page; and
  5. Copy of an audio tape, \$35.00; and
  6. Digital medium not requiring programming, \$100.
- C.** Except as provided under A.R.S. § 41-1077, the fees listed in subsection (A) are not refundable.

#### **Historical Note**

Adopted effective January 24, 1984 (Supp. 84-1). Section R4-22-02 repealed effective June 29, 1987 (Supp. 87-2).

New Section R4-22-102 adopted effective August 7, 1992 (Supp. 92-3). Section R4-22-102 renumbered to R4-22-106; new Section R4-22-102 renumbered from R4-22-108 and amended by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

#### **R4-22-103. Submitting Documents to the Board**

An individual who wants the Board to consider a document at a meeting or hearing shall submit the document to the Board at least 15 days before the meeting or hearing or at another time as directed by the Board.

#### **Historical Note**

Former Section R4-22-04 repealed, new Section R4-22-103 adopted effective June 29, 1987 (Supp. 87-2). Amended by final rulemaking at 10 A.A.R. 2793, effective August 7, 2004 (Supp. 04-2). Section R4-22-103 renumbered to R4-22-105; new Section R4-22-103 made by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

#### **R4-22-104. Licensing Time-frames**

- A.** The overall time-frame described in A.R.S. § 41-1072(2) for each type of license issued by the Board is listed in Table 1.

An applicant and the Executive Director of the Board may agree in writing to extend the substantive review and overall time-frames by no more than 25 percent of the overall time-frame listed in Table 1.

- B.** The administrative completeness review time-frame described in A.R.S. § 41-1072(1) for each type of license issued by the Board is listed in Table 1. The administrative completeness review time-frame for a particular license begins on the date the Board receives an application package for that license.
  1. If the application package is incomplete, the Board shall send to the applicant a written notice specifying the missing document or incomplete information. The administrative completeness review and overall time-frames are suspended from the postmark date on the notice until the date the Board receives the missing document or incomplete information.
  2. If the application package is complete, the Board shall send to the applicant a written notice of administrative completeness.
  3. If the Board grants or denies a license during the administrative completeness review time-frame, the Board shall not issue a separate written notice of administrative completeness.
- C.** The substantive review time-frame described in A.R.S. § 41-1072(3) for each type of license issued by the Board is listed in Table 1. The substantive review time-frame begins on the postmark date of the Board's notice of administrative completeness.
  1. During the substantive review time-frame, the Board may make one comprehensive written request for additional information or documentation. The substantive review and overall time-frames are suspended from the postmark date on the comprehensive written request for additional information or documentation until the Board receives the additional information or documentation. The Board and applicant may agree in writing to allow the Board to submit supplemental requests for additional information.
  2. The Board shall send a written notice of approval to an applicant who meets the requirements of A.R.S. Title 32, Chapter 17 and this Chapter.
  3. The Board shall send a written notice of denial to an applicant who fails to meet the requirements of A.R.S. Title 32, Chapter 17 or this Chapter.
- D.** The Board shall administratively close an applicant's file if the applicant fails to submit the information or documentation required under subsection (B)(1) or (C)(1) within 360 days from the date on which the application package was originally submitted. If an individual whose file is administratively closed wishes to be licensed, the individual shall file another application package and pay the application fee.
- E.** The Board shall grant or deny the following licenses within seven days after receipt of an application:
  1. Ninety-day extension of locum tenens registration;
  2. Waiver of continuing education requirements for a particular period;
  3. Extension of time to complete continuing education requirements;
  4. Five-day educational training permit; and
  5. Extension of one-year renewable training permit.
- F.** In computing any time-frame prescribed in this Section, the day of the act or event that begins the time-frame is not included. The computation includes intermediate Saturdays, Sundays, and official state holidays. If the last day of a time-frame falls on a Saturday, Sunday, or official state holiday, the next business day is the time-frame's last day.

## Board of Osteopathic Examiners in Medicine and Surgery

**Historical Note**

Former Rule 4. Amended effective May 2, 1978 (Supp. 78-3). Former Section R4-22-05 repealed, new Section R4-22-104 adopted effective June 29, 1987 (Supp. 87-2).

Section R4-22-104 renumbered to R4-22-203; new Section R4-22-104 renumbered from R4-22-212 and amended by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

**Table 1. Time-frames (in days)**

Type of License	Statutory Authority	Overall Time-frame	Administrative Completeness Time-frame	Substantive Review Time-frame
License	A.R.S. § 32-1822	120	30	90
License Renewal	A.R.S. § 32-1825	120	30	90
90-day Locum Tenens Registration	A.R.S. § 32-1823	60	30	30
One-year Renewable Training Permit	A.R.S. § 32-1829(A)	60	30	30
Short-term Training Permit	A.R.S. § 32-1829(C)	60	30	30
One-year Training Permit at Approved School or Hospital	A.R.S. § 32-1830	60	30	30
Two-year Teaching License	A.R.S. § 32-1831	60	30	30
Registration to Dispense Drugs and Devices	A.R.S. § 32-1871	90	30	60
Renewal of Registration to Dispense Drugs and Devices	A.R.S. §§ 32-1826(A)(11) and 32-1871	60	30	30
Approval of Educational Program for Medical Assistants	A.R.S. § 32-1800(17)	60	30	30

**Historical Note**

New Table 1, under Section R4-22-104, renumbered from R4-22-212 and amended by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

**R4-22-105. Equivalents to an Approved Internship or Residency**

For purposes of A.R.S. § 32-1822, the equivalent of an approved internship or approved residency is any of the following:

1. One or more years of a fellowship training program approved by the AOA or the ACGME; or
2. A current certification by the AOA in an osteopathic medical specialty.

**Historical Note**

Former Rule 8. Amended by adding subsection (D) effective January 24, 1984 (Supp. 84-1). Former Section R4-22-08 amended and renumbered as Section R4-22-105 effective June 29, 1987 (Supp. 87-2). Section repealed by final rulemaking at 10 A.A.R. 2793, effective August 7, 2004 (Supp. 04-2). New Section R4-22-105 renumbered from R4-22-103 and amended by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

**R4-22-106. Specialist Designation**

- A.** The Board approves specialty boards recognized by the:
1. American Osteopathic Association Bureau of Osteopathic Specialists and listed in the *Handbook of the Bureau of Osteopathic Specialists* (BOS), revised March 2013, available from the AOA at 142 E. Ontario Street, Chicago, IL 60611, 800-621-1773, or [www.osteopathic.org](http://www.osteopathic.org); and
  2. American Board of Medical Specialties (ABMS) and listed in the *ABMS Guide to Medical Specialties*, 2013, available from the ABMS at 222 N. LaSalle Street, Suite 1500, Chicago, IL 60601, 312-436-2600, or [www.abms.org](http://www.abms.org).

- B.** The Board incorporates the materials listed in subsection (A) by reference. The materials include no future editions or amendments. The Board shall make the materials available at the Board office and on its web site.

**Historical Note**

Adopted effective May 8, 1978 (Supp. 78-3). Former Section R4-22-11 amended and renumbered as Section R4-22-106 effective June 29, 1987 (Supp. 87-2). Amended by final rulemaking at 10 A.A.R. 2793, effective August 7, 2004 (Supp. 04-2). Section R4-22-106 renumbered to R4-22-108; new Section R4-22-106 renumbered from R4-22-102 and amended by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

**R4-22-107. Petition for Rulemaking or Review**

- A.** A person may petition the Board under A.R.S. § 41-1033 for either a:
1. Rulemaking action relating to a Board rule, including making a new rule or amending or repealing an existing rule; or
  2. Review of an existing Board practice or substantive policy statement alleged to constitute a rule.
- B.** A person shall submit to the Board a written petition including the following information:
1. Name, address, e-mail address, and telephone and fax numbers of the person submitting the petition;
  2. Name of any person represented by the person submitting the petition;
  3. If requesting a rulemaking action:
    - a. Statement of the rulemaking action sought, including the A.A.C. citation of all existing rules, and the

- specific language of a new rule or rule amendment; and
- b. Reasons for the rulemaking action, including an explanation of why the existing rule is inadequate, unreasonable, unduly burdensome, or unlawful;
- 4. If requesting a review of an existing practice or a substantive policy statement:
  - a. Subject matter of the existing practice or substantive policy statement, and
  - b. Reasons why the existing practice or substantive policy statement constitutes a rule; and
- 5. Dated signature of the person submitting the petition.
- C. A person may submit supporting information with a petition.
- D. A person may submit a petition and any supporting information by e-mail, hand delivery, or the U.S. Postal Service.
- E. The Board shall send the person submitting a petition a written response within 60 days of the date the Board receives the petition.

**Historical Note**

Adopted effective August 7, 1992 (Supp. 92-3). Section R4-22-107 repealed; new Section R4-22-107 renumbered from R4-22-115 and amended by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

**R4-22-108. Rehearing or Review of Decision**

- A. The Board shall provide for a rehearing and review of its decisions under A.R.S. Title 41, Chapter 6, Article 10 and rules established by the Office of Administrative Hearings.
- B. Except as provided in subsection (I), a party is required to file a motion for rehearing or review of a decision of the Board to exhaust the party's administrative remedies.
- C. A party may amend a motion for rehearing or review at any time before the Board rules on the motion.
- D. The Board may grant a rehearing or review for any of the following reasons materially affecting a party's rights:
  - 1. Irregularity in the proceedings of the Board, or any order or abuse of discretion, that deprived the moving party of a fair hearing;
  - 2. Misconduct of the Board, 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 Board's decision is a 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 Board 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). An order modifying a decision or granting a rehearing shall specify with particularity the grounds for the order.
- F. When a motion for rehearing or review is based upon affidavits, the affidavits 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 Board 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 Board 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 Board shall hold the rehearing within 60 days after the issue date on the order granting the rehearing.
- I. If the Board 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 Board shall issue the decision as a final decision without an opportunity for rehearing or review.
- J. A party that has exhausted the party's administrative remedies may appeal a final order of the Board under A.R.S. Title 12, Chapter 7, Article 6.

**Historical Note**

Adopted effective August 7, 1992 (Supp. 92-3). Amended by final rulemaking at 18 A.A.R. 2488, effective November 10, 2012 (Supp. 12-3). Section R4-22-108 renumbered to R4-22-102; new Section R4-22-108 renumbered from R4-22-106 and amended by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

**R4-22-109. Renumbered****Historical Note**

Former Rule 1. Former Section R4-22-01 repealed, new Section R4-22-101 adopted effective June 29, 1987 (Supp. 87-2). Renumbered from R4-22-101 effective May 3, 1993 (Supp. 93-2). Former R4-22-109 renumbered to R4-22-207 by final rulemaking at 12 A.A.R. 2765, effective September 9, 2006 (Supp. 06-3).

**R4-22-110. Renumbered****Historical Note**

Adopted effective May 3, 1993 (Supp. 93-2). Amended by final rulemaking at 10 A.A.R. 2793, effective August 7, 2004 (Supp. 04-2). Section R4-22-110 renumbered to R4-22-401 by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

**R4-22-111. Renumbered****Historical Note**

Adopted effective May 3, 1993 (Supp. 93-2). Amended by final rulemaking at 10 A.A.R. 2793, effective August 7, 2004 (Supp. 04-2). Section R4-22-111 renumbered to R4-22-402 by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

**R4-22-112. Renumbered****Historical Note**

Adopted effective May 3, 1993 (Supp. 93-2). Amended by final rulemaking at 10 A.A.R. 2793, effective August 7, 2004 (Supp. 04-2). Section R4-22-112 renumbered to R4-22-403 by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

**R4-22-113. Repealed****Historical Note**

Adopted effective May 3, 1993 (Supp. 93-2). Section repealed by final rulemaking at 10 A.A.R. 2793, effective August 7, 2004 (Supp. 04-2).

**R4-22-114. Repealed**

**Historical Note**

Adopted effective May 3, 1993 (Supp. 93-2). Section repealed by final rulemaking at 10 A.A.R. 2793, effective August 7, 2004 (Supp. 04-2).

**R4-22-115. Renumbered**

**Historical Note**

Adopted effective May 3, 1993 (Supp. 93-2). Section R4-22-115 renumbered to R4-22-107 by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

**ARTICLE 2. LICENSING**

**R4-22-201. Application Required**

An individual or entity that seeks a license or other approval from the Board shall complete and submit an application form prescribed by the Board. The Board has prescribed the following application forms, which are available from the Board office or web site:

1. License,
2. License renewal,
3. Locum tenens registration,
4. Initial registration to dispense,
5. Registration to dispense renewal,
6. Renewable one-year post-graduate training permit,
7. Renewal of post-graduate training permit,
8. Short-term training permit,
9. Two-year teaching license, and
10. Approval of an educational program for medical assistants.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

**R4-22-202. Determining Qualification for Licensure**

**A.** To obtain a license, an applicant shall submit:

1. The application form specified in R4-22-201;
2. The proof required under A.R.S. § 32-1822(A);
3. A list of all Board-certified specializations, the certifying entity, and a copy of each certification or letter verifying specialization;
4. A malpractice claim or suit questionnaire for each instance of medical malpractice in which there was an award, settlement, or payment;
5. A passport-size picture taken within the last 60 days; and
6. The application fee required under R4-22-102(A).

**B.** In addition to the materials required under subsection (A), an applicant shall have the following information submitted directly to the Board by the specified entity:

1. Professional Education Verification form or an official transcript submitted by the osteopathic college from which the applicant graduated;
2. Verification of Postgraduate Training form submitted by each postgraduate facility or program at which the applicant trained;
3. Practice Experience Verification form for at least seven of the last 10 years submitted by each health care facility or employer at which the applicant obtained experience;
4. Verification of passing the medical licensure examination if the examination was passed within the last seven years submitted by the examining entity; and
5. Verification of licensure form submitted by every state in which the applicant is or has been licensed as an osteopathic physician.

**C.** If an applicant has established a credentials portfolio with the FCVS or AOIA, the applicant may request that the FCVS forward to the Board some or all of the materials required under subsection (B).

**D.** The Board shall conduct a substantive review of the information submitted under subsections (A) and (B) and determine whether the applicant is qualified for licensure by virtue of:

1. Possessing the knowledge and skills necessary to practice medicine safely and skillfully;
2. Demonstrating a history of professional conduct; and
3. Possessing the physical, mental, and emotional fitness to practice medicine.

**E.** If the substantive review referenced in subsection (D) does not yield sufficient information for the Board to determine whether an applicant is qualified for licensure, the Board shall request that the applicant appear before the Board for an interview.

1. The Board shall conduct an application interview in the same manner as an informal hearing conducted under A.R.S. § 32-1855 and shall accord the applicant the same rights as a respondent.

2. In conjunction with an application interview, the Executive Director or Board may require that the applicant, at the applicant's expense:

- a. Provide additional documentation,
- b. Submit to a physical or psychological examination,
- c. Submit to a practice assessment evaluation,
- d. Pass an approved special purposes competency examination listed in R4-22-203(A)(3), or
- e. Fulfill any combination of the requirements listed in subsections (E)(2)(a) through (d).

**F.** If the substantive review referenced in subsection (D) reveals that an applicant has been subject to disciplinary action or criminal conviction, the Board shall consider the following factors to determine whether the applicant has been rehabilitated from the conduct underlying the disciplinary action or criminal conviction:

1. Nature of the disciplinary or criminal action including charges and final disposition;
2. Whether all terms of court-ordered sentencing or Board-issued order were satisfied;
3. Whether the disciplinary action or criminal conviction was set aside, dismissed with prejudice, or reduced;
4. Whether a diversion program was entered and completed;
5. Whether the circumstances, relationships, or personal attributes that caused or contributed to the underlying conduct changed;
6. Personal and professional references attesting to rehabilitation; and
7. Other information the Board determines demonstrates whether the applicant has been rehabilitated.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

**R4-22-203. Examination; Practice Equivalency to an Examination**

**A.** Approved examinations. For the purposes of licensing, the Board approves the following examinations:

1. All levels and parts of the COMLEX required by the NBOME with a passing score determined by the NBOME;
2. All levels and parts of the USMLE required by the NBME with a passing score determined by the NBME; and
3. A special purposes competency examination given by the

NBOME or NBME to an applicant at the request of the Board, with a passing score established by the NBOME or NBME.

- B.** Practice equivalency to an examination. If an applicant has not passed an approved examination within the seven years before the date of application, the Board shall find that the applicant has practice experience equivalent to an approved examination if the applicant submits documentation of all of the following:
1. On the date of application and continuously until the date the applicant is issued or denied a license, the applicant holds:
    - a. An active license to practice osteopathic medicine issued by another state, or
    - b. An active permit or temporary license to practice in an approved residency or fellowship;
  2. For at least seven of the 10 years immediately before the date of application, the applicant:
    - a. Was in clinical practice providing direct patient care, or
    - b. Was in the second or later year of an approved residency or fellowship; and
    - c. Has completed a certification examination provided by a specialty board under R4-22-106; and
  3. Within two years immediately before the date of application, the applicant completed at least 40 hours of approved CME, defined and documented as specified in R4-22-207.

#### Historical Note

New Section renumbered from R4-22-104 and amended by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

#### R4-22-204. License Issuance; Effective Date of License

- A.** Within 90 days after an applicant for licensure receives notice from the Board that the applicant is approved, but no later than 360 days after the date on which the application was originally submitted, the approved applicant shall submit to the Board the license issuance fee required by A.R.S. § 32-1826(A) and the following information in writing:
1. Practice address and telephone number,
  2. Residential address, and
  3. A statement of whether the practice address or residential address should be used by the Board as the address of record.
- B.** The Board shall issue a license to an approved applicant that is effective on the date the information required under subsection (A) is received.
- C.** The Board shall administratively close an approved applicant's file if the approved applicant fails to submit the information required within the time specified under subsection (A). If an applicant whose file is administratively closed wishes to be considered further for licensure, the applicant shall reapply by complying with R4-22-202.

#### Historical Note

New Section made by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

#### R4-22-205. License Renewal

To renew a license, the licensee shall submit to the Board the renewal application required under R4-22-201. Failure to receive notice of the need to renew does not excuse failure to renew timely.

#### Historical Note

New Section made by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

#### R4-22-206. Procedure for Application to Reenter Practice

- A.** The procedures in this Section apply only to an osteopathic physician who:
1. Was licensed and practiced as an osteopathic physician in Arizona or another jurisdiction, and
  2. Currently is not licensed and practicing as an osteopathic physician in Arizona or another jurisdiction.
- B.** All applicants to reenter practice shall:
1. Submit the application required under R4-22-201, including all documents specified in the application; and
  2. Pay the fee specified in R4-22-102(A).
- C.** In addition to complying with subsection (B), an applicant who has been out of practice for less than two years and has no disciplinary history shall submit documentation of completing at least 40 hours of Category 1-A or Category 1 CME in the applicant's intended field of practice within the two years before the date the application to reenter practice is approved.
- D.** In addition to complying with subsection (B), an applicant who has been out of practice for two or more years and has no disciplinary history shall attend a Board meeting and:
1. Discuss with the Board evidence that the applicant remains competent to practice medicine; and
  2. Develop a reentry plan designed to ensure that the applicant is competent to practice medicine. The re-entry plan may include any or all of the following, at the discretion of the Board:
    - a. Taking a competency or specialty examination;
    - b. Taking continuing education;
    - c. Completing a practice assessment program;
    - d. Practicing under supervision or with restrictions; and
    - e. Submitting to a physical or psychological examination.
- E.** In addition to complying with subsection (B), an applicant who has been out of practice and has a history of disciplinary action shall attend a Board meeting and:
1. Establish to the Board's satisfaction that the applicant is rehabilitated from the underlying unprofessional conduct. In determining whether the applicant is rehabilitated, the Board shall consider the factors listed in R4-22-202(F); and
  2. If the Board determines that the applicant is rehabilitated, take the actions listed in subsection (D) to ensure that the applicant is competent to practice medicine.

#### Historical Note

New Section made by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

#### R4-22-207. Continuing Medical Education; Waiver; Extension of Time to Complete

- A.** Under A.R.S. § 32-1825(B), a licensee is required to obtain 20 hours of Board-approved CME in each of the two years before license renewal. The Board shall approve the CME of a licensee if the CME complies with the following:
1. At least 12 hours are obtained annually by completing CME classified by the AOA as Category 1A; and
  2. No more than eight hours are obtained annually by completing CME classified as American Medical Association Category 1 approved by an ACCME-accredited CME provider.
- B.** A licensee may fulfill 20 hours of the CME requirement for a particular year by participating in an approved residency, internship, fellowship, or preceptorship during that year.
- C.** The Board shall accept the following documentation as evidence of compliance with the CME requirement:
1. For a CME under subsection (A)(1):



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- a. The AOA printout of the licensee's CME, or
  - b. A copy of the certificate of attendance from the provider of the CME showing:
    - i. Licensee's name,
    - ii. Title of the CME,
    - iii. Name of the provider of the CME,
    - iv. Category of the CME,
    - v. Number of hours in the CME, and
    - vi. Date of attendance;
  2. For a CME under subsection (A)(2):
    - a. A copy of the certificate of attendance from the provider of the CME showing the information listed in subsection (C)(1)(b); or
    - b. A specialty board's printout showing a licensee's completion of CME.
  3. For a CME under subsection (B), either a letter from the Director of Medical Education or a certificate of completion for the approved internship, residency, fellowship, or preceptorship.
- D.** Waiver of CME requirements. To obtain a waiver under A.R.S. § 32-1825(C) of the CME requirements, a licensee shall submit to the Board a written request that includes the following:
1. The period for which the waiver is requested,
  2. CME completed during the current license period and the documentation required under subsection (C), and
  3. Reason that a waiver is needed and the applicable documentation:
    - a. For military service. A copy of current orders or a letter on official letterhead from the licensee's commanding officer;
    - b. For absence from the United States. A copy of pages from the licensee's passport showing exit and reentry dates;
    - c. For disability. A letter from the licensee's treating physician stating the nature of the disability; or
    - d. For circumstances beyond the licensee's control:
      - i. A letter from the licensee stating the nature of the circumstances, and
      - ii. Documentation that provides evidence of the circumstances.
- E.** The Board shall grant a request for waiver of CME requirements that:
1. Is based on a reason listed in subsection (D)(3),
  2. Is supported by the required documentation,
  3. Is filed no sooner than 60 days before and no later than 30 days after the license renewal date, and
  4. Will promote the safe and professional practice of osteopathy in this state.
- F.** Extension of time to complete CME requirements. To obtain an extension of time under A.R.S. § 32-1825(C) to complete the CME requirements, a licensee shall submit to the Board a written request that includes the following:
1. Ending date of the requested extension,
  2. CME completed during the current license period and the documentation required under subsection (C),
  3. Proof of registration for additional CME that is sufficient to enable the licensee to complete all CME required for license renewal before the end of the requested extension, and
  4. Licensee's attestation that the CME obtained under the extension will be reported only to fulfill the current license renewal requirement and will not be reported on a subsequent license renewal application.
- G.** The Board shall grant a request for an extension that:
1. Specifies an ending date no later than May 1,

2. Includes the required documentation and attestation,
3. Is submitted no sooner than 60 days before and no later than 30 days after the license renewal date, and
4. Will promote the safe and professional practice of osteopathy in this state.

**Historical Note**

Section R4-22-207 renumbered from R4-22-109 and amended by final rulemaking at 12 A.A.R. 2765, effective September 9, 2006 (Supp. 06-3). Amended by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

**R4-22-208. Reserved**

**R4-22-209. Reserved**

**R4-22-210. Reserved**

**R4-22-211. Reserved**

**R4-22-212. Confidential Program for Treatment and Rehabilitation of Impaired Osteopathic Physicians**

- A.** To protect the public health and safety, a licensee is required by A.R.S. § 32-1822 to be physically, mentally, and emotionally able to practice medicine.
- B.** If the Board determines that a licensee may be impaired by substance abuse and there is evidence of an imminent danger to the public health and safety, the Board's Executive Director, with the concurrence of investigative staff, the medical consultant, or a Board member, may enter into:
1. A consent agreement with the licensee to restrict the licensee's practice if there is evidence that a restriction of the licensee's practice is needed to mitigate the danger to the public health and safety;
  2. A stipulated agreement with the licensee requiring the licensee to complete a Board-approved evaluation and treatment program for abuse or misuse of chemical substances if there is evidence the program would be successful in enabling the licensee to return to practice safely; and
  3. A stipulated agreement with the licensee to enter a Monitored Aftercare Program (MAP) if there is evidence the licensee intends to comply with a program for rehabilitation.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 1388, effective June 4, 2006 (Supp. 06-2). Section R4-22-212 renumbered to Section R4-22-104; new Section R4-22-212 made by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

**Table 1. Renumbered**

**Historical Note**

Table 1 made by final rulemaking at 12 A.A.R. 1388, effective June 4, 2006 (Supp. 06-2). Table 1 renumbered to R4-22-104, Table 1 by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

**ARTICLE 3. DISPENSING DRUGS**

**R4-22-301. Registration to Dispense Required**

- A.** An osteopathic physician shall register with the Board annually if the osteopathic physician:
1. Maintains a supply of controlled substances, as defined in A.R.S. § 32-1901(13), prescription-only drugs, as defined in A.R.S. § 32-1901(76), or prescription-only devices, as defined in A.R.S. § 32-1901(75), excluding manufacturers' samples;

2. Prescribes the items listed in subsection (A)(1) to a patient of the osteopathic physician for use outside the office of the osteopathic physician; and
3. Obtains payment for the items listed in subsection (A)(1) at a practice location in Arizona.
- B.** To register with the Board to dispense, an osteopathic physician shall:
  1. Submit the form referenced in R4-22-201,
  2. Submit a copy of the osteopathic physician's current Drug Enforcement Administration certificate of registration for each location from which the osteopathic physician will dispense a controlled substance, and
  3. Pay the fee authorized by A.R.S. § 32-1826(A)(11).
- C.** An osteopathic physician who is registered with the Board to dispense shall renew the registration by December 31 of each year by complying with subsection (B). If an osteopathic physician submits a timely and complete application to renew a registration to dispense, the osteopathic physician may continue to dispense until the Board approves or denies the renewal application.
- D.** If an osteopathic physician fails to submit a timely and complete application to renew a registration to dispense, the osteopathic physician shall immediately cease dispensing.
  1. If the osteopathic physician wishes to resume dispensing, the osteopathic physician shall register with the Board by complying with subsection (B) and shall not dispense until the osteopathic physician receives notice from the Board that the registration is approved.
  2. If the osteopathic physician does not wish to resume dispensing, the osteopathic physician shall, as required by A.R.S. § 32-1871(F), submit to the Board an inventory disposal form, which is available from the Board office or on its web site.
- a. Designation of the persons who have access to the locked cabinet or room, and
- b. Procedures for recording requests for access to the locked cabinet or room;
3. Make the written procedure required under subsection (C)(2) available on demand by the Board or its authorized representative for inspection or copying;
4. Store prescription-only drugs so they are not accessible to patients; and
5. Store controlled substances and prescription-only drugs not requiring refrigeration in an area where the temperature does not exceed 85° F.
- D.** An osteopathic physician shall maintain a dispensing log for all controlled substances and the prescription-only drug nalbuphine hydrochloride (Nubain) dispensed. The osteopathic physician shall ensure that the dispensing log includes the following information on a separate inventory sheet for each controlled substance or prescription-only drug:
  1. Date the drug is dispensed;
  2. Patient's name;
  3. Name of controlled substance or prescription-only drug, strength, dosage, form, and name of manufacturer;
  4. Number of dosage units dispensed;
  5. Running total of each controlled substance or prescription-only drug dispensed; and
  6. Written signature of the osteopathic physician next to each entry.
- E.** An osteopathic physician may use a computer to maintain the dispensing log required under subsection (D) if the log is quickly accessible through either on-screen viewing or printing a copy.
- F.** This Section does not apply to a prepackaged manufacturer sample of a controlled substance or prescription-only drug unless otherwise provided by federal law.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R.  
2654, effective November 8, 2014 (Supp. 14-3).

**R4-22-302. Packaging and Inventory**

- A.** An osteopathic physician shall dispense a controlled substance or prescription-only drug in a prepackaged or light-resistant container with a consumer safety cap that complies with standards specified in the official compendium, as defined at A.R.S. § 32-1901(55), and state and federal law, unless a patient or the patient's representative requests a non-safety cap.
- B.** An osteopathic physician shall ensure that a dispensed controlled substance or prescription-only drug is labeled with the following information:
  1. The name, address, and telephone number of the dispensing osteopathic physician;
  2. The date the controlled substance or prescription-only drug is dispensed;
  3. The patient's name;
  4. The name of the controlled substance or prescription-only drug, strength, dosage, form, name of manufacturer, quantity dispensed, directions for use, and any cautionary statement necessary for the safe and effective use of the controlled substance or prescription-only drug; and
  5. A beyond-use date not to exceed one year from the date of dispensing or the manufacturer's expiration date if less than one year.
- C.** An osteopathic physician shall:
  1. Secure all controlled substances in a locked cabinet or room;
  2. Control access to the locked cabinet or room by a written procedure that includes, at a minimum:

**Historical Note**

New Section made by final rulemaking at 20 A.A.R.  
2654, effective November 8, 2014 (Supp. 14-3).

**R4-22-303. Prescribing and Dispensing Requirements**

- A.** An osteopathic physician who dispenses a controlled substance, prescription-only drug, or prescription-only device shall record the following information on the patient's medical record:
  1. Name, strength, dosage, and form of the controlled substance, prescription-only drug, or prescription-only device dispensed;
  2. Quantity or volume dispensed;
  3. Date of dispensing;
  4. Medical reasons for dispensing; and
  5. Number of refills authorized.
- B.** Before dispensing a controlled substance, prescription-only drug, or prescription-only device, an osteopathic physician shall review the prepared controlled substance, prescription-only drug, or prescription-only device to ensure that:
  1. The container label and contents comply with the prescription; and
  2. The patient is informed of the name of the controlled substance, prescription-only drug, or prescription-only device, directions for use, precautions, and storage requirements.
- C.** An osteopathic physician shall purchase all controlled substance, prescription-only drugs, or prescription-only devices dispensed from a manufacturer or distributor approved by the United States Food and Drug Administration or a pharmacy holding a current permit from the Arizona Board of Pharmacy.

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- D. The individual who prepares a controlled substance, prescription-only drug, or prescription-only device for dispensing shall countersign and date the original prescription form.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

**R4-22-304. Recordkeeping and Reporting Shortages**

- A. An osteopathic physician who dispenses a controlled substance or prescription-only drug shall ensure that an original prescription order, as defined in A.R.S. § 32-1901(77), for the controlled substance or prescription-only drug dispensed is dated, consecutively numbered in the order in which originally dispensed, and filed separately from patient medical records. The osteopathic physician shall ensure that original prescription orders are maintained in three separate files, as follows:
1. Schedule II controlled substances, which are listed at A.R.S. § 36-2513;
  2. Schedule III, IV, and V controlled substances, which are defined or listed at A.R.S. §§ 36-2514 through 36-2516, and
  3. Prescription-only drugs.
- B. An osteopathic physician shall ensure that purchase orders and invoices for all dispensed controlled substances and prescription-only drugs are maintained for three years from the date on the purchase order or invoice in three separate files as follows:
1. Schedule II controlled substances;
  2. Schedule III, IV, and V controlled substances and nalbuphine; and
  3. All other prescription-only drugs.
- C. An osteopathic physician who discovers a theft or loss of a controlled substance or dangerous drug, as defined in A.R.S. Title 36, Chapter 27, Article 2, from the physician's office shall:
1. Immediately notify the local law enforcement agency,
  2. Provide the local law enforcement agency with a written report, and
  3. Send a copy of the report to the U.S. Drug Enforcement Administration and the Board within seven days of the discovery of the theft or loss.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

**R4-22-305. Inspections; Denial and Revocation**

- A. An osteopathic physician shall allow the Board or its representative access to the physician's office and the records required under this Article for inspection of compliance with A.R.S. § 32-1871 and this Article.
- B. Failure to comply with A.R.S. § 32-1871 and this Article is unprofessional conduct and grounds for revocation of the physician's registration to dispense or denial of renewal of registration to dispense.
- C. The Board shall revoke an osteopathic physician's registration to dispense upon the occurrence of the following:
1. Suspending, revoking, surrendering, or canceling the physician's license;
  2. Failing to timely renew the physician's license; or
  3. Restricting the physician's ability to prescribe or administer medication, including loss or expiration of the physician's Drug Enforcement Administration Certificate of Registration.
- D. If the Board denies a registration to dispense to an osteopathic physician, the physician may appeal the decision by filing a written request with the Board no later than 30 days after service of the notice of denial.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

**ARTICLE 4. MEDICAL ASSISTANTS****R4-22-401. Approval of Educational Programs for Medical Assistants**

- A. For purposes of this Section, a Board-approved medical assistant training program is a program:
1. Accredited by the CAAHEP;
  2. Accredited by the ABHES;
  3. Accredited by any accrediting agency recognized by the United States Department of Education; or
  4. Designed and offered by a licensed osteopathic physician, that meets or exceeds the standards of one of the accrediting programs listed in subsections (A)(1) through (A)(3), and the licensed osteopathic physician verifies that those who complete the program have the entry level competencies referenced in R4-22-402.
- B. A person seeking approval of a training program for medical assistants shall submit to the Board the application required under R4-22-201 and verification that the program meets the requirements in subsection (A).

**Historical Note**

Section R4-22-401 renumbered from R4-22-110 and amended by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

**R4-22-402. Medical Assistants – Authorized Procedures**

- A. A medical assistant may, under the direct supervision of a licensed osteopathic physician, perform the medical procedures listed in the Commission on Accreditation of Allied Health Education Programs' *Standards and Guidelines for the Accreditation of Educational Programs in Medical Assisting*, revised 2008. This material is incorporated by reference, does not include any later revisions, amendments or editions, is on file with the Board, and may be obtained from the Commission on Accreditation of Allied Health Education Programs, 1361 Park Street, Clearwater, FL 33756, 727-210-2350, or [www.caahep.org](http://www.caahep.org).
- B. Additionally, a medical assistant working under the direct supervision of a licensed osteopathic physician may:
1. Perform physical medicine modalities, including administering whirlpool treatments, diathermy treatments, electronic galvanic stimulation treatments, ultrasound therapy, massage therapy, and traction treatments;
  2. Apply Transcutaneous Nerve Stimulation units and hot and cold packs;
  3. Administer small volume nebulizers;
  4. Draw blood;
  5. Prepare proper dosages of medication and administer the medication as directed by the physician;
  6. Assist in minor surgical procedures;
  7. Perform urine analyses, strep screens, and urine pregnancy tests;
  8. Perform EKGs; and
  9. Take vital signs.

**Historical Note**

Section R4-22-402 renumbered from R4-22-111 and amended by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

**R4-22-403. Medical Assistant Training Requirement**

- A. The licensed osteopathic physician who will provide direct supervision to a medical assistant shall ensure that the medical

assistant satisfies one of the following training requirements before the medical assistant is employed:

1. Completes an approved medical assistant training program,
2. Completes an unapproved medical assistant training program and passes a medical assistant examination administered by either the American Association of Medical Assistants or the American Medical Technologists, or
3. Completes a medical services training program of the Armed Forces of the United States.

- B.** This Section does not apply to a person who completed a medical assistant training program before August 7, 2004, and was employed continuously as a medical assistant since completing the program.

#### Historical Note

Section R4-22-403 renumbered from R4-22-112 and amended by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

### ARTICLE 5. OFFICE-BASED SURGERY

#### R4-22-501. Definitions

In this Article,

“ACLS” means advanced cardiac life support performed according to certification standards of the American Heart Association.

“Auscultation” means the act of listening to sounds within the human body either directly or through use of a stethoscope or other means.

“BLS” means basic life support performed according to certification standards of the American Heart Association.

“Capnography” means monitoring the concentration of exhaled carbon dioxide of a sedated patient to determine adequacy of the patient's ventilatory function.

“Deep sedation” means a drug-induced depression of consciousness during which a patient:

- Cannot be easily aroused, but
- Responds purposefully following repeated or painful stimulation, and
- May partially lose the ability to maintain ventilatory function.

“Discharge” means a written or electronic documented termination of office-based surgery provided to a patient.

“Emergency” means an immediate threat to the life or health of a patient.

“General anesthesia” means a drug-induced loss of consciousness during which a patient:

- Can not be aroused even with painful stimulus; and
- May partially or completely lose the ability to maintain ventilatory, neuromuscular, or cardiovascular function or airway.

“Health care professional” means a registered nurse or a registered nurse practitioner, as defined in A.R.S. § 32-1601, physician assistant, as defined in A.R.S. § 32-2501, and any individual authorized to perform surgery under A.R.S. Title 32 who participates in office-based surgery.

“Informed consent” means advising a patient of the:  
Purpose for and alternatives to office-based surgery,  
Risks associated with office-based surgery, and  
Possible benefits and complications from office-based surgery.

“Malignant hyperthermia” means a life-threatening condition in an individual who has a genetic sensitivity to inhalant anesthetics and depolarizing neuromuscular blocking drugs that occurs during or after the administration of an inhalant anesthetic or depolarizing neuromuscular blocking drug.

“Minimal sedation” means a drug-induced state during which:

- A patient responds to verbal commands,
- Cognitive function and coordination may be impaired, and
- A patient's ventilatory and cardiovascular functions are unaffected.

“Moderate sedation” means a drug-induced depression of consciousness during which:

- A patient responds to verbal commands or light tactile stimulations, and
- No interventions are required to maintain ventilatory or cardiovascular function.

“Monitor” means to assess the condition of a patient.

“Office-based surgery” means a medical procedure performed by an osteopathic physician in the physician's office or other practice location that is not part of a licensed hospital or licensed ambulatory surgical center while using sedation.

“PALS” means pediatric advanced life support performed according to certification standards of the American Academy of Pediatrics or the American Heart Association.

“Rescue” means to correct adverse physiologic consequences of deeper than intended level of sedation and return the patient to the intended level of sedation.

“Staff member” means an individual who:

- Is not a health care professional, and
- Assists with office-based surgery under the supervision of the osteopathic physician performing the office-based surgery.

“Transfer” means a physical relocation of a patient from the office or other practice location of an osteopathic physician to a licensed health care institution.

#### Historical Note

New Section made by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

#### R4-22-502. Health Care Institution License

An osteopathic physician who performs office-based surgery shall obtain a health care institution license as required by the Arizona Department of Health Services under A.R.S. Title 36, Chapter 4 and 9 A.A.C. 10.

#### Historical Note

New Section made by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

#### R4-22-503. Administrative Provisions

**A.** An osteopathic physician who performs office-based surgery shall:

1. Establish, document, and implement written policies and procedures that cover:
  - a. Patients' rights,
  - b. Informed consent,
  - c. Care of patients in an emergency, and
  - d. Transfer of patients to a local accredited or licensed acute-care hospital;
2. Ensure that a staff member who assists with or a health care professional who participates in office-based surgery:

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- a. Has sufficient education, training, and experience to perform assigned duties;
  - b. If applicable, has a current license or certification required to perform assigned duties; and
  - c. Performs only those acts that are within the scope of practice established in the staff member's or health care professional's governing statutes;
3. Ensure that the office or other practice location where office-based surgery is performed has all equipment necessary for:
    - a. The physician to perform the office-based surgery safely,
    - b. The physician or health care professional to administer the sedation safely,
    - c. The physician or health care professional to monitor the use of sedation, and
    - d. The physician and health care professional administering the sedation to rescue a patient after the sedation is administered if the patient enters into a deeper state of sedation than was intended by the physician;
  4. Ensure that a copy of the patients' rights policy is provided to each patient before performing office-based surgery;
  5. Obtain informed consent from the patient before performing office-based surgery that:
    - a. Authorizes the office-based surgery, and
    - b. Authorizes the office-based surgery to be performed at the specific practice location; and
  6. Review all policies and procedures at least every 12 months and update as needed.
- B.** An osteopathic physician who performs office-based surgery shall comply with:
1. The local jurisdiction's fire code;
  2. The local jurisdiction's building codes for construction and occupancy;
  3. The bio-hazardous waste and hazardous waste standards in 18 A.A.C. 13, Article 14; and
  4. The controlled substances administration, supply, and storage standards in 4 A.A.C. 23, Article 5.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

**R4-22-504. Procedure and Patient Selection**

- A.** An osteopathic physician shall ensure that each office-based surgery performed:
1. Can be performed safely with the equipment, staff members, and health care professionals at the physician's office;
  2. Is of duration and degree of complexity that allows a patient to be discharged from the physician's office within 24 hours;
  3. Is within the education, training, experience, skills, and licensure of the physician; and
  4. Is within the education, training, experience, skills, and licensure of the staff members and health care professionals at the physician's office.
- B.** An osteopathic physician shall not perform office-based surgery if the patient:
1. Has a medical condition or other condition that indicates the procedure should not be performed in the physician's office, or
  2. Will require inpatient services at a hospital.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

**R4-22-505. Sedation Monitoring Standards**

- A.** An osteopathic physician who performs office-based surgery when minimal sedation is administered to a patient shall ensure from the time sedation is administered until post-sedation monitoring begins that a quantitative method of assessing the patient's oxygenation, such as pulse oximetry, is used.
- B.** An osteopathic physician who performs office-based surgery when moderate or deep sedation is administered to a patient shall ensure from the time sedation is administered until post-sedation monitoring begins that:
1. A quantitative method of assessing the patient's oxygenation, such as pulse oximetry, is used;
  2. The patient's ventilatory function is monitored by any of the following:
    - a. Direct observation,
    - b. Auscultation, or
    - c. Capnography;
  3. The patient's circulatory function is monitored by:
    - a. Having a continuously displayed electrocardiogram,
    - b. Documenting arterial blood pressure and heart rate at least every five minutes, and
    - c. Evaluating the patient's cardiovascular function by pulse plethysmography;
  4. The patient's temperature is monitored if the physician expects the patient's temperature to fluctuate; and
  5. A licensed and qualified health care professional, other than the physician performing the office-based surgery, is:
    - a. Present throughout the office-based surgery, and
    - b. Has the sole responsibility of attending to the patient.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

**R4-22-506. Perioperative Period; Patient Discharge**

An osteopathic physician performing office-based surgery shall ensure all of the following:

1. The physician is physically present in the room where office-based surgery is performed while the office-based surgery is performed;
2. After the office-based surgery is performed and until the patient's post-sedation monitoring is discontinued, a physician is at the physician's office and sufficiently free of other duties to respond to an emergency;
3. If using minimal sedation, the physician or a health care professional certified in ACLS, PALS, or BLS is at the physician's office and sufficiently free of other duties to respond to an emergency until the patient is discharged;
4. If using moderate or deep sedation, the physician or a health care professional certified in ACLS or PALS is at the physician's office and sufficiently free of other duties to respond to an emergency until the patient is discharged;
5. A discharge is documented in the patient's medical record including:
  - a. The date and time of the patient's discharge, and
  - b. A description of the patient's medical condition at the time of discharge; and
6. The patient receives discharge instructions and receipt of the discharge instructions is documented in the patient's medical record.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

**R4-22-507. Emergency Drugs; Equipment and Space Used for Office-based Surgery**

**A.** In addition to the requirements in R4-22-503(A)(3) and R4-22-504(A)(1), an osteopathic physician who performs office-based surgery shall ensure that the physician's office has at a minimum:

1. The following:
  - a. A reliable oxygen source with a SaO<sub>2</sub> monitor;
  - b. Suction;
  - c. Resuscitation equipment, including a defibrillator;
  - d. Emergency drugs; and
  - e. A cardiac monitor;
2. The equipment for patient monitoring according to the standards in R4-22-505;
3. Space large enough to:
  - a. Allow access to the patient during office-based surgery, recovery, and any emergency;
  - b. Accommodate all equipment necessary to perform the office-based surgery; and
  - c. Accommodate all equipment necessary for sedation monitoring;
4. A source of auxiliary electrical power available in the event of a power failure;
5. Equipment, emergency drugs, and resuscitative capabilities required under this Section for patients less than 18 years of age, if office-based surgery is performed on these patients; and
6. Procedures to minimize the spread of infection.

**B.** An osteopathic physician who performs office-based surgery shall:

1. Ensure that all equipment used for office-based surgery is maintained, tested, and inspected according to manufacturer specifications; and
2. Maintain documentation of manufacturer-recommended maintenance of all equipment used in office-based surgery.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

**R4-22-508. Emergency and Transfer Provisions**

**A.** An osteopathic physician who performs office-based surgery shall ensure that a health care professional who participates in or a staff member who assists with office-based surgery receives instruction in the following:

1. Policy and procedure in cases of emergency,
2. Policy and procedure for office evacuation, and
3. Safe and timely patient transfer.

**B.** When performing office-based surgery, an osteopathic physician shall not use any drug or agent that may trigger malignant hyperthermia.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R. 2654, effective November 8, 2014 (Supp. 14-3).

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**TITLE 4. PROFESSIONS AND OCCUPATIONS**  
**CHAPTER 30. BOARD OF TECHNICAL REGISTRATION**

Authority: A.R.S. § 32-101 et seq.

*Chapter 30, consisting of Sections R4-30-101 through R4-30-126, R4-30-201 through R4-30-284, and R4-30-301 through R4-30-307, adopted effective August 3, 1983.*

*Former Chapter 30, consisting of Sections R4-30-01 through R4-30-04, R4-30-13 through R4-30-19, R4-30-27 through R4-30-31, R4-30-41 through R4-30-43, R4-30-52 through R4-30-56, R4-30-66, and R4-30-76, repealed effective August 3, 1983.*

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### ARTICLE 1. GENERAL PROVISIONS

#### R4-30-101. Definitions

The following definitions apply in this Chapter unless the context otherwise requires:

1. "Act" means the Technical Registration Act, A.R.S. Title 32, Chapter 1.
2. "Active engagement" means actually practicing or providing architectural, assaying, engineering, geological, landscape architectural, or land surveying services.
3. "Bona fide employee" means:
  - a. Any person employed by a town, city, county, state, or federal agency working under the direction or supervision of a registrant;
  - b. Any person employed by a business entity and working under the direct supervision of a registrant who is also employed by the same business entity; or
  - c. Any person working under the direct supervision of a registrant who:
    - i. Receives direct wages from the registrant;
    - ii. Receives contract compensation from the registrant; or
    - iii. Receives direct wages from the project prime professional who has a contract with another registrant and whose work product is the responsibility of the latter registrant.
4. "Branch" means a specialty area within the category of engineering.
5. "Category" means the professions of architecture, assaying, geology, engineering, landscape architecture, and land surveying.
6. "De minimis violations" means violations of Board statutes or rules that do not present a threat to public welfare, health, or safety.
7. "Design team" means a group of individuals that includes one or more professional registrants collaborating with any other individuals on a specific project to develop professional documents.
8. "Detached single family dwelling" as used in the Act means a single family dwelling unit such as a house, which is structurally and physically separate from all other family dwelling units. This does not mean any single family dwelling unit which is part of a multiple dwelling unit building such as a duplex, townhouse, apartment building, condominium, or cooperative. The term "detached single family dwelling" also includes all subsidiary buildings, structures and improvements such as garage, storage areas, swimming pool, and landscaping.
9. "Direct supervision" means a registrant's critical examination and evaluation of a bona fide employee's work product, during and after the preparation, for purposes of compliance with applicable laws, codes, ordinances, and regulations pertaining to professional practice.
10. "Experience" is classified as follows:
  - a. "Subprofessional experience" means task work done under direct supervision and not falling within the definition of professional experience, including but not limited to time spent as a rodman, chainman, recorder, instrument technician, survey aide, technician, clerk of the works, or similar work.
  - b. "Professional experience" means work calling for substantial technical knowledge, skill, and responsibility as well as a lesser degree of supervision.
  - c. "Responsible charge experience" means work in the field or in the office, where the applicant had responsibility for the direction of the work and its successful accomplishment and where the applicant had to make professional decisions without relying on advice or instructions from or first referring the decisions for approval to a superior.
  - d. "Design experience" means professional experience, including work defined under "responsible charge experience," where the applicant must fulfill the requirements of local circumstances and conditions and yet not violate any of the requirements of the profession and ensure that the executed plan meets the purpose for which it was designed.
11. "Federal agency" means the United States or any agency or instrumentality, corporate or otherwise, of the United States.
12. "Good moral character and repute" means that the registration or certification applicant:
  - a. Has not been convicted of a class 1 felony as under in A.R.S. § 13-601(A).
  - b. Has not been convicted of a felony or misdemeanor if the offense has a reasonable relationship to the functions of the employment or category for which the registration, certification, or designation is sought;
  - c. Has not, within five years of application for registration or certification, committed any act involving dishonesty, fraud, misrepresentation, breach of fiduciary duty, gross negligence, or incompetence reasonably related to the candidate's proposed area of practice;
  - d. Is not currently incarcerated in a penal institution;
  - e. Has not engaged in fraud or misrepresentation in connection with the application for registration, certification, or related examination;
  - f. Has not had a registration or certification revoked or suspended for cause by this state or by any other jurisdiction, or surrendered a professional license in lieu of disciplinary action;

- ### Historical Note

Adopted effective August 3, 1983 (Supp. 83-4).

Amended effective December 18, 1991 (Supp. 91-4).

Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by emergency rulemaking at 8 A.A.R. 1102, effective February 19, 2002 for 180 days (Supp. 02-1). Emergency rulemaking renewed for an additional 180 days under A.R.S. § 41-1026(D) at 8 A.A.R. 3842, effective August 14, 2002 (Supp. 02-3). Emergency expired; original Section amended by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 13 A.A.R. 968, effective May 5, 2007 (Supp. 07-1).

## R4-30-102. Home Inspection Definitions

The following definitions apply to home inspection requirements in this Chapter:

1. "Automatic safety controls" means devices designated and installed to protect systems and components from high or low pressures and temperatures, electrical current, loss of water, loss of ignition, fuel leaks, fire, freezing, or other unsafe conditions.
2. "Central air conditioning" means a system that uses ducts to distribute cooled or dehumidified air to more than one room or uses pipes to distribute chilled water to heat exchangers in more than one room, and that is not plugged into an electrical convenience outlet.
3. "Component" means a readily accessible and observable aspect of a system, such as a floor or wall, but not individual pieces such as boards or nails where many similar pieces make up the system.
4. "Cross connection" means any physical connection or arrangement between potable water and any source of contamination.
5. "Dangerous or adverse situations" means situations that pose a threat of injury to the inspector, and those situations that require the use of special protective clothing or safety equipment.
6. "Dismantle" means to take apart or remove any component, device, or piece of equipment that is bolted, screwed, or fastened by other means and that would not be taken apart or removed by a homeowner in the course of normal household maintenance.
7. "Major defect" means a system or component that is dangerous or not functioning.
8. "Observe" means the act of making a visual examination of a system or component and reporting on its condition.

9. "On-site water supply quality" means water quality based on the bacterial, chemical, mineral, and solids content of the water.
10. "Parallel inspection" means a home inspection by an applicant supervised by a certified home inspector, in the presence of no more than three other applicants, that includes a written report prepared by the applicant, reviewed and corrected by the supervising certified home inspector, and returned to the applicant within 10 days after the supervising certified home inspector receives the written report.
11. "Primary windows and doors" means windows and exterior doors that are designed to remain in their respective openings year round.
12. "Readily openable access panel" means a panel provided for homeowner inspection and maintenance that has removable or operable fasteners or latch devices so the panel can be lifted off, swung open, or otherwise removed by one person; and has edges and fasteners that are not painted in place; is within normal reach or accessible from a four-foot stepladder, and is not blocked by stored items, furniture, or building components.
13. "Recreational facilities" means spas, saunas, steam baths, swimming pools, tennis courts, play-ground equipment, and other exercise, entertainment, or athletic facilities.
14. "Representative number" means for multiple identical components such as windows and electrical outlets, the inspection of one component per room. For multiple identical exterior components, the inspection of one component on each side of the building.
15. "Safety glazing" means tempered glass, laminated glass, or rigid plastic.
16. "Shut down" means a piece of equipment whose switch or circuit breaker is in the "off" position, or its fuse is missing or blown, or a system cannot be operated by the device or control that a home owner should normally use to operate it.
17. "Solid fuel heating device" means any wood, coal, or other similar organic fuel burning device, including but not limited to fireplaces whether masonry or factory built, fireplace inserts and stoves, wood stoves (room heaters), central furnaces, and combinations of these devices.
18. "Structural component" means a component that supports non-variable forces or weights (dead loads) and variable forces or weights (live loads). For purposes of this definition, a dead load is the fixed weight of a structure or piece of equipment, such as a roof structure on bearing walls; and a live load is a moving variable weight added to the dead load or intrinsic weight of a structure.
19. "System" means a combination of interacting or interdependent components, assembled to carry out one or more functions.
20. "Technically exhaustive" means an inspection involving measurements, instruments, testing, calculations, and other means to develop scientific or engineering findings, conclusions, and recommendations.

#### Historical Note

Adopted effective August 3, 1983 (Supp. 83-4). Repealed effective December 18, 1991 (Supp. 91-4). New Section made by emergency rulemaking at 8 A.A.R. 1102, effective February 19, 2002 for 180 days (Supp. 02-1). Emergency rulemaking amended and renewed for an additional 180 days under A.R.S. § 41-1026(D) at 8 A.A.R. 3842, effective August 14, 2002 (Supp. 02-3). Emergency expired; new Section made by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp.

03-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2).

#### R4-30-103. Drug Laboratory Site Remediation Definitions

In addition to the definitions provided in A.R.S. §§ 12-990, 32-101, and R4-30-101, the following definitions shall apply only to drug laboratory site remediation requirements in this Chapter:

1. "ADHS" means the Arizona Department of Health Services.
2. "AHERA" means the Asbestos Hazard Emergency Response Act of 1986 training provisions contained in 40 CFR 763.92, effective November 15, 2000, 65 FR 69216, the provisions of which are incorporated by reference. This rule does not include any later amendments or editions of the incorporated matter. Copies of these provisions are available at the office of the Board of Technical Registration and from the U.S. Government Printing Office, P.O. Box 979050, St. Louis, MO 6397-9000, and on the federal digital system at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).
3. "AWQS" means the Arizona Aquifer Water Quality Standards contained in A.A.C. R18-11-406.
4. "Background concentration" means the level of naturally occurring contaminant in soil.
5. "Certificate" or "certificates" means registrations or certifications issued to onsite workers or onsite supervisors by the Board.
6. "Certified Industrial Hygienist" means a person certified in the comprehensive practice of industrial hygiene by the American Board of Industrial Hygiene.
7. "Certified Safety Professional" means a person certified in safety practices and procedures by the Board of Certified Safety Professionals.
8. "Chain-of-custody protocol" means a procedure used to document each person that has had custody or control of an environmental sample from its source to the analytical laboratory, and the time of possession of each person.
9. "Characterize" means to determine the quality or properties of a material by sampling and testing to determine the concentration of contaminants, or specific properties of the material such as flammability or corrosiveness.
10. "Combustible" means vapor concentration from a liquid that has a flash point greater than 100° F.
11. "Confirmation sampling of remedial projects" means collecting material samples after a remedial effort to confirm that the remedial effort reduced contaminant concentrations or material properties to a level at or below the remedial standard.
12. "Contamination" or "contaminated" means the state of being impacted or polluted by hazardous or petroleum substances or chemicals.
13. "Corrosive" means a material such as acetic acid, acetic anhydride, acetyl chloride, ammonia (anhydrous), ammonium hydroxide, benzyl chloride, dimethylsulfate, formaldehyde, formic acid, hydrogen chloride/hydrochloric acid, hydrobromic acid, hydriodic acid, hydroxylamine, methylamine, methylene chloride (dichloromethane, methylene dichloride), methyl methacrylate, nitroethane, oxalylchloride, perchloric acid, phenylmagnesium bromide, phosphine, phosphorus oxychloride, phosphorus pentoxide, sodium amide (sodamide), sodium metal, sodium hydroxide, sulfur trioxide, sulfuric acid, tetrahydrofuran, or thionyl chloride that increases or decreases the pH of a material and may cause degradation of the material.
14. "Delineated" means to determine the extent of a contaminant by sampling, testing, and showing the size and shape of the contaminant plume on a drawing.

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15. "EPA" means the United States Environmental Protection Agency.
16. "EPA Method 8015B" means the EPA approved method for determining the concentration of various non-halogenated volatile organic compounds and semi-volatile organic compounds by gas chromatography/flame ionization detector. The EPA first published the second revision to the report, SW-846, citing this Method in Ch. 4.3.1, in the South West Region, in December 1996. It is incorporated by reference. The material incorporated by reference does not include any later amendments or editions of the incorporated matter. Copies of these provisions are available at U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, and at the office of the Board of Technical Registration.
17. "EPA Method 6010B" means the EPA approved method for determining the concentration of various heavy metals by inductively coupled plasma. The EPA first published the report, SW-846, citing this Method in Ch. 3.3, in the South West Region, in December 1996. It is incorporated by reference. The material incorporated by reference does not include any later amendments or editions of the incorporated matter. Copies of these provisions are available at U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, and at the office of the Board of Technical Registration.
18. "EPA Method 8260B" means the EPA approved method for determining the concentration of various volatile organic compounds by GC/MS. The EPA first published the report, SW-846, citing this Method in Ch. 4.3.2, in the South West Region, in December 1996. It is incorporated by reference. The material incorporated by reference does not include any later amendments or editions of the incorporated matter. Copies of these provisions are available at U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105 or on the EPA website at [http://epa.gov/wastes/hazard/testmethods/sw846/online/8\\_series.htm](http://epa.gov/wastes/hazard/testmethods/sw846/online/8_series.htm), and at the office of the Board of Technical Registration.
19. "Exposed" means open to the atmosphere and not covered by a non-porous material.
20. "Final Report" means the report required in R4-30-305(D).
21. "FID" means flame ionization detector.
22. "Flammable" means vapor concentration from a liquid that has a flash point less than 100° F.
23. "GC/MS" means gas chromatograph/mass spectrometer.
24. "Hazardous chemical decontamination projects" means work or services related to the remediation, removal, or clean-up of hazardous chemicals, hazardous substances, petroleum substances, or other hazardous materials.
25. "Hazardous substance" means red phosphorus, iodine crystals, tincture of iodine, methamphetamine, ephedrine, pseudoephedrine, volatile organic compounds, corrosives, LSD, ecstasy, lead, mercury, and any other chemical used at a clandestine drug laboratory site to manufacture methamphetamine, LSD, or ecstasy.
26. "Hazardous waste" means toxic materials to be discarded as defined in 40 CFR 261.3, and 66 FR 60153, effective December 3, 2001, and published by the U.S. Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000 and available electronically through the federal digital system at [www.gpo.gov/fdsys/](http://www.gpo.gov/fdsys/). The text of this regulation is incorporated by reference. This rule does not include any later amendments or editions of the incorporated matter. Copies of these provisions are available in the office of the Board of Technical Registration.
27. "HAZWOPER" or Hazardous Waste Operations and Emergency Response training means Hazardous Waste Operations Training as defined in 29 CFR 1910.120(e), and 67 FR 67964, effective November 7, 2002, and published by the U.S. Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000, and available electronically through the federal digital system at [www.gpo.gov/fdsys/](http://www.gpo.gov/fdsys/). The text of this regulation is incorporated by reference. This rule does not include any later amendments or editions of the incorporated matter. Copies of these standards are available at the office of the Board of Technical Registration.
28. "HEPA" means high-efficiency particulate air.
29. "Highly suggestive of contamination" means visible or olfactory indication of contamination, or locations that are within 10 feet of areas where hazardous substances were stored or used to manufacture methamphetamine, LSD, or ecstasy and could likely be contaminated with hazardous substances, unless separated by a full-height, non-porous wall with no openings.
30. "Impacted groundwater" means water present beneath ground surface that contains hazardous or petroleum substances at concentrations above background concentrations.
31. "Impacted soil" means soil that contains hazardous or petroleum substances at concentrations above background concentrations.
32. "Inaccessible" means unable to be reached without removal of a construction material or component.
33. "LEL/O<sub>2</sub>" means lower explosive limit/oxygen.
34. "Laboratory detection limit" means the lowest concentration of a hazardous or petroleum substance that can be reliably quantified or measured by an analytical laboratory under ideal operating conditions for a particular test method on a sample.
35. "Negative pressure enclosure" means an air-tight enclosure using a local exhaust and HEPA filtration system to maintain a lower air pressure in the work area than in any adjacent area and to generate a constant flow of air from the adjacent areas into the work area.
36. "Non-porous" means resistant to penetration of hazardous substances or non-permeable substance or materials, such as concrete floors, wood floors, ceramic tile floors, vinyl tile floors, sheet vinyl floors, painted drywall or sheet rock walls or ceilings, doors, appliances, bathtubs, toilets, mirrors, windows, counter-tops, sinks, sealed wood, metal, glass, plastic, and pipes.
37. "Personal protective equipment" means various types of clothing such as suits, gloves, hats, and boots, or apparatus such as face masks or respirators designed to prevent inhalation, skin contact, or ingestion of hazardous chemicals.
38. "Personnel decontamination procedures" means procedures used to clean or remove potential contamination from personal protective equipment.
39. "PID" means photo ionization detector.
40. "Porous" means easily penetrated or permeated by hazardous substances or permeable substances or materials such as carpets, draperies, bedding, mattresses, fabric covered furniture, pillows, drop ceiling or other fiberboard ceiling panels, cork paneling, blankets, towels, clothing, and cardboard.
41. "Properly disposed of" means to discard at a licensed facility in accordance with all applicable laws and not reused or sold, or metal recycled by giving or selling to a licensed recycling facility for scrap metal.

42. "Remedial standard" or "remediation standard" means the level or concentration to be achieved by the drug laboratory site remediation firm as defined in R4-30-305(C)(2) and (C)(4).
43. "Remediated" or "remediation" means treatment of the residually contaminated portion of the real property by a drug laboratory site remediation firm to reduce contaminant concentrations to a level below the remedial standards.
44. "Residual contamination" means contamination resulting from spills or releases of hazardous or petroleum substances.
45. "Return air housing" means the main portion of an air ventilation system where air from the livable space returns to the air handling unit for heating or cooling.
46. "Reusable" means not disposable or equipment that can be used more than one time for sampling after cleaning.
47. "Sample location" means the actual place where an environmental sample was obtained.
48. "Shoring plan" means a written description or drawing that shows the structural supports required to safely occupy the building during remediation.
49. "Seepage pit" means a hole in the ground used to dispose of septic fluids.
50. "Services" means the activities performed by the drug laboratory site remediation firm in the course of remediating residual contamination from the manufacturing of methamphetamine, ecstasy, or LSD, or from the storage of chemicals used in manufacturing methamphetamine, ecstasy, or LSD.
51. "SRL" means the Arizona residential soil remediation levels contained in, 18 A.A.C. 7, Article 2, Appendices A and B.
52. "Temporary filter media" means a device used to filter or clean air.
53. "Toxic" means hazardous substances that can cause local or systemic detrimental effects to people.
54. "VOA" means volatile organic analyte.
55. "VOCs" means volatile organic compounds or chemicals that can evaporate at ambient temperatures such as acetone, acetonitrile, aniline, benzene, benzaldehyde, benzyl chloride, carbon tetrachloride, chloroform, cyclohexanone, dioxane, ethanol, ethyl acetate, ethyl ether, Freon 11, hexane, isopropanol, methanol, methyl alcohol, methylene chloride, naphtha, nitroethane, petroleum ether, petroleum distillates, pyridine, toluene, o-toluidine, and any other volatile organic chemical used at the clandestine drug laboratory site to manufacture methamphetamine, LSD, or ecstasy.
56. "Waste" means refuse, garbage, or other discarded material.

#### Historical Note

Adopted effective August 3, 1983 (Supp. 83-4). Repealed effective December 18, 1991 (Supp. 91-4). New Section made by exempt rulemaking at 9 A.A.R. 1412, effective April 15, 2003 (Supp. 03-2). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 19 A.A.R. 1911, effective October 7, 2013 (Supp. 13-3).

#### R4-30-104. Repealed

#### Historical Note

Adopted effective August 3, 1983 (Supp. 83-4). Repealed effective December 18, 1991 (Supp. 91-4).

#### R4-30-105. Repealed

#### Historical Note

Adopted effective August 3, 1983 (Supp. 83-4). Repealed effective December 18, 1991 (Supp. 91-4).

#### R4-30-106. Fees

- A. The Board shall charge the following fees:
  1. A roster of registrants is \$15.00.
  2. A code or rule booklet is \$5.00.
  3. The computer printout fee per name is \$0.10 (non-commercial use). The maximum charge is \$150.00 per run.
  4. The photocopy fee is \$0.20 per page (non-commercial use).
  5. The replacement certificate fee is \$10.00.
  6. The recording medium copy fee is \$10.00 per recording.
  7. The local examination review fee is \$25.00.
  8. The returned check fee is \$25.00.
- B. A person paying fees shall remit them in United States dollars in the form of cash, check, or money order. If a check is returned for insufficient funds, repayment, including payment of the returned check charge, shall be made in the form of cash, money order, or certified check.
- C. Upon written request, the Board shall waive renewal fees for registrants whose registration is in inactive status.
- D. Application fee refunds are not allowed after the application has been assigned an application number and processing commences.

#### Historical Note

Adopted effective August 3, 1983 (Supp. 83-4). Emergency amendments adopted effective May 7, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency amendments readopted without change effective August 8, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency expired. Emergency amendments readopted without change effective February 13, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-1). Emergency expired. Emergency amendments readopted without change effective May 31, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-2). Emergency expired. Emergency amendments readopted with changes effective October 22, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency amendments permanently adopted with changes effective December 18, 1991 (Supp. 91-4). Amended effective July 6, 1993 (Supp. 93-3). Amended effective May 1, 1995 (Supp. 95-2). Amended effective January 12, 1996 (Supp. 96-1). Amended effective January 15, 1998 (Supp. 98-1). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by emergency rulemaking at 8 A.A.R. 1102, effective February 19, 2002 for 180 days (Supp. 02-1). Emergency rulemaking renewed for an additional 180 days under A.R.S. § 41-1026(D) at 8 A.A.R. 3842, effective August 14, 2002 (Supp. 02-3). Emergency expired; original Section amended by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1). Amended by exempt rulemaking at 9 A.A.R. 1412, effective April 15, 2003 (Supp. 03-2). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2).

## Board of Technical Registration

**R4-30-107. Registration and Certification Expiration Dates**

- A. Registrants with triennial registration have expiration dates based on the date of initial registration. The following table indicates triennial registration renewal periods:

Initial Registration Granted Date	Initial Triennial Renewal Expiration Date
Jan. 1 through Mar. 31	Three years from Mar. 31
Apr. 1 through Jun. 30	Three years from Jun. 30
Jul. 1 through Sept. 30	Three years from Sept. 30
Oct. 1 through Dec. 31	Three years from Dec. 31

- B. Subsequent triennial renewal dates will be three years from the initial triennial renewal expiration date.
- C. All annual registrations and certifications expire one year from the date of issuance.

**Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4).  
 Amended effective December 18, 1991 (Supp. 91-4).  
 Amended by emergency rulemaking at 8 A.A.R. 1102, effective February 19, 2002 for 180 days (Supp. 02-1).  
 Emergency rulemaking renewed for an additional 180 days under A.R.S. § 41-1026(D) at 8 A.A.R. 3842, effective August 14, 2002 (Supp. 02-3). Emergency expired; original Section amended by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1). Amended by exempt rulemaking at 9 A.A.R. 1412, effective April 15, 2003 (Supp. 03-2). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2).

**R4-30-108. Reserved****R4-30-109. Reserved****R4-30-110. Reserved****R4-30-111. Reserved****R4-30-112. Reserved****R4-30-113. Reserved****R4-30-114. Reserved****R4-30-115. Reserved****R4-30-116. Reserved****R4-30-117. Reserved****R4-30-118. Reserved****R4-30-119. Reserved****R4-30-120. Complaint Review Process**

- A. The Board shall select a pool of volunteers who have submitted resumes and letters of interest to serve on enforcement advisory committees. The Executive Director shall select registrants and public members from the pool of volunteers to serve on the committees as needed. Each committee shall be comprised of one public member and a minimum of four registrants, at least one of whom is registered in the same category or branch as the respondent. The committee members shall provide technical assistance to Board staff in the evaluation and investigation of complaints. A quorum of three committee members is required for each committee meeting.
- B. During the preliminary informal investigation of a complaint, registrants named as respondents may appear before an enforcement advisory committee for an informal conference relating to the complaint. Respondents may elect to appear with or without counsel. The committee shall attempt to assess the complaint and discuss the complaint with the respondent

and others, if deemed necessary, and prepare a recommendation for disposition of the complaint.

- C. Respondents are not required to participate in the informal conference and no inference shall be drawn from a respondent's decision not to attend.
- D. If a respondent chooses not to attend the informal conference, the committee may meet and review information presented by staff and others and prepare a recommendation for disposition of the complaint.
- E. The Board shall advise the respondent of the committee recommendation and offer the respondent the opportunity to attend an informal compliance conference as outlined in R4-30-123 as part of the informal investigation.
- F. After the informal investigation has been completed, if the committee recommendation supports a determination that the complaint is unfounded, the recommendation shall be forwarded to the Board for review and final disposition.
- G. In all cases where the advisory committee finds probable cause to believe that disciplinary action is warranted, the staff will attempt to obtain a signed consent agreement. The Board shall review the committee recommendation, staff recommendation, consent agreement, and, in the event a signed consent agreement cannot be obtained, any counterproposal from the respondent.

**Historical Note**

Adopted effective December 18, 1991 (Supp. 91-4).  
 Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by emergency rulemaking at 8 A.A.R. 1102, effective February 19, 2002 for 180 days (Supp. 02-1). Emergency rulemaking renewed for an additional 180 days under A.R.S. § 41-1026(D) at 8 A.A.R. 3842, effective August 14, 2002 (Supp. 02-3). Emergency expired; original Section amended by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1).

**R4-30-121. Investigation of Violations**

If any information concerning a possible violation of the Act or any of these rules is received or obtained by the Board or Board staff, an investigation shall be conducted prior to the initiation of formal proceedings. Investigative reports, enforcement advisory committee recommendations, and other documents and materials relating to an investigation shall remain confidential until the matter is closed, until the issuance of a hearing notice under A.R.S. § 32-128, or until the matter is settled by consent order; however, the Board shall inform the respondent that an investigation is being conducted and explain the general nature of the investigation. The public may obtain information that an investigation is being conducted and an explanation of the general nature of the investigation. The Board may refer investigative information to other public agencies as appropriate under the circumstances.

**Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4).  
 Amended effective December 18, 1991 (Supp. 91-4).  
 Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1).

**R4-30-122. Issuance of Subpoenas**

Any party desiring the Board to issue a subpoena shall make application, stating the substance of the testimony expected of the witness or the relevancy of the evidence to be produced. If the testimony or evidence appears to the Board to be material and necessary, a subpoena shall be supplied. The affixing of the seal of the Board and the signature of the Chairman, Secretary, Executive Director, shall be sufficient attestation of the same. The party apply-

ing for the subpoena shall pay for service of the subpoena. A party is considered served at the time of personal service or mailing of the document by certified mail that is addressed to the person's last known address of record on file with the Board.

#### Historical Note

Adopted effective August 3, 1983 (Supp. 83-4).  
Amended effective December 18, 1991 (Supp. 91-4).  
Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 19 A.A.R. 128, effective March 10, 2013 (Supp. 13-1).

#### R4-30-123. Informal Compliance Procedures

- A. Upon notification of the recommendation of an enforcement advisory committee, a registrant may attend a compliance conference with Board staff. The registrant may appear with or without counsel. The Board staff shall mail the notice of the compliance conference to the registrant at least 15 days before the date of the conference. The purpose of the compliance conference is to discuss informal settlement of the investigative matter. Upon completion of the interview, a Board enforcement officer shall make recommendations to the Board.
- B. At any time either before or after formal disciplinary proceedings have been instituted against a registrant, the registrant may submit to the Board an offer of settlement whereby, in lieu of formal disciplinary action by the Board, the registrant agrees to accept certain sanctions such as suspension, civil penalties, enrolling in relevant professional education courses, limiting the scope of practice, submitting work product to professional peer review, or other sanctions. If the Board determines that the proposed settlement will adequately protect the public welfare, the Board shall accept the offer and enter a decision consented to by the registrant, incorporating the proposed settlement.

#### Historical Note

Adopted effective August 3, 1983 (Supp. 83-4).  
Amended effective December 18, 1991 (Supp. 91-4).  
Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1).

#### R4-30-124. Repealed

#### Historical Note

Adopted effective August 3, 1983 (Supp. 83-4).  
Amended effective December 18, 1991 (Supp. 91-4).  
Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Section repealed by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1).

#### R4-30-125. Reserved

#### R4-30-126. Service of Board Decisions; Rehearing of Board Decisions

- A. Except as provided in subsection (G), any party to an appealable agency action or contested case before the Board who is aggrieved by a decision rendered in the matter may file with the Board, not later than 30 days after service of the decision, a written motion for rehearing or review of the decision specifying the particular grounds for the motion. A decision shall be deemed to have been served when personally delivered or mailed by certified mail to the party's last known address of record with the agency. The filing of a motion for rehearing is a condition precedent to the right of appeal provided in A.R.S. § 32-128(J).

- B. A motion for rehearing under this rule may be amended at any time before it is ruled upon by the Board. A response may be filed within 15 days after service of the motion or amended motion by any other party. The Board may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument. The filing of a motion for rehearing or review suspends the operation of the Board's order and allows the registrant to practice in his or her profession pending denial or granting of the motion, and pending the decision of the Board on the rehearing or review if the motion is granted.
- C. A rehearing or review of the 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 agency, members of the Board or the prevailing party, or any order or abuse of discretion, whereby the moving party was deprived of a fair hearing;
  2. Misconduct of the Board 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. The decision is unjustified based upon the evidence or is contrary to law.
- D. The Board may affirm or modify the decision or grant a rehearing 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 shall specify with particularity the ground or grounds on which the rehearing is granted, and the rehearing shall cover only those matters so specified.
- E. Not later than 30 days after a decision is rendered, the Board may on its own motion order a rehearing or review of its decision for any reason listed in subsection (C). After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing for a reason not stated in the motion. In either case the order granting a rehearing shall specify the grounds for the rehearing.
- F. When a motion for rehearing is based upon affidavits, they shall be served with the motion. An opposing party may, within ten days after service, serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days by the Board for good cause shown or by written stipulation of the parties. Reply affidavits may be permitted.
- G. If the Board makes specific findings that the immediate effectiveness of a decision is necessary for preservation of the public welfare, 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, any application for judicial review of the decision shall be made within the time limits permitted for applications for judicial review of the Board's final decisions.

#### Historical Note

Adopted effective August 3, 1983 (Supp. 83-4).  
Amended effective December 18, 1991 (Supp. 91-4).  
Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2).



**ARTICLE 2. REGISTRATION PROVISIONS****R4-30-201. Registration as an Architect, Assayer, Engineer, Geologist, Landscape Architect, or Land Surveyor**

**A.** An applicant for registration as an architect, assayer, engineer, geologist, landscape architect, or land surveyor shall submit an original and one copy of a completed application package for professional registration that contains the following:

1. Evidence of successful completion of the current national professional examination or waiver of the examination pursuant to A.R.S. § 32-126 and R4-30-203 in the category, and branch if applicable, for which registration is sought. Applicants shall arrange to have their examination results sent directly to the Board from the applicable testing agency holding the examination results;
2. Name, residence address, mailing address if different from residence, and telephone number, of the applicant;
3. Date of birth and social security number of the applicant;
4. Citizenship or legal residence of the applicant;
5. Category, and branch of engineering if applicable, for which the applicant is seeking registration;
6. A detailed explanatory statement and documentation, regarding;
  - a. Any disciplinary action, including suspension and revocation, taken by any state or jurisdiction on any professional or occupational registration, certification, or license held by the applicant in any state or jurisdiction;
  - b. Refusal of any professional or occupational registration, certification, or license to the applicant by any state or jurisdiction;
  - c. Any pending disciplinary action in any state or jurisdiction on any professional or occupational registration, certification, or license held by the applicant;
  - d. Any alias or other name used by the applicant; and
  - e. Any conviction of the applicant for a felony or misdemeanor, other than a minor traffic violation.
7. State or jurisdiction in which the applicant holds any other professional or occupational registration, certification, or license, type of registration, certification or license number, year granted, how registration, certification, or license was granted (by examination, education, experience, or reciprocity), and the number of examination hours taken by the applicant;
8. State or jurisdiction in which the applicant has pending an application for any type of professional or occupational license, registration, or certification, type of license, registration or certification being sought, and the status of the application;
9. Name, mailing address, years attended, graduation date, major, and type of degree received from each college, university, or educational institution the applicant attended;
10. Certified transcripts sent directly to the Board from the registrar of each college, university, or educational institution the applicant attended, unless previously provided to the Board pursuant to R4-30-204;
11. Name, current address, and telephone number of the applicant's current and former employers in the category for which registration is sought; dates of employment; applicant's title; description of the work performed; and number of hours worked per week, unless previously provided to the Board pursuant to R4-30-204;
12. Names and addresses of immediate supervisors in past and present employment in the category for which registration is sought. An applicant who has been working in the category for which registration is sought for 10 or

more years shall provide the names and address of all immediate supervisors during the most recent 10-year period. If an applicant cannot supply the names and addresses of supervisors for at least three engagements, the applicant shall provide to the Board a written, sworn statement explaining the inability to provide this information, and the names and addresses of three references, unrelated to the applicant, at least two of whom are registered in the category for which registration is sought, unless previously provided to the Board pursuant to R4-30-204;

13. A release authorizing the Board to investigate the applicant's education, experience, moral character, and repute;
  14. Certificate of Experience Record and Reference Forms from the applicant's present and past immediate supervisors, unless previously provided to the Board pursuant to R4-30-204. The applicant shall also provide Certificate of Experience Record and Reference Forms from additional references as required by the Board. The applicant shall provide the name, address, and telephone numbers of all references. The applicant shall ensure that completed reference forms are provided to the Board;
  15. Evidence of successful completion, or waiver by the Board, of the applicable in-training examination, unless previously provided to the Board pursuant to R4-30-204. An applicant for registration who has successfully completed an in-training examination in another jurisdiction in the category for which registration is sought equivalent to the examination for that category administered in Arizona shall submit proof of examination directly from the authority that administered the original examination. An applicant seeking professional registration as an architect or landscape architect may take the in-training examination at the same time as the professional examination. An applicant seeking professional registration as an assayer, engineer, geologist or land surveyor shall pass the applicable in-training examination before admission to the professional examination;
  16. Certification that the information provided to the Board is accurate, true and complete; and
  17. The applicable fee.
- B.** If an applicant does not have the required education and experience for registration, the Board may, upon request of the applicant, hold the application for a period of time that does not exceed one year from the date the application is filed with the Board. All time-frames adopted pursuant to Title 41, Chapter 6, Article 7.1 are suspended during the above-referenced time.
- C.** An applicant holding a certificate of qualification issued by one of the national registration bodies recognized in R4-30-203(B) shall arrange to have the record forwarded to the Board by the national registration body. If the forms provided by the national registration body contain all the information described in A.R.S. § 32-122.01 and subsection (A), the Board may accept the forms in lieu of requiring the applicant to furnish the information directly to the Board.
- D.** The Board staff shall review all applications and, if necessary, refer completed applications to an advisory committee for evaluation. If the application for registration is complete and in the proper form and the Board staff or committee is satisfied that all statements on the application are true and that the applicant is eligible in all other aspects to be registered in the field for which the application was filed, the Board staff or committee shall recommend that the Board certify the applicant as eligible for registration. If for any reason the Board staff or committee is not satisfied that all of the statements on

the application are true or that the applicant is eligible in all respects for registration, the Board staff shall make a further investigation of the applicant. The Board staff and committee shall submit recommendations to the Board for approval. The Board may also require an applicant to submit additional oral or written information if the applicant has not furnished satisfactory evidence of qualifications for registration.

- E. The Board may accept documentation that an applicant has passed a written national examination in the area for which registration is sought from a national council of which the Board is a member or a professional association approved by the Board.
- F. The Board shall not accept an application for registration renewal unless the applicant has responded to the questions on the application relating to good moral character and other misconduct and signed the application for renewal. The Board shall return an incomplete application to the applicant which may result in assessment of a delinquent renewal fee.
- G. An applicant may withdraw an application for registration by written request to the Board. Any fee paid by the applicant is non-refundable. If an applicant withdraws an application, the Board shall close the file. An applicant whose file has been closed and who later wishes to apply for professional registration shall submit a new application package to the Board pursuant to R4-30-201 and R4-30-202.

#### Historical Note

Adopted effective August 3, 1983 (Supp. 83-4).  
 Amended effective December 18, 1991 (Supp. 91-4).  
 Amended effective November 10, 1998 (Supp. 98-4).  
 Amended by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 11 A.A.R. 3294, effective October 1, 2005 (05-3).

#### R4-30-202. In-training Designation

- A. An applicant for in-training designation shall submit an original and one copy of a completed in-training application package that contains the following:
  - 1. Evidence of successful completion, or waiver by the Board, of the current in-training examination in the category and branch, if applicable, for which in-training designation is sought;
  - 2. The information set forth in subsections (B)(1) through (9); and
  - 3. The applicable fee.
- B. An in-training applicant who wants to sit for an in-training examination shall submit an original and one copy of a completed application for in-training designation to the Board, and provide the following:
  - 1. Name, residence address, mailing address if different from residence, and telephone number of the applicant;
  - 2. Date of birth and social security number of the applicant;
  - 3. Citizenship or legal residence;
  - 4. Category, and branch of engineering if applicable, for which the applicant is seeking an in-training designation;
  - 5. Information regarding any conviction for a felony or misdemeanor, other than a minor traffic violation, and any alias or other name used by the applicant;
  - 6. Name, mailing address, years attended, graduation date, major, and type of degree received from each college, university, or educational institution that the applicant attended;
  - 7. Certified transcripts sent directly to the Board from the registrar of each college, university, or educational institution the applicant attended;

- 8. A release authorizing the Board to investigate the applicant's education, experience, moral character, and repute;
- 9. Certification that the information provided to the Board is accurate, true, and complete.
- C. If otherwise qualified, the Board shall permit an applicant for in-training designation to take the in-training examination in the final year of a baccalaureate, masters, or other degree program accepted by the Board and accredited in the category for which the application is made. The applicant shall have the application form endorsed by the applicant's college dean or faculty advisor, or, if already a graduate, may arrange to have a final transcript, indicating the degree awarded, sent directly from the registrar to the Board, in lieu of the endorsement.
- D. The Board shall permit an applicant for in-training designation without an accredited college degree to take the in-training examination after submitting to the Board evidence of four years, or if an architect-in-training applicant, five years of satisfactory experience or education or both. The applicant shall provide the name, current address, and telephone number of all current and former employers; names of all supervisors and their titles; dates of employment; applicant's title, and a description of the work performed. The applicant shall provide Certificate of Experience Record and Reference Forms to immediate supervisors at present and past employers. The applicant shall ensure the completed reference forms are submitted to the Board. The applicant shall meet all other requirements of this Section.

#### Historical Note

New Section R4-30-202 renumbered from R4-30-203 and amended effective November 10, 1998 (Supp. 98-4).  
 Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2).

#### R4-30-202.01. Remediation Specialist Certification

- A. An applicant for certification as a remediation specialist shall submit an original and one copy of a completed application package that contains the following:
  - 1. Name, residence address, mailing address if different from residence, and residence telephone number of the applicant;
  - 2. Date of birth and social security number of the applicant;
  - 3. A detailed explanatory statement regarding:
    - a. Any disciplinary action, including suspension and revocation, taken by any state or jurisdiction on any professional or occupational registration, certification, or license held by the applicant in any state or jurisdiction;
    - b. Refusal of any professional or occupational registration, certification, or license by any state or jurisdiction;
    - c. Any pending disciplinary action in any state or jurisdiction on any professional or occupational registration, certification, or license held by the applicant;
    - d. Any alias or other name used by the applicant; and
    - e. Any conviction for a felony or misdemeanor, other than a minor traffic violation.
  - 4. State or jurisdiction in which any professional or occupational registration, certification, or license is held; type of professional or occupational registration, certification, or license; registration, certification, or license number, year granted, how registration, certification, or license was granted (that is, by examination, education, experience or reciprocity), and the number of examination hours taken by the applicant;
  - 5. Name of the state or jurisdiction, type of professional or occupational registration, certification, or license the

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applicant is seeking, and the current status of any application for professional or occupational registration, certification, or license pending in any state or jurisdiction;

6. Name, mailing address, years attended, graduation date, major, and type of degree received from each college, university or educational institution the applicant attended;
7. Relevant certified transcripts sent directly to the Board from the registrar of educational institutions the applicant attended;
8. Name, current address, and telephone number of the applicant's current and former employers in the area of remediation; dates of employment; applicant's title; description of the work performed, and the number of hours worked per week;
9. Names and addresses of immediate supervisors in past and present employment in the area of remediation. Applicants who have been working in remediation for 10 or more years shall provide the names and addresses of all immediate supervisors during the most recent ten-year period. If an applicant cannot supply the names and addresses of all immediate supervisors for at least three engagements, the applicant shall provide to the Board a written, sworn statement explaining the inability to provide this information;
10. A release authorizing the Board to investigate the applicant's education, experience, moral character and repute;
11. Certificate of Experience Record and Reference forms from the applicant's present and past immediate supervisors. The applicant shall also provide Certificate of Experience Record and Reference forms to additional references as required by the Board. The applicant shall provide the name, address, and telephone numbers of all references and ensure that completed reference forms are provided to the Board;
12. Certification that the information provided to the Board is accurate, true, and complete;
13. A completed fingerprint card; and
14. The applicable fees.

- B.** The Board staff shall review all applications and, if necessary, refer completed applications to an advisory committee for evaluation. If the application is complete and in the proper form and the Board staff or committee is satisfied that all statements on the application are true and that the applicant is eligible in all other aspects to be certified as a remediation specialist, the Board staff or committee shall recommend that the Board certify the applicant as eligible to take the examination. If for any reason the Board staff or committee is not satisfied that all of the statements on the application are true or that the applicant is eligible in all other respects for registration, the Board staff shall make a further investigation of the applicant. The Board staff or committee shall submit recommendations to the Board for approval. The Board may also require an applicant to submit additional oral or written information if the applicant has not furnished satisfactory evidence of qualifications for examination or certification.

#### Historical Note

New Section made by final rulemaking at 8 A.A.R. 903, effective February 14, 2002 (Supp. 02-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2).

#### R4-30-203. Waiver of Examination

- A.** The Board shall grant a waiver of the professional examination requirement in A.R.S. § 32-122.01 and R4-30-201 to an applicant for professional registration who holds a valid profes-

sional or occupational registration, certification, or license in the category for which registration, certification, or licensure is sought, and is in good standing in another state or jurisdiction provided:

1. The applicant submits verifiable documentation to the Board that the education, experience, and examination requirements under which the applicant was registered in the original state or jurisdiction were substantially identical to those existing in Arizona at the time of the applicant's original registration, certification, or licensure; or
  2. The applicant submits verifiable documentation to the Board that the applicant has been actively engaged as a professional or occupational registrant, certificant, or licensee in another state or jurisdiction for at least 10 years in the category for which registration, certification, or licensure is sought. For purposes of this subsection, "actively engaged as a professional registrant" means that the applicant holds a valid professional or occupational registration, certification, or license in good standing, and has been practicing or offering professional services for at least 10 of the last 15 years.
- B.** The Board shall grant a waiver of the professional examination requirement in A.R.S. § 32-122.01 and R4-30-201 to an applicant for professional registration who submits verifiable documentation to the Board that the applicant holds one of the following professional records, issued by a national registration body, and is registered in good standing in another state or jurisdiction. The Board recognizes the following national registration body records:
1. National Council of Architectural Registration Boards Certificate Record, with design and seismic (lateral forces) qualifications;
  2. National Council of Examiners for Engineers and Surveyors Council Record; or
  3. Council of Landscape Architectural Registration Boards Council Record and Certification.
- C.** When reviewing an engineering applicant's experience and examination information, the Board shall take into account the specific branch of engineering in which the applicant is seeking proficiency recognition.
- D.** The Board shall waive the in-training examination if an applicant has successfully completed an in-training examination in another state or jurisdiction in the category for which registration is sought, which is equivalent to those examinations administered in Arizona. The applicant shall ensure that proof of successful completion is forwarded directly from the authority that administered the original examination.
- E.** The Board shall waive the in-training examination for an applicant who has a degree listed in R4-30-208(A) or other educational credit approved by the Board in the category, and branch if applicable, for which registration is sought, and meets all other requirements of A.R.S. § 32-126(D).
- F.** All applicants who request a waiver of any examination requirement shall meet all other requirements for professional registration or in-training designation in R4-30-201 and R4-30-202. An applicant applying for a waiver under subsection (B) shall ensure that the required documentation is forwarded directly to the Board from the national registration body.
- G.** The Board shall waive the remediation specialist examination requirement if the applicant has successfully completed a remediation specialist examination in another state or jurisdiction that is substantially equivalent to the remediation specialist examination provided in Arizona.

#### Historical Note

Adopted effective August 3, 1983 (Supp. 83-4).  
Amended effective December 18, 1991 (Supp. 91-4).

Amended effective May 1, 1995 (Supp. 95-2). R4-30-203 renumbered to R4-30-202; new Section R4-30-203 renumbered from R4-30-207 and amended effective November 10, 1998 (Supp. 98-4). Amended by final rulemaking at 8 A.A.R. 903, effective February 14, 2002 (Supp. 02-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2).

#### **R4-30-204. Examinations**

- A. Board Review For Examination Equivalency:** Applicants who wish to sit for professional examination who do not possess an educational degree recognized by the applicable national council shall submit to the Board the following information for approval:
1. Name, residence address, mailing address if different from residence, and telephone number;
  2. Date of birth and Social Security number;
  3. Proof of citizenship or legal residence;
  4. Category, and branch of engineering if applicable;
  5. Name, mailing address, years attended, graduation date, major, and type of degree received from each college, university, or educational institution attended;
  6. Certified transcripts sent directly to the Board from the registrar of each college, university, or educational institution attended;
  7. Evidence of at least 60 months of required education or experience, or both, in the category for which registration is sought.
    - a. The name, current address, and telephone number of the applicant's current and former employers in the category for which registration is sought;
    - b. Dates of employment;
    - c. Applicant's title;
    - d. Description of work performed; and
    - e. Number of hours worked per week;
  8. Names and addresses of applicant's immediate supervisors in past and present employment in the category for which registration is sought. If an applicant cannot supply the names and addresses of supervisors for at least three engagements, the applicant shall provide to the Board a written, sworn statement explaining the inability to provide this information, and the names and addresses of three additional references, unrelated to the applicant, at least two of whom are registered in the category for which registration is sought;
  9. A release authorizing the Board to investigate the applicant's education and experience;
  10. Certificate of Experience Record and Reference Forms from the applicant's present and past immediate supervisors. The applicant shall also provide Certificate of Experience Record and Reference Forms from additional references as required by the Board. The applicant shall provide the name, address, and telephone numbers of all references. The applicant shall ensure that completed reference forms are provided to the Board;
  11. Evidence of successful completion, or waiver by the Board, of the applicable in-training examination. An applicant who has successfully completed an in-training examination in another jurisdiction in the category for which registration is sought equivalent to the examination for that category administered in Arizona shall submit proof of examination directly from the authority that administered the original examination. An applicant seeking professional registration as an assayer, engineer, geologist, or land surveyor shall pass the applicable in-training examination before admission to the professional examination;
  12. Certification that the information provided to the Board is accurate, true, and complete; and
  13. The applicable fees.
- B.** The Board staff shall review all applications and, if necessary, refer completed applications to an advisory committee for evaluation. If the application for examination is complete and in the proper form and the Board staff or committee is satisfied that all statements on the application are true and that the applicant is eligible to take the examination, the Board staff or committee shall recommend that the Board certify the applicant as eligible to take the examination. If for any reason the Board staff or committee is not satisfied that all of the statements on the application are true or that the applicant is eligible in all respects for examination, the Board staff shall make a further investigation of the applicant.
- C. National Council Examinations:**
1. Applicants for architect, landscape architect, engineer, or land surveyor registration who wish to sit for a professional examination, and who have earned an educational degree recognized by the applicable national council, may apply directly to the applicable national council to take that exam.
  2. Applicants not possessing the appropriate degree pursuant to subsection (C)(1) may apply to the Board for examination approval and after Board review, may be recommended to the applicable national council for entry into the applicable national examination. Applicants must meet all national council requirements for successful completion of applicable examinations.
  3. An applicant for professional examination in any category must take the examination within one year after receiving approval. If an applicant fails to take an examination within one year after receiving approval, the applicant must submit a new application for professional examination to the Board.
  4. An applicant who has failed any division of a national multi-divisional examination shall be required to meet the applicable national council's requirements for successful completion of the examination.
  5. Examinations administered by a national council of which the Board is a member, or a professional association approved by the Board, shall be given at the times and places determined by the testing agency. Once approved to sit for a non-Board-administered examination, the applicant shall communicate all questions and concerns regarding extensions, additional time, special accommodation, reexamination, exam review and refunds to the applicable testing agency. The Board shall not refund any examination fee paid to a testing agency.
- D. Board Administered Examinations:**
1. An examination administered by the Board shall be given at the times and places determined by the Board. Once the Board approves an applicant to sit for a Board-administered examination, the applicant shall communicate all questions and concerns regarding extensions, special accommodations and refunds to the Board. The applicant shall make any request for additional time or other special examination accommodation to the Board within a reasonable time before the examination date.
  2. An applicant who fails to achieve a passing grade on any division of any examination administered by the Board may request reexamination by notifying the Board in writing of the applicant's desire to retake the examination and paying the applicable examination fee. An applicant who retakes any examination shall advise the Board of any changes in the information provided under subsection

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(A) of this Section and R4-30-202(B) within 30 days from the date of the change. The Board shall close an applicant's file if the Board does not receive written confirmation from the applicant of the applicant's desire to retake the Board-administered examination within one year from the request for reexamination. An applicant whose file has been closed and who later wishes to apply for examination shall submit a new examination application package to the Board.

3. An applicant for a Board-administered examination who wishes to review the applicant's examination scores shall file a written request with the Board within 30 days after receiving notification of the failing grade. The applicant may review an examination by making prior arrangements with the staff and paying the applicable fee. The applicant shall complete any review within 60 days of the request for a review. In reviewing multiple choice questions, an applicant may review only those questions that were incorrect.
4. An applicant who desires a regrade of a Board administered examination shall file a written request with the Board within 30 days after receiving notification of the failing grade or within 30 days after reviewing the examination, whichever is applicable, and pay the applicable fee. The applicant shall identify the questions to be reviewed. The applicant shall state why a review of the item is justified. The applicant shall provide specific facts, data, and references to support any assertion that the solution deserves more credit. The Board shall determine whether it will regrade the examination.
5. The Board shall close an application file for examination if the applicant fails to pass all divisions of the applicable examination within five years after first passing any division of the examination unless the Board approves an extension.
6. If an applicant for professional examination fails to take the examination within five years from the examination approval date, the Board shall close the application file. The applicant shall submit a new application to take the applicable examination to the Board.

**Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4).  
 Amended effective December 18, 1991 (Supp. 91-4).  
 Amended effective May 1, 1995 (Supp. 95-2). Amended effective November 10, 1998 (Supp. 98-4). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 11 A.A.R. 3294, effective October 1, 2005 (Supp. 05-3).  
 Amended by final rulemaking at 19 A.A.R. 128, effective March 10, 2013 (Supp. 13-1).

**R4-30-205. Reserved****R4-30-206. Repealed****Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4).  
 Amended effective December 18, 1991 (Supp. 91-4).  
 Repealed effective November 10, 1998 (Supp. 98-4).

**R4-30-207. Renumbered****Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4).  
 Amended effective December 18, 1991 (Supp. 91-4).  
 Amended effective May 1, 1995 (Supp. 95-2). Section R4-30-207 renumbered to R4-30-203 effective November 10, 1998 (Supp. 98-4).

**R4-30-208. Education and Work Experience****A. Education credit.**

1. The Board shall grant credit according to the following:
  - a. Architectural applicants with five-year National Architectural Accrediting Board accredited degree (NAAB) . . . . . 60 months
  - b. Architectural applicants with four-year NAAB accredited degree . . . . . 48 months
  - c. Landscape Architectural applicants with five-year Landscape Architectural Accrediting Board accredited degree (LAAB) . . . . . 60 months
  - d. Landscape Architectural applicants with four-year LAAB accredited degree . . . . . 48 months
  - e. Engineering applicants with an Accreditation Board of Engineering and Technology (ABET) accredited bachelor degree and a (ABET) master's or doctorate degree in the branch of engineering that registration is sought . . . . . 60 months
  - f. Engineering applicants with an ABET accredited bachelor degree in the branch of engineering that registration is sought . . . . . 48 months
  - g. Engineering applicants with four-year ABET accredited degrees in a branch other than that in which registration is sought . . . . . 36 months
  - h. Land Surveying applicants with ABET accredited bachelor degree in land surveying 48 months
  - i. Geology applicants with four-year degree in geology . . . . . 48 months
  - j. Assayer applicants with four-year degree in chemistry, metallurgy or other science directly related to the analysis of metal and ores . . . . . 48 months
  - k. Remediation specialist applicants with an undergraduate degree as specified in subsection (A), or up to five years of education directly relating to remediation.
2. The Board shall grant all other education credit according to the following:
  - a. Credit shall not be granted for course work obtained in the United States or its possessions unless attained at an institution of higher education accredited by an accrediting agency recognized by the U.S. Department of Education.
  - b. Pro rata credit shall be granted for successful completion of courses substantially equivalent to the courses contained in the pertinent degree program identified in subsection (A) of this rule.
  - c. Credit shall not be given for general education courses in excess of the number of hours allowed in the pertinent program identified in subsection (A).
  - d. In determining pro rata credit, 30 semester hours or 45 quarter hours shall equal 12 months' credit.
  - e. An applicant shall be granted both education and work experience for the same period provided the total months' credit granted in a period does not exceed the number of months in that period.
  - f. Foreign education evaluation service acceptable to the Board shall be required of foreign-educated applicants and shall be provided at applicants' cost.

**B. The Board shall credit work experience as follows:**

1. One hundred and thirty hours or more of work per month is equal to one month of work experience.
2. Between 85 hours and 129 hours of work per month is equal to one-half month of work experience.
3. The Board shall not grant credit for less than 85 hours of work experience in a month.

4. Experience shall be substantiated by the employer before the Board grants the credit.
5. Remediation specialist applicants shall have at least eight years of acceptable education and remediation experience, including at least three years of experience supervising remediations

#### Historical Note

Adopted effective December 18, 1991 (Supp. 91-4).  
Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 903, effective February 14, 2002 (Supp. 02-1).

#### **R4-30-209. Time-frames for Professional Registration, Certification, or In-training Designation**

- A. Within 60 days of receiving the initial application package for professional registration, certification, or in-training designation, the Board shall finish an administrative completeness review.
  1. If the application package is complete, the Board shall notify the applicant that the package is complete and that the administrative completeness review is finished.
  2. If the application package is incomplete, the Board shall notify the applicant that the package is deficient and specify the information or documentation that is missing. All time-frames are suspended from the date the notice is mailed to the applicant until the Board receives all missing information or documentation.
  3. An applicant with an incomplete application package shall supply the missing information or documentation within 90 days from the date of the notice of deficiencies. However, the Board may hold a home inspector applicant's package for one year to permit a home inspector applicant to meet the requirements of R4-30-247(A)(7). If the applicant fails to supply the missing information or documentation, the Board may close the applicant's application file. Any fee paid by the applicant is non-refundable. An applicant whose file has been closed and who later wishes to apply for professional registration, certification, or in-training designation shall submit a new application package and pay the applicable fee.
  4. If an applicant requests to sit for the professional, certification, or in-training examination, or requests a waiver of examination, the time-frames in R4-30-210 apply until the Board grants or denies the applicant's request.
- B. The Board shall complete its substantive review of the application package and render a decision no later than 60 days after the date the Board mails the notice of administrative completeness to the applicant.
  1. If the Board finds that the applicant meets all requirements in statute and rule, the Board shall approve the applicant for professional registration, certification, or in-training designation.
  2. If the Board finds that the applicant does not meet all requirements in statute and rule, the Board shall deny the applicant professional registration, certification, or in-training designation. The Board shall provide written notice of the denial. The notice shall include justification for the denial, references to the statutes or rules on which the denial was based, and an explanation of the applicant's right to appeal, including the number of days the applicant has to file an appeal, and the name and telephone number of a Board contact person who will answer questions regarding the appeals process.
  3. If the Board finds a deficiency during the substantive review of the application package, the Board shall issue a

written request, specifying the additional information or documentation to be submitted and the deadline for submission. The time-frame for substantive review of an application package is suspended from the date the written request for additional information or documentation is mailed until the date that all missing information or documentation is received or the deadline for submission passes.

4. When the Board and applicant mutually agree in writing, the Board or its designee shall grant extensions of the substantive review time-frame totaling no more than 30 days.
  5. If the applicant fails to supply the missing information or documentation by the deadline date, the Board may close the applicant's application file. Any fee paid by the applicant is non-refundable. An applicant whose file has been closed and who later wishes to apply for professional registration, certification, or in-training designation shall submit a new application package and pay the applicable fee.
- C. Saturdays, Sundays, and legal holidays are not counted in calculating the number of days under this Section.
  - D. For purposes of A.R.S. § 41-1073, the Board establishes the following time-frames for a candidate applying for professional registration, certification, or in-training designation:
    1. Administrative completeness review time-frame: 60 days;
    2. Substantive review time-frame: 60 days; and
    3. Overall time-frame: 120 days. Days during which time is suspended under subsection (A)(2) are not counted in the computation of the overall time-frame.

#### Historical Note

Adopted effective November 10, 1998 (Supp. 98-4).  
Amended by final rulemaking at 8 A.A.R. 903, effective February 14, 2002 (Supp. 02-1). Amended by emergency rulemaking at 8 A.A.R. 1102, effective February 19, 2002 for 180 days (Supp. 02-1). Emergency rulemaking amended and renewed for an additional 180 days under A.R.S. § 41-1026(D) at 8 A.A.R. 3842, effective August 14, 2002 (Supp. 02-3). Emergency expired; original Section amended by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2).

#### **R4-30-210. Time-frames for Approval to Sit for, or for Waiver of, the Professional, Certification, or In-training Examination**

- A. Within 60 days of receiving the initial application package to sit for, or for waiver of, the professional, certification, or in-training examination, the Board shall finish an administrative completeness review.
  1. If the application package is complete, the Board shall notify the applicant that the package is complete and that the administrative completeness review is finished.
  2. If the application package is incomplete, the Board shall notify the applicant that the package is deficient and specify the information or documentation that is missing. All time-frames are suspended from the date the notice is mailed to the applicant until the Board receives all missing information or documentation.
  3. An applicant with an incomplete application package shall supply the missing information or documentation within 90 days from the date of the notice of deficiencies. If the applicant fails to supply the missing information or documentation, the Board may close the applicant's

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application file. Any fee paid by the applicant is non-refundable. An applicant whose file has been closed and who later wishes to sit for the in-training, certification, or professional examination, or who requests a waiver of examination, shall submit a new application package and pay the applicable fee.

**B.** The Board shall complete its substantive review of the application package and render a decision no later than 120 days after the date the Board mails the notice of administrative completeness to the applicant.

1. If the Board finds that the applicant meets all requirements in statute and rule, the Board shall either approve the applicant to sit for the next applicable examination, or the Board shall waive the examination requirement.
2. If the Board finds that the applicant does not meet all requirements in statute or rule, the Board shall not allow the applicant to sit for the applicable examination or shall deny a waiver of examination.
3. The Board shall provide written notice of its refusal to allow the applicant to sit for the examination, or for its decision to deny a waiver of the examination. The notice shall include justification for the denial, references to the statutes or rules on which the denial was based, an explanation of the applicant's right to appeal, including the number of days the applicant has to file an appeal, and the name and telephone number of a Board contact person who will answer questions regarding the appeal process. If the Board issues a denial of waiver of an examination, it may allow the applicant to sit for the applicable examination or, depending on the circumstances and the applicant's qualifications, require the applicant to submit an application to sit for the applicable examination.
4. If the Board finds a deficiency during the substantive review of the application package, the Board shall issue a written request, specifying the additional information or documentation to be submitted and the deadline for submission. The time-frame for substantive review of an application package is suspended from the date the written request for additional information or documentation is mailed until the date that all missing information or documentation is received.
5. If the Board and applicant mutually agree in writing, the Board or its designee shall grant extensions of the substantive review time-frames totaling not more than 45 days.
6. If the applicant fails to supply the missing information or documentation by the deadline date, the Board may close the applicant's application file. Any fee paid by the applicant is non-refundable. An applicant whose file has been closed and who later wishes to sit for the applicable examination or request a waiver of examination shall submit a new application package and pay the applicable fee.

**C.** Saturdays, Sundays, and legal holidays are not counted in calculating the number of days under this Section.

**D.** For the purposes of A.R.S. § 41-1073, the Board establishes the following time-frames for an applicant wishing to sit for the applicable examination or to request a waiver of examination:

1. Administrative completeness review time-frame: 60 days;
2. Substantive review time-frame: 120 days; and
3. Overall time-frame: 180 days.

**Historical Note**

Adopted effective November 10, 1998 (Supp. 98-4).  
Amended by final rulemaking at 8 A.A.R. 903, effective February 14, 2002 (Supp. 02-1). Amended by final

rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2).

**R4-30-211. Repealed**

**Historical Note**

Adopted effective November 10, 1998 (Supp. 98-4).  
Amended by final rulemaking at 8 A.A.R. 903, effective February 14, 2002 (Supp. 02-1). Section repealed by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2043, effective June 30, 2014 (Supp. 14-3).

**R4-30-212. Expired**

**Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4).  
Amended effective December 18, 1991 (Supp. 91-4).  
Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 19 A.A.R. 128, effective March 10, 2013 (Supp. 13-1). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2043, effective June 30, 2014 (Supp. 14-3).

**R4-30-213. Reserved**

**R4-30-214. Architect Registration**

An applicant for architect registration shall complete all of the following:

1. An applicant shall provide evidence of successful completion of the National Council of Architectural Registration Boards (NCARB) Intern Development Program (IDP) training requirement.
2. An applicant shall successfully complete the professional architect examination designated by the Board and provided by the National Council of Architectural Registration Boards.
3. An applicant must demonstrate 96 months of architectural education or experience, or both, satisfactory to the Board prior to being granted registration.

**Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4).  
Amended effective December 18, 1991 (Supp. 91-4).  
Correction to subsection (B) (Supp. 96-1). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 11 A.A.R. 3294, effective October 1, 2005 (Supp. 05-3). Amended by final rulemaking at 19 A.A.R. 128, effective March 10, 2013 (Supp. 13-1).

**R4-30-215. Reserved**

**R4-30-216. Reserved**

**R4-30-217. Reserved**

**R4-30-218. Reserved**

**R4-30-219. Reserved**

**R4-30-220. Reserved**

**R4-30-221. Engineering Branches Recognized**

- A.** The Board shall recognize the branches of engineering described below for review of experience, selection of exam-

ination, definition of examination areas, and definition of demonstrated proficiency areas to be inscribed on the registrant's seal. The branches do not limit the areas of a registrant's practice of engineering. (See R4-30-301(18))

1. Agriculture: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning agricultural machinery, drainage, irrigation, terracing, farm electricity or water pumps and wells for the maintenance of adequate potable water supplies for crops, people, animals, or industry.
2. Architectural: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning building mechanical, acoustical, electrical, lighting, or structural systems.
3. Chemical: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning chemical enterprises, chemical and biological processes, plant layout, production of pilot plants, water, wastewater and pollution control plants, piping and distribution systems, heat exchanges, energy production management and distribution systems, process instrumentation and control systems, biomedical equipment, mining and minerals beneficiation, corrosion retardation, heat, mass and momentum transfer systems, reaction kinetics, thermodynamics, quality assurance controls, or systems for heat transmission.
4. Civil: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning highways, streets, transportation systems, drainage and flood control structures, surface and subsurface hydrologics, sewers, tunnels, railroads, geotechnical analysis, waterfronts, water and wastewater systems, water power and supply apparatus, wells, pumps, bridges, dams, irrigation structures, water purification apparatus, incinerators, or site fire protection systems.
5. Control Systems: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning control systems and their constituent devices including, but not limited to, dynamic stability and the application of instrumentation and feedback control principles to regulate and operate chemical plants, petroleum refineries, food processing plants, water and waste treatment plants, power plants, pollution abatement systems, transportation systems, or other dynamic processes and systems.
6. Electrical: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning power systems, electronic and transmission equipment, electric service and supply systems, lighting systems, communication service and supply systems, fire alarm and detection systems, control systems, or electrical installations.
7. Environmental: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning water and wastewater systems, domestic and process (industrial/commercial) solid waste and hazardous materials systems, air quality systems, or health, safety, and environmental protection including, but not limited to systems relating to emergency response, risk analysis, radiation protection, noise toxicology, or industrial hygiene.
8. Fire Protection: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning building exiting and life safety systems, fire suppression systems and devices, fire detection and alarm systems and devices, smoke exhaust and smoke management systems, fire resistance for building components and assemblies, water supplies and pumping systems for fire protection, including the hydraulic analysis of such systems, and the reduction and control of fire hazards due to processes subject to fire or explosion.
9. Geological: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning geological studies related to surface and subsurface excavations and foundations, stability of slopes, groundwater locations, geological material age and strength determinations near surface or deep subsurface geological structures or geophysical mapping of geological formations and groundwater locations.
10. Industrial: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning factory layouts, tools and fixtures, factory planning, time and motion study systems, rate plans, production plans, quality control systems and analysis, work simplification systems, methods studies and cost, production control, organizational, operational and labor needs, or safety analysis.
11. Mechanical: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning air conditioning, refrigeration, ventilation, combustion, heat transfer, energy, power, fuels, propulsion, machinery, tools, manufacturing, fluids, plumbing, fire suppression systems and devices, water supplies and pumping systems for fire protection, including the hydraulic analysis of such systems.
12. Metallurgical: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning the production of metals or metal objects, testing procedures, metal processing, failure analysis procedures, mining and mineral beneficiation, or the development of metal alloys.
13. Mining: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning the construction of plants, shaft and bottom layouts, ventilation and hoisting systems, head frames, washery or concentration mills, mining methods and testing procedures, or metallurgical works and production procedures.
14. Nuclear: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning nuclear waste management, alternative waste management systems, disposal criteria and risk evaluation, transportation, packaging, decontamination, handling, welding evaluation, site stabilization, recovery techniques, water and air quality control systems, waste volume management, evaporation systems, reactor safety methods, health safety systems, cycle analysis, or nuclear fuels.
15. Petroleum: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning drilling equipment, pipelines, refinery plants, gathering systems, handling and storage systems, exploitation and selection methods, gas measurement and core analysis, phase behavior studies, reserve calculations, or the development of petroleum products.



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16. Sanitary: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning water treatment and sewage disposal plants, water systems, sewers, incinerators, distribution systems, sewage and industrial waste treatment plants, pollution reduction systems, sanitary facilities, or public health systems.
  17. Structural: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning force-resisting and load-bearing members and their connections for structures such as foundations, bridges, walls, columns, slabs, beams, trusses, or similar members used singly or as part of a larger structure.
- B.** An applicant shall submit to the Board a separate application and application fee for each branch for which application is made. An applicant who wishes to change the branch of application after notification by the Board that the application has been evaluated by the Board shall submit the request in writing and pay an additional application fee.

**Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4).  
 Amended effective December 18, 1991 (Supp. 91-4).  
 Amended effective July 6, 1993 (Supp. 93-3). Amended effective May 1, 1995 (Supp. 95-2). Amended effective December 18, 1997 (Supp. 97-4). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 12 A.A.R. 1606, effective July 1, 2006 (Supp. 06-2).

**R4-30-222. Engineer-In-Training Designation**

- A.** To qualify for admission to the in-training examination solely on the basis of education, an applicant shall be a graduate of a four-year engineering degree program accredited at the time of graduation by the Accreditation Board for Engineering and Technology (ABET) or an equivalent predecessor organization.
- B.** To qualify for admission to the in-training examination, an applicant who is not a graduate of a four-year ABET-accredited engineering degree program shall have at least four years of education or experience or a combination of both directly related to the practice of engineering. Experience directly related to the practice of engineering of a character satisfactory to the Board includes but is not limited to the following in the candidate's branch of engineering:
1. Consultation: The active involvement in meetings, discussions or development of reports intended to provide information, facts or advice regarding the application of the accepted engineering principles to fulfill the client's specific requirements.
  2. Research investigation: The search, examination or study to determine the practicality or effectiveness of accepted principles for adaptation and application to novel situations or the development of new or alternative solutions to solve problems.
  3. Evaluation: The analysis, testing or study to determine or estimate the merit, effect, efficiency or practicality of approaches, methods, designs, structures or materials for use in a given situation or to achieve a specific result.
  4. Planning: The preliminary development of objectives, statements, outlines, drafts, drawings or diagrams showing the arrangement, scheme, schedule, program or procedure for determining the most effective solution to a problem.

5. Design: Design, development and location experience.
  6. Construction review: The review or supervision of construction projects in the candidate's branch of engineering to determine conformance with contract documents and design specifications (maximum 12 months' credit).
  7. Administration: Administrative experience in the candidate's branch of engineering, including office and field administration, field or laboratory testing, quotation requests, change orders, bidding procedures, cost accounting and project closeouts (maximum 12 months' credit).
  8. Surveying: The measurement, using accepted methods of surveying, of units of space, water, land or structures to determine boundaries, areas, shapes, slopes, distances, angles or other calculations (maximum 12 months' credit).
  9. Editing or writing: The editing or writing for publication of articles, books, newsletters or other written materials directly relating to the candidate's branch of engineering (maximum six months' credit).
  10. Other engineering experience: Experience of a nature set forth in this subsection but in other recognized branches of engineering (maximum six months' credit).
  11. Subprofessional experience: As defined in rule R4-30-101 (maximum six months' credit).
- C.** An applicant shall successfully complete the engineer-in-training examination designated by the Board and provided by the National Council of Examiners for Engineers and Surveyors.

**Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4).  
 Amended effective December 18, 1991 (Supp. 91-4).  
 Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2).

**R4-30-223. Reserved****R4-30-224. Engineer Registration**

- A.** Work experience credited toward the eight-year active engagement requirement shall be directly related to the applicant's branch of engineering and of a character satisfactory to the Board and attained as described in R4-30-222, except that work experience for specific branches of engineering as described in R4-30-221 shall be for the purpose of qualifying an applicant for registration only and shall not be construed to restrict or confine the work practices of or engineering engagements accepted by a registrant.
- B.** An applicant shall successfully complete the professional engineer examinations offered in the applicant's branch of engineering designated by the Board.

**Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4).  
 Amended effective December 18, 1991 (Supp. 91-4).  
 Amended effective July 6, 1993 (Supp. 93-3). Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2).

**R4-30-225. Reserved****R4-30-226. Reserved****R4-30-227. Reserved**

**R4-30-228. Reserved****R4-30-229. Reserved****R4-30-230. Reserved****R4-30-231. Reserved****R4-30-232. Reserved****R4-30-233. Reserved****R4-30-234. Reserved****R4-30-235. Reserved****R4-30-236. Reserved****R4-30-237. Reserved****R4-30-238. Reserved****R4-30-239. Reserved****R4-30-240. Reserved****R4-30-241. Reserved****R4-30-242. Geologist-in-training Designation**

- A.** To qualify for admission to the in-training examination solely on the basis of education, an applicant shall be a graduate of a four-year degree program with a major in geology at a college or university accredited at the time of graduation by a regional accrediting agency recognized by the Arizona Board of Regents.
- B.** To qualify for admission to the in-training examination, an applicant who is not a graduate of a four-year degree program as specified in subsection (A) shall have at least four years of education or experience or both directly related to the practice of geology. Experience directly related to the practice of geology of a character satisfactory to the Board shall include the following:
1. Consultation: The active involvement in meetings, discussions and development of reports intended to provide information, facts or advice regarding natural resources and surface and subsurface geological conditions and the preparation of geological maps for use in consultations with clients.
  2. Evaluation: The evaluation of mining and petroleum properties, groundwater resources, unconsolidated earth materials, mineral fuels, natural hazards and land use limitations.
  3. Supervision of exploration: The supervision of the geological phases of engineering investigation, exploration for mineral and natural resources, metallic and nonmetallic ores, petroleum and groundwater resources.
  4. Administration: Administrative experience, including office and field administration, field or laboratory testing, quotation requests, change orders, cost accounting, bidding procedures and project closeouts (maximum 12 months' credit).
  5. Editing or writing: The editing or writing for publication of articles, books, newsletters or other written materials on geological subjects (maximum six months' credit).
  6. Engineering: Experience in related branches of engineering (maximum six months' credit).
  7. Subprofessional experience: As defined in rule R4-30-101 (maximum six months' credit).
- C.** An applicant shall successfully complete the geologist-in-training examination designated by the Board and provided by the Association of State Boards of Geology.

**Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4).

Amended effective December 18, 1991 (Supp. 91-4).  
 Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2).

**R4-30-243. Reserved****R4-30-244. Geologist Registration**

An applicant shall successfully complete the professional geologist examination designated by the Board and provided by the Association of State Boards of Geology.

**Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4).  
 Amended effective December 18, 1991 (Supp. 91-4).  
 Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2).

**R4-30-245. Reserved****R4-30-246. Reserved****R4-30-247. Home Inspector Certification**

- A.** An applicant for certification as a home inspector shall submit an original and one copy of a completed application package that contains the following:
1. Evidence of successful completion, within two years before the date of application, of the National Home Inspector Examination as administered by the Examination Board of Professional Home Inspectors;
  2. The information in subsections (B)(1) through (10);
  3. A completed fingerprint card;
  4. Applicable fees;
  5. Evidence of successful completion of 84 hours of classroom training or an equivalent course conducted by an educational facility that is licensed by the applicable post-secondary education regulatory agency in the home state of the facility, or accredited by the Accrediting Commission of the Distance Education and Training Council, or by an accrediting agency approved by the United States Department of Education. The course of study shall encompass all of the following major content areas:
    - a. Structural Components,
    - b. Exterior,
    - c. Roofing,
    - d. Plumbing,
    - e. Heating,
    - f. Cooling,
    - g. Electrical,
    - h. Insulation and Ventilation,
    - i. Interiors,
    - j. Fireplaces and Solid Fuel-Burning Devices,
    - k. Swimming Pools & Spas, and
    - l. Professional Practice;
  6. An applicant who has lawfully conducted home inspections as part of a business shall provide evidence of successful completion of 100 home inspections that meet the standards referenced in R4-30-301.01 on a form provided by the Board. An applicant under this subsection shall meet all other requirements for certification in this Section; and
  7. To complete a home inspector in-training program, an applicant who otherwise qualifies for certification as a home inspector except for meeting the qualification in subsection (A)(6), shall present evidence of completion of 30 parallel inspections. The 30 parallel inspections and

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home inspection report shall meet the standards in R4-30-301.01 and be retained by the applicant for at least two years from the date of application. The applicant shall conduct these inspections on separate residential dwelling units and shall list them on a log provided by the Board. The log shall include, with respect to each inspection, the address of the property, the date of the inspection, and the name and certification number of the supervising home inspector. The Board may hold the applicant's package for a period of one year based solely on the need for time to permit the applicant to complete the required parallel inspections. All time-frames promulgated under A.R.S. Title 41, Chapter 6, Article 7.1 are suspended during this period.

- B. A certified home inspector is not required to inspect a pool and/or spa as part of a home inspection. If a certified home inspector conducts a pool and/or spa inspection, it shall be conducted in accordance with the "Standards of Professional Practice for the Inspection of Swimming Pools & Spas for Arizona Home Inspectors," ("Standards") adopted and published by Arizona Chapter of the American Society of Home Inspectors on March 11, 2011, and incorporated by reference, without any later amendments or editions, by the Board on February 28, 2012. Copies of the Standards are available at the Board's office and at the Arizona Chapter of the American Society of Home Inspectors' web site, [www.azashi.org](http://www.azashi.org).
- C. The application package shall contain the following:
  - 1. Name, residence address, mailing address if different from residence address, and telephone number;
  - 2. Date of birth and Social Security number of the applicant;
  - 3. Citizenship or legal residence;
  - 4. A detailed explanatory statement regarding:
    - a. Any disciplinary action, including suspension and revocation, taken by any state or jurisdiction on any professional or occupational registration, license, or certification held by the applicant in any state or jurisdiction;
    - b. Refusal of any professional or occupational registration, license, or certification by any state or jurisdiction;
    - c. Any pending disciplinary action in any state or jurisdiction on any professional or occupational registration, license, or certification held by the applicant;
    - d. Any alias or other name used by the applicant;
    - e. Any conviction for a felony or misdemeanor, other than a minor traffic violation.
  - 5. Documentation of absolute discharge from sentence at least five years before the date of application if an applicant has been convicted of one or more felonies;
  - 6. State or jurisdiction in which any professional or occupational registration, license or certification is held; type of registration, license, or certification; number; year granted, and how registration, license, or certification was granted (that is, by examination, education, experience, or reciprocity);
  - 7. The current status of any application for any type of professional or occupational registration, license, or certification pending in another state or jurisdiction;
  - 8. A release authorizing the Board to investigate the applicant's education, experience, and moral character and repute;
  - 9. Certification that the information provided to the Board is accurate, true, and complete;
  - 10. Copy of one report that meets the standards in R4-30-301.01; and

11. Sworn statement or statements by the supervising certified home inspector or inspectors that the parallel inspections conducted by the applicant meet the standards in R4-30-301.01.

- D. The Board staff shall review all applications and, if necessary, refer completed applications to the Home Inspector Rules and Standards Committee for evaluation. If the application is complete and in the proper form, the Board staff or committee is satisfied that all statements on the application are true, and the applicant is eligible in all other aspects to be certified as a home inspector, the Board staff or committee shall recommend that the Board certify the applicant. If the evidence is not clear and convincing of qualification for certification, the matter shall be reviewed by the committee and the committee may request additional information regarding any issue upon which the applicant has not established qualification by clear and convincing evidence.
- E. A certified home inspector shall notify the Board in writing within five business days of any loss of, or change in, financial assurance. The Board shall suspend the certificate holder's certification immediately and prohibit further home inspections until current proof of financial assurance is provided to the Board. The Board shall revoke a certificate if the certificate holder fails to provide proof of financial assurance within 90 days of loss of financial assurance or lapse of policy. All certified home inspectors shall provide proof of financial assurance at the time of each annual certification renewal. The Board shall not renew a home inspector certification unless the financial assurance is in full force and effect.
- F. A registrant who has been certified by the Board to conduct home inspections prior to February 28, 2012, will be exempt from any additional education or testing requirements relating to pools and spas.

**Historical Note**

New Section made by emergency rulemaking at 8 A.A.R. 1102, effective February 19, 2002 for 180 days (Supp. 02-1). Emergency rulemaking amended and renewed for an additional 180 days under A.R.S. § 41-1026(D) at 8 A.A.R. 3842, effective August 14, 2002 (Supp. 02-3). Emergency expired; new Section made by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 19 A.A.R. 713 (Supp. 13-2).

**R4-30-248. Reserved**

**R4-30-249. Reserved**

**R4-30-250. Reserved**

**R4-30-251. Reserved**

**R4-30-252. Landscape Architect-in-training Designation**

- A. To qualify for admission to the in-training examination solely on the basis of education, an applicant shall be a graduate of a four- or five-year landscape architectural degree program accredited at the time of graduation by the Landscape Architectural Accreditation Board (LAAB) or an equivalent predecessor organization.
- B. To qualify for admission to the in-training examination, an applicant who is not a graduate of a four- or five-year LAAB-accredited landscape architectural degree program shall have at least four years of education or experience or both directly related to the practice of landscape architecture. Experience directly related to the practice of landscape architecture of a character satisfactory to the Board shall include the following:

1. Consultation: The active involvement in meetings, discussions and development of reports intended to provide information, facts or advice regarding the application of landscape architectural principles to fulfill the client's specific requirements.
  2. Investigation, reconnaissance and research: The search, examination or study to determine the practicality or effectiveness of accepted landscape architectural principles to novel situations or the development of new or alternative solutions to landscape architectural problems.
  3. Planning: The preliminary development of objectives, statements, outlines, drafts, drawings, maps or diagrams showing the arrangement, scheme, schedule, program or procedure for determining the most effective solution to a landscape architectural problem.
  4. Design: The preparation and use of sketches, plans, drawings, outlines, models or schemes to convey the use and development of land, plantings, landscapings, settings, approaches to buildings, structures or facilities, traffic patterns and drainage or erosion patterns.
  5. Supervision of development: The supervision of the development of land and incidental water areas for the preservation, enhancement or determination of proper land uses, natural land features, ground cover and planting, naturalistic and esthetic values, settings and approaches, natural drainage and the consideration and determination of inherent problems of the land, including erosion, wear and tear, light and other hazards.
  6. Administration: Administrative experience, including office and field administration, field testing, quotation requests, change orders, cost accounting, bidding procedures and project closeouts (maximum 12 months' credit).
  7. Editing or writing: The editing or writing for publication of articles, books, newsletters or other written materials on landscape architectural subjects (maximum six months' credit).
  8. Subprofessional experience: As defined in rule R4-30-101 (maximum six months' credit).
- C. An applicant shall successfully complete the landscape architect-in-training examination designated by the Board and provided by the Council of Landscape Architectural Registration Boards.

#### Historical Note

Adopted effective August 3, 1983 (Supp. 83-4).  
 Amended effective December 18, 1991 (Supp. 91-4).  
 Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2).

#### R4-30-253. Reserved

#### R4-30-254. Landscape Architect Registration

An applicant shall successfully complete the professional landscape architect examination designated by the Board and provided by the Council of Landscape Architectural Registration Boards.

#### Historical Note

Adopted effective August 3, 1983 (Supp. 83-4).  
 Amended effective December 18, 1991 (Supp. 91-4).  
 Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2).

#### R4-30-255. Reserved

#### R4-30-256. Reserved

#### R4-30-257. Reserved

#### R4-30-258. Reserved

#### R4-30-259. Reserved

#### R4-30-260. Reserved

#### R4-30-261. Reserved

#### R4-30-262. Assayer-in-training Designation

- A. To qualify for admission to the in-training examination solely on the basis of education, an applicant shall be a graduate of a four-year degree program with a major in chemistry, metallurgy or other science directly related to the analysis of metals and ores at a college or university accredited at the time of graduation by a regional accrediting agency recognized by the Arizona Board of Regents.
- B. To qualify for admission to the in-training examination, an applicant who is not a graduate of a four-year degree program with a major in chemistry, metallurgy or other science directly related to the analysis of metals and ores at an accredited college or university specified in subsection (A), shall have at least four years of education or experience or both directly related to the practice of assaying. Experience directly related to the practice of assaying of a character satisfactory to the Board shall include the following:
1. Experience in the analysis of ferrous and nonferrous metals, minerals, fabrics and rock or powdered ores.
  2. Experience in all phases of fire analysis for the isolation or quantification of precious metals or minerals or any other substance in them, the experience to include: identification of sample metals, ores, minerals or alloys; pre-weighing of sample preparations; use of assaying weights; grit sizing; dehydration; sampling; crushing; mixing; rolling; coning; truncating; quartering; firing; choice and use of fluxes; button processing; cupellation; weighing; parting; and calculation.
  3. Experience in wet analysis or titration procedures.
  4. Experience in analysis by atomic absorption.
  5. Experience in the use of mineral standards.
  6. Consultation with clients or colleagues in service or work requiring the use of the knowledge of mineral sciences and assaying and the application of this knowledge in assignments involving the evaluation and analysis of metals, minerals and ores.
  7. Editing or writing for publication of articles, books, newsletters or other written materials on assaying-related subjects (maximum six months' credit).
  8. Subprofessional experience as defined in rule R4-30-101 (maximum six months' credit).
- C. An applicant shall successfully complete the assayer-in-training examination administered and provided by the Board.

#### Historical Note

Adopted effective August 3, 1983 (Supp. 83-4).  
 Amended effective December 18, 1991 (Supp. 91-4).  
 Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2).

#### R4-30-263. Reserved

#### R4-30-264. Assayer Registration

An applicant shall successfully complete the professional assayer examination administered and provided by the Board.

**Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4).  
 Amended effective December 18, 1991 (Supp. 91-4).  
 Amended by final rulemaking at 6 A.A.R. 1018, effective  
 February 25, 2000 (Supp. 00-1). Amended by final  
 rulemaking at 10 A.A.R. 2798, effective August 7, 2004  
 (Supp. 04-2).

**R4-30-265. Reserved****R4-30-266. Reserved****R4-30-267. Reserved****R4-30-268. Reserved****R4-30-269. Reserved****R4-30-270. Drug Laboratory Site Remediation Firm Registration**

An applicant for drug laboratory site remediation firm registration shall submit an original and one copy of a completed application package that contains the following:

1. Name of business, business address, mailing address if different from business address, and business telephone number;
2. Description of the applicant's services offered to the public;
3. Name and certification number of each on-site supervisor who is authorized and responsible for the services being offered;
4. Legal status of business, such as corporation, partnership, sole proprietorship, or other status;
5. Name and address of the responsible individual in the firm to whom notices and correspondence from the Board should be mailed; and
6. Certification that the information provided to the Board is accurate, true, and complete;
7. Copy of a current license issued by the Registrar of Contractors, the scope of which permits the applicant to perform the activities required of drug laboratory site remediation firms certified pursuant to this Chapter;
8. The applicable fee.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 1412, effective April 15, 2003 (Supp. 03-2). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2).

**R4-30-271. Onsite Supervisor Certification and Renewal**

**A.** An applicant for onsite supervisor certification shall submit an original and one copy of a completed application package containing the following:

1. Name, residence address, mailing address if different from residence address, and telephone number;
2. Date of birth and Social Security number of the applicant;
3. Proof of citizenship or legal residence;
4. State or jurisdiction in which any other professional or occupational certification, registration, or license is held by the applicant, type of certification, registration, or license, number, and year granted;
5. Name of the state or jurisdiction, the type of professional or occupational certification, registration, or license the applicant is seeking, and the status of any professional or occupational certification, registration, or license application pending in any state or jurisdiction;
6. A detailed explanatory statement, regarding:
  - a. Denial of professional or occupational certification, registration, or license by any state or jurisdiction;

- b. Any pending disciplinary action in any state or jurisdiction on any professional or occupational certification, registration, or license held by the applicant;
  - c. Any alias or other name used by the applicant;
  - d. Any conviction for a felony or misdemeanor, other than a minor traffic violation; and
  - e. Any disciplinary action taken by any state or jurisdiction on any professional or occupational registration, certification, or license held by the applicant in any state or jurisdiction.
7. Certification that the information provided to the Board is accurate, true, and complete;
  8. A copy of a current 40-hour HAZWOPER training certificate or a copy of a current eight hour HAZWOPER training refresher certificate and a copy of a 40-hour HAZWOPER training certificate;
  9. Documentation of 12 months or more of onsite experience in hazardous chemical decontamination projects and a copy of a HAZWOPER training certificate that shows the applicant held valid HAZWOPER training certification during the 12 months of experience;
  10. Documentation of current AHERA contractor or supervisor certification or a copy of a current AHERA refresher certificate and a copy of an AHERA contractor or supervisor training certificate;
  11. Documentation of successful completion of a lead training course that meets the requirements of 29 CFR 1926.62(l), effective January 8, 1998, 63 FR 1296, (published by the U.S. Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000 and available electronically through the federal digital system at [www.gpo.gov/fdsys/](http://www.gpo.gov/fdsys/). The provisions of this regulation are incorporated by reference and copies are available at the office of the Board of Technical Registration. This rule does not include any later amendments or editions of the incorporated matter.);
  12. Documentation of successful completion of an eight hour training course approved by the Board that encompasses the following:
    - a. Clandestine drug laboratory site remediation best standards and practices contained in R4-30-305;
    - b. Chemical and physical hazards of a clandestine drug laboratory;
    - c. Typical manufacturing methods for methamphetamine, LSD, and ecstasy;
    - d. Typical flammable, combustible, corrosive, and reactive materials used in a clandestine drug laboratory;
    - e. Potential sharps and biohazards at a clandestine drug laboratory;
    - f. Proper handling and disposal of wastes from the remediation of a clandestine drug laboratory; and
    - g. Other potential hazards or dangers that can be associated with a clandestine drug laboratory;
  13. Documentation of successful completion of an 8-hour training course approved by the Board that encompasses the following:
    - a. Hazardous conditions and precautionary measures upon initial entry into a clandestine drug laboratory site,
    - b. Assessing residual contamination,
    - c. Preparing the work plans for remediation of a clandestine drug laboratory,
    - d. Assessing structural stability for safe entry into a clandestine drug laboratory site,

- e. Characterizing waste from the remediation of a clandestine drug laboratory, and
    - f. Preparing final reports on the remediation of the clandestine drug laboratory;
  - 14. A signed release authorizing the Board to investigate the applicant's education, experience, and good moral character and repute; and
  - 15. The applicable fee.
  - B.** An applicant for renewal of onsite supervisor certification shall submit an application package that contains:
    - 1. A completed renewal application form provided by the Board, signed and dated by the applicant that provides the information contained in subsections (A)(1), (2), (6), and (7);
    - 2. A copy of the registrant's current eight-hour HAZWOPER training refresher certificate;
    - 3. A copy of the registrant's current AHERA refresher certificate;
    - 4. Documentation of successful completion of a two-hour refresher training course approved by the Board that encompasses the following:
      - a. Clandestine drug laboratory site remediation best standards and practices contained in R4-30-305,
      - b. Hazardous conditions and precautionary measures upon initial entry into a clandestine drug laboratory site,
      - c. Preparation of the work plan for remediation of a clandestine drug laboratory,
      - d. Assessment of the structural stability for safe entry into a clandestine drug laboratory site,
      - e. Characterizing waste from the remediation of a clandestine drug laboratory, and
      - f. Preparing the final report on the remediation of a clandestine drug laboratory;
    - 5. The applicable fee.
  - C.** The Board staff shall review all applications and, if necessary, refer completed applications to the Environmental Remediation Rules and Standards Committee for evaluation. If the application is complete and in the proper form, and the Board staff or committee is satisfied that all statements on the application are true and that the applicant is eligible in all other aspects to be certified, the Board staff or committee shall recommend that the Board certify the applicant. If for any reason the Board staff or committee is not satisfied that all of the statements on the application are true, the Board staff shall make a further investigation of the applicant. The Board staff or committee shall submit recommendations to the Board for approval. The Board may also require an applicant to submit additional oral or written information if the applicant has not furnished satisfactory evidence of qualifications for certification.
- Historical Note**
- New Section made by exempt rulemaking at 9 A.A.R. 1412, effective April 15, 2003 (Supp. 03-2). Amended by exempt rulemaking at 9 A.A.R. 2111, effective June 2, 2003 (Supp. 03-2). Amended by exempt rulemaking at 9 A.A.R. 3514, effective July 17, 2003 (Supp. 03-3). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 19 A.A.R. 128, effective March 10, 2013 (Supp. 13-1).
- R4-30-272. Onsite Worker Certification and Renewal**
- A.** An applicant for onsite worker certification shall submit an original and one copy of a completed application package containing the following:
    - 1. Name, residence address, mailing address if different from residence address, and telephone number;
    - 2. Date of birth and Social Security number of the applicant;
    - 3. Proof of citizenship or legal residence;
    - 4. State or jurisdiction in which any professional or occupational certification, registration, or license is held by the applicant, type of certification, registration, or license number and year granted;
    - 5. Name of the state or jurisdiction, the type of professional or occupational certification, registration, or license the applicant is seeking, and the status of any professional or occupational application pending in any state or jurisdiction;
    - 6. A detailed explanatory statement regarding:
      - a. Any denial of professional or occupational certification, registration, or license by any state or jurisdiction;
      - b. Any pending disciplinary action in any state or jurisdiction on any professional or occupational certification, registration, or license held by the applicant;
      - c. Any alias or other name used by the applicant;
      - d. Any conviction for a felony or misdemeanor, other than a minor traffic violation; and
      - e. Any disciplinary action taken by any state or jurisdiction on any professional or occupational certification, registration, or license held by the applicant in any state or jurisdiction;
    - 7. Certification that the information provided to the Board is accurate, true, and complete;
    - 8. Copy of a current 40-hour HAZWOPER training certificate or copy of a current eight-hour HAZWOPER training refresher certificate and a copy of a 40-hour HAZWOPER training certificate;
    - 9. Documentation of successful completion of an eight-hour training course approved by the Board that encompasses the following:
      - a. Clandestine Drug Laboratory Site Remediation Best Standards and Practices contained in R4-30-305;
      - b. Chemical and physical hazards of a clandestine drug laboratory;
      - c. Typical manufacturing methods for methamphetamine, LSD, and ecstasy;
      - d. Typical flammable, combustible, corrosive, and reactive materials used in a clandestine drug laboratory;
      - e. Potential sharps and biohazards at a clandestine drug laboratory;
      - f. Proper handling and disposal of wastes from the remediation of a clandestine drug laboratory; and
      - g. Other potential hazards or dangers that can be associated with a clandestine drug laboratory;
    - 10. A signed release authorizing the Board to investigate the applicant's education, experience, and good moral character and repute; and
    - 11. The applicable fee.
  - B.** An applicant for renewal of onsite worker certification shall submit an application package that contains:
    - 1. A completed renewal application form provided by the Board, signed and dated by the applicant that provides the information contained in subsections (A)(1), (2), (6) and (7);
    - 2. A copy of the applicant's current eight-hour HAZWOPER training refresher certificate;
    - 3. The applicable fee.
  - C.** The Board staff shall review all applications and, if necessary, refer completed applications to the Environmental Remediation

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tion Rules and Standards Committee for evaluation. If the application is complete and in the proper form, and the Board staff or committee is satisfied that all statements on the application are true and the applicant is eligible in all other respects to be certified, the Board staff or committee shall recommend that the Board certify the applicant. If for any reason the Board staff or committee is not satisfied that all of the statements on the application are true, the Board staff shall make a further investigation of the applicant. The Board staff or committee shall submit recommendations to the Board for approval. The Board may also require an applicant to submit additional oral or written information if the applicant has not furnished satisfactory evidence of qualifications for certification.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 1412, effective April 15, 2003 (Supp. 03-2). Amended by exempt rulemaking at 9 A.A.R. 2111, effective June 2, 2003 (Supp. 03-2). Amended by exempt rulemaking at 9 A.A.R. 3514, effective July 17, 2003 (Supp. 03-3). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 19 A.A.R. 128, effective March 10, 2013 (Supp. 13-1).

**R4-30-273. Reserved**

**R4-30-274. Reserved**

**R4-30-275. Reserved**

**R4-30-276. Reserved**

**R4-30-277. Reserved**

**R4-30-278. Reserved**

**R4-30-279. Reserved**

**R4-30-280. Reserved**

**R4-30-281. Reserved**

**R4-30-282. Land Surveyor-in-training Designation**

- A. To qualify for admission to the in-training examination solely on the basis of education, an applicant shall be a graduate of a four-year land surveying degree program accredited at the time of graduation by the Accreditation Board for Engineering and Technology (ABET) or an equivalent predecessor organization.
- B. To qualify for admission to the in-training examination, an applicant who is not a graduate of a four-year ABET-accredited land surveying degree program shall have at least four years of education or experience or both directly related to the practice of land surveying. Experience directly related to the practice of land surveying of a character satisfactory to the Board shall include the following:
  1. The measurement of space, water, land or structures located or to be located upon or within them, to determine boundaries, areas or other necessary calculations through the use of any mechanical, physical, electric or electronic equipment or devices commonly used by registered professional land surveyors.
  2. The analysis of measurement data through the use of professional knowledge or education or practical experience in the mathematical and physical sciences and in the principles of land surveying.
  3. The location or relocation, establishment or re-establishment of boundaries, easements, rights-of-way, bench marks or corners.
  4. Consultation with clients to determine the necessity of land surveying services and the determination of the cor-

rect type of services necessary to fulfill the client's needs and objectives.

5. The search of any source of public or private records for the purpose of performing a survey or to determine and, if necessary, to reconcile differences between the surveyor's collected data and such records.
  6. The platting or subdividing of land or the planning and design of parcels of land for development purposes.
  7. The preparation and maintenance of survey records.
  8. Other land surveying activities, analyses or investigations defined in the Act.
  9. The participation in office and field administration, quotation requests, bidding procedures, cost accounting and project closeouts (maximum 12 months' credit).
  10. The editing or writing for publication of articles, books, newsletters or other written materials on land surveying subjects (maximum six months' credit).
  11. Construction staking (maximum 12 months' credit).
  12. Subprofessional experience as defined in R4-30-101 (maximum six months' credit).
- C. The applicant shall successfully complete the land surveyor-in-training examination designated by the Board and provided by the National Council of Examiners for Engineers and Surveyors.

**Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4). Amended effective December 18, 1991 (Supp. 91-4). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2).

**R4-30-283. Reserved**

**R4-30-284. Land Surveyor Registration**

The candidate shall successfully complete the professional land surveyor examination. Part One of the professional examination is designated by the Board and provided by the National Council of Examiners for Engineers and Surveyors. Part Two of the professional examination is designated and provided by the Board.

**Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4). Amended effective December 18, 1991 (Supp. 91-4). Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1).

**ARTICLE 3. REGULATORY PROVISIONS**

**R4-30-301. Rules of Professional Conduct**

All registrants shall comply with the following rules of professional conduct:

1. A registrant shall not submit any materially false statements or fail to disclose any material facts requested in connection with an application for registration or certification, or in response to a subpoena.
2. A registrant shall not engage in fraud, deceit, misrepresentation or concealment of material facts in advertising, soliciting, or providing professional services to members of the public.
3. A registrant shall not commit bribery of a public servant as proscribed in A.R.S. § 13-2602, commit commercial bribery as proscribed in A.R.S. § 13-2605, or violate any federal statute concerning bribery.
4. A registrant shall comply with state, municipal, and county laws, codes, ordinances, and regulations pertaining to the registrant's area of practice.

5. A registrant shall not violate any state or federal criminal statute involving dishonesty, fraud, misrepresentation, embezzlement, theft, forgery, perjury, bribery, or breach of fiduciary duty. The Board may take action against a registrant's license or certificate if a violation of the law is reasonably related to a registrant's area of practice.
6. A registrant shall apply the technical knowledge and skill that would be applied by other qualified registrants who practice the same profession in the same area and at the same time.
7. A registrant shall not accept an engagement if the duty to a client or the public would conflict with the registrant's personal interest or the interest of another client without making a full written disclosure of all material facts of the conflict to each person who might be related to or affected by the engagement.
8. A registrant shall not accept compensation for services related to the same engagement from more than one party without making a full written disclosure of all material facts to all parties and obtaining the express written consent of all parties involved.
9. A registrant shall make full disclosure to all parties concerning:
  - a. Any transaction involving payments to any person for the purpose of securing a contract, assignment, or engagement, except payments for actual and substantial technical assistance in preparing the proposal; or
  - b. Any monetary, financial, or beneficial interest the registrant holds in a contracting firm or other entity providing goods or services, other than the registrant's professional services, to a project or engagement.
10. A registrant shall not solicit, receive, or accept compensation from material, equipment, or other product or services suppliers for specifying or endorsing their products, goods or services to any client or other person without full written disclosure to all parties.
11. If a registrant's professional judgment is overruled or not adhered to under circumstances where a serious threat to the public health, safety, or welfare may result, the registrant shall immediately notify the responsible party appropriate building official, or agency, and the Board of the specific nature of the public threat.
12. If called upon or employed as an arbitrator to interpret contracts, to judge contract performance, or to perform any other arbitration duties, the registrant shall render decisions impartially and without bias to any party.
13. To the extent applicable to the professional engagement, a registrant shall conduct a land survey engagement in accordance with the April 12, 2001 Arizona Professional Land Surveyors Association (APLS) Arizona Boundary Survey Minimum Standards, available at [www.azapls.org](http://www.azapls.org) and from APLS, 3346 East Menadota Drive, Phoenix, AZ. The Board of Technical Registration adopted them on June 15, 2001 and incorporated them into this subsection by reference. This incorporation by reference does not include any later amendments or editions and is available at the office of the Board of Technical Registration.
14. A registrant shall comply with any subpoena issued by the Board or its designated administrative law judge.
15. A registrant shall update the registrant's address and telephone number of record with the Board within 30 days of the date of any change.
16. A registrant shall not sign, stamp, or seal any professional documents not prepared by the registrant or a bona fide employee of the registrant.
17. Except as provided below and in subsections (18) and (19), a registrant shall not accept any professional engagement or assignment outside the registrant's professional registration category unless:
  - a. The registrant is qualified by education, technical knowledge, or experience to perform the work; and
  - b. The work is exempt under A.R.S. § 32-143.
18. A registered professional engineer may accept professional engagements or assignments in branches of engineering other than that branch in which the registrant has demonstrated proficiency by registration but only if the registrant has the education, technical knowledge, or experience to perform such engagements or assignments.
19. Except as otherwise provided by law, a registrant may act as the prime professional for a given project and select collaborating professionals; however, the registrant shall perform only those professional services that the registrant is qualified by registration to perform and shall seal and sign only the work prepared by the registrant or by the registrant's bona fide employee.
20. A registrant who is designated as a responsible registrant shall be responsible for the firm or corporation. The Board may impose disciplinary action on the responsible registrant for any violation of Board statutes or rules that is committed by a non-registrant employee, firm, or corporation.
21. A registrant shall not enter into a contract for expert witness services on a contingency fee basis or any other arrangement in a disputed matter where the registrant's fee is directly related to the outcome of the dispute.

#### Historical Note

Adopted effective August 3, 1983 (Supp. 83-4).

Amended effective December 18, 1991 (Supp. 91-4).

Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 903, effective February 14, 2002 (Supp. 02-1). Amended by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 12 A.A.R. 1609, effective July 1, 2006 (Supp. 06-2). Amended by final rulemaking at 19 A.A.R. 128, effective March 10, 2013 (Supp. 13-1).

#### **R4-30-301.01. Home Inspector Rules of Professional Conduct**

- A. To the extent applicable, a certified home inspector shall conduct a home inspection in accordance with the "Standards of Professional Practice" adopted by the Arizona Chapter of the American Society of Home Inspectors, Inc. on January 1, 2002, the provisions of which are incorporated by reference and on file with the Office of the Secretary of State. This rule does not include any later amendments or editions of the incorporated matter. Copies of these standards are available at the office of the Board of Technical Registration.
- B. A Certified Home Inspector shall not:
  1. Pay or receive, directly or indirectly, in full or in part, a commission or compensation as a referral or finder's fee;
  2. Perform, or offer to perform, for an additional fee, any repairs to a structure that has been inspected by that inspector or the inspector's firm for a period of twenty-four months following the inspection; or



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3. Be accompanied by more than four home inspector candidates while conducting any parallel home inspection.

**Historical Note**

New Section made by emergency rulemaking at 8 A.A.R. 1102, effective February 19, 2002 for 180 days (Supp. 02-1). Emergency rulemaking amended and renewed for an additional 180 days under A.R.S. § 41-1026(D) at 8 A.A.R. 3842, effective August 14, 2002 (Supp. 02-3). Emergency expired; new Section made by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1).

**R4-30-302. Electrical Plans**

- A. A registrant shall prepare and submit drawings and specifications for a new electrical system or an addition or modification to an existing electrical system provided the service and associated electrical feeders exceeds 600 amperes 120/240 volts, single phase or 225 amperes 120/208 volts, three phase and the fault current exceeds 10,000 amperes.
- B. In all cases a registrant shall design:
  1. Electrical installations in hospitals or other buildings with surgical operating rooms regulated by Article 517 of the National Electrical code (1990 edition) incorporated herein by reference and on file with the Office of the Secretary of State.
  2. Electrical installations in locations classified as hazardous in Article 500 of the National Electrical Code (1990 edition) incorporated herein by reference and on file with the Office of the Secretary of State.
  3. Electrical installations in locations classified as hazardous in Article 500 of the National Electrical Code (1990 edition) with the exception of gasoline dispensing or repair garages.
  4. A registrant shall design an alarm or signaling system that is required for life safety or code compliance.

**Historical Note**

Adopted effective December 18, 1991 (Supp. 91-4).  
Heading amended by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1).

**R4-30-303. Securing Seals**

- A. Each registrant required to use a seal shall secure and use an ink seal 1 1/2 inches in diameter and identical in style, size, and appearance to the sample shown in Appendix A. The upper portion of the annular space between the second and third circles shall bear whichever of the following phrases is applicable to the registrant:
  1. "Registered Architect"; "Registered Professional Engineer" together with the branch of engineering in which registered; "Registered Geologist"; "Registered Landscape Architect"; "Registered Land Surveyor"; or "Registered Assayer."
  2. The inscription "Arizona U.S.A." shall appear at the bottom of the annular space between the second and third circles; the inner circle shall contain the name of the registrant, registration number, and the words "date signed."
- B. The registrant may order the seal through any vendor and shall pay the cost of its manufacture. Immediately upon receipt of the seal and before using the seal for any purpose, the registrant shall file with the Board, for its records, on a form provided by the Board, an imprint of the seal with an original signature superimposed over it and an affidavit regarding the use of the seal. The Board, within 10 working days of receipt of the form from the registrant, shall disapprove any seal that does not meet the exact specifications of subsection (A) and require that the registrant obtain and pay for another seal that

meets those specifications before sealing any work. Engineers registered in more than one branch shall secure and use a seal for each branch of engineering in which registration has been granted.

**Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4).  
Amended effective December 18, 1991 (Supp. 91-4).  
Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2).

**R4-30-304. Use of Seals**

- A. A registrant shall place a permanently legible imprint of the registrant's seal and signature on the following:
  1. Each sheet of drawings or maps;
  2. Each of the master sheets when reproduced into a single set of finished drawings or maps;
  3. Either the cover, title, index, or table of contents page, first sheet of each set of project specifications;
  4. Either the cover, index page, or first sheet of each addenda or change order to specifications;
  5. Either the cover, index page, or first sheet of bound details when prepared to supplement project drawings or maps;
  6. Either the cover, title, index, or table of contents page, or first sheet of any report, specification, or other professional document prepared by a registrant or the registrant's bona fide employee;
  7. The signature line of any letter or other professional document prepared by a registrant, or the registrant's bona fide employee; and
  8. Shop drawings that require professional services or work as described in the Act. Examples of shop drawings that do not require a seal include drawings that show only:
    - a. Sizing and dimensioning information for fabrication purposes;
    - b. Construction techniques or sequences;
    - c. Components with previous approvals or designed by the registrant of record; or
    - d. Modifications to existing installations that do not affect the original design parameters and do not require additional computations.
- B. A registrant shall apply a label that describes the name of the project and an original imprint of the registrant's seal and signature on all video cassettes that contain copies of professional documents.
- C. In the event that a copy of a professional document is provided to a client, regulatory body, or any other person for any reason by computer disk, tape, CD, or any other electronic form, and the document does not meet the requirements of subsection (D), the registrant shall mark the copy of the professional document: "Electronic copy of final document; sealed original document is with (identify the registrant's name and registration number)."
- D. A registrant shall sign, date, and seal a professional document:
  1. Before the document is submitted to a client, contractor, any regulatory or review body, or any other person, unless the document is marked "preliminary," "draft," or "not for construction" except when the document is work product intended for use by other members of a design team; and
  2. In all cases, if the document is prepared for the purpose of dispute resolution, litigation, arbitration, or mediation.
- E. For purposes of subsection (A), all original documents shall include:

1. An original seal imprint or a computer-generated seal that matches the seal on file at the Board's office;
  2. An original signature that does not obscure either the registrant's printed name or registration number;
  3. The date the document was sealed; and
  4. A notation beneath the seal either written, typed, or electronically generated that provides the day, month, and year of expiration of current registration, as shown in Appendix B.
- F. Methods of transferring a seal other than an original seal imprint or a computer-generated seal are not acceptable.
- G. An electronic signature, as an option to a permanently legible signature, in accordance with A.R.S. Title 41 and Title 44, is acceptable for all professional documents. The registrant shall provide adequate security regarding the use of the seal and signature.

#### Historical Note

Adopted effective August 3, 1983 (Supp. 83-4).  
 Amended effective December 18, 1991 (Supp. 91-4).  
 Amended effective May 1, 1995 (Supp. 95-2). Amended by final rulemaking at 6 A.A.R. 1018, effective February 25, 2000 (Supp. 00-1). Amended by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 13 A.A.R. 1084, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 282, effective March 8, 2008 (Supp. 08-1).

#### R4-30-305. Drug Laboratory Site Remediation Best Standards and Practices

##### A. Preliminary procedures.

1. The onsite supervisor shall determine the nature and extent of damage and contamination of the residually contaminated portion of the real property.
2. The onsite supervisor shall request a copy of any document from a law enforcement agency, state agency, or other reporting agency regarding the nature and extent of illegal drug activity, evidence of what materials were removed from the real property, the location from which they were removed, and the area posted by the notice of removal.
3. The onsite supervisor shall:
  - a. Evaluate all information obtained regarding the nature and extent of damage and contamination,
  - b. Develop procedures to safely enter the residually contaminated portion of the real property in order to conduct a visual assessment,
  - c. Wear the appropriate personal protective equipment for all conditions assessed,
  - d. Visually inspect the residually contaminated portion of the real property, and
  - e. Be assisted by at least one onsite worker during the initial entry into the residually contaminated portion of the real property.
4. The onsite supervisor shall conduct and document required testing for corrosive, flammable, combustible, and toxic atmospheres during the initial entry in the residually contaminated portion of the real property, such as using a LEL/O<sub>2</sub> meter, pH paper, PID, FID, or equivalent equipment.
5. If the notice of removal posting is no longer present at the time of the initial entry by the drug laboratory site remediation firm, then the entire house, mobile home, recreational vehicle, detached garage or shed, hotel room, motel room or apartment unit shall be considered the residually contaminated portion of the real property.
6. If there was a fire or explosion in the residually contaminated portion of the real property that appears to have compromised the integrity of the structure, the drug laboratory site remediation firm shall obtain a structural assessment of the residually contaminated portion of the real property.
7. The owner may retain a drug laboratory site remediation firm to demolish, and dispose of the residually contaminated portion of the real property rather than perform the remediation described in subsection (B).
8. The drug laboratory site remediation firm shall prepare a written work plan that contains:
  - a. Complete identifying information of the real property, and the drug laboratory site remediation firm including but not limited to:
    - i. Street address, mailing address, owner of record, legal description, county tax or parcel identification number, or vehicle identification number if a mobile home or recreational vehicle;
    - ii. Registration number of the drug laboratory site remediation firm, name and certification number of the onsite supervisor and onsite workers that will be performing remediation services on the residually contaminated portion of the real property;
  - b. Copies of the current certification of the onsite supervisor and onsite workers that will be performing remediation services on the residually contaminated portion of the real property;
  - c. Photographs or drawings, and a written description of the residually contaminated portion of the real property that depicts the location and type of any residual contamination;
  - d. A description of the personal protective equipment to be used at the residually contaminated portion of the real property;
  - e. The health and safety procedures that will be followed in performing the remediation of the residually contaminated portion of the real property;
  - f. A list of emergency contacts and telephone numbers;
  - g. The route and location of the nearest hospital with emergency service facilities;
  - h. A detailed summary of the work to be performed by the drug laboratory site remediation firm including:
    - i. Any pre-remediation sampling and testing of non-porous or porous materials;
    - ii. Any demolition work;
    - iii. Any and all materials or articles to be removed or cleaned;
    - iv. All procedures to be employed to remove the residual contamination;
    - v. All procedures to be employed to evaluate plumbing, septic, sewer, and soil;
    - vi. All procedures for decontamination or disposal of contaminated materials or demolition debris;
    - vii. All containment and negative pressure enclosure plans; and
    - viii. Personnel decontamination procedures to be used;
  - i. The shoring plan, if an assessment of the structural integrity was conducted and it was determined that

shoring was necessary for the safe occupation of the structure during remediation; and

- j. A complete list of the proposed post-decontamination testing of the residually contaminated portion of the real property and the name of each individual conducting the sampling, such as an independent Certified Industrial Hygienist, Certified Safety Professional, Arizona-registered geologist, or Arizona-registered engineer supervising the sampling, and each laboratory performing the analytical testing.

9. The written work plan shall be:

- a. Approved in writing by the owner of the real property or the owner's agent;
- b. Submitted to the State Board of Technical Registration; and
- c. Retained by the drug laboratory site remediation firm for a minimum of three years.

**B. Remediation procedures for the residually contaminated portion of the real property.**

1. All clandestine drug laboratory site remediation firms, onsite supervisors, and onsite workers shall comply with all applicable federal, state, municipal, and local laws, rules, ordinances, and regulations during the remediation or demolition of the residually contaminated portion of the real property.
2. An onsite supervisor shall be present on the residually contaminated portion of the real property during the performance of remedial or demolition services including any pre-remediation and post-remediation sampling and testing.
3. The ventilation system shall be turned off at the start of the remediation work and remain off until completion of the remediation work.
4. The remediation or demolition work shall be conducted in a manner so that no other areas or items are contaminated as a result of the work. An onsite worker shall not store new or cleaned items in any areas requiring remediation.
5. If the dwelling on the real property is connected to a septic system, then wash water from the remediation work shall not be disposed of in the septic system.
6. If the dwelling has an attic or crawl space, the onsite supervisor shall assess the attic or crawl space. If the attic or crawl space was not used for the manufacturing of drugs, the storage of drugs or chemicals, or the ventilation of manufacturing areas, and these areas will not be occupied, then the attic or crawl space does not require remediation.
7. The residually contaminated portion of the real property shall be assessed for asbestos-containing materials prior to demolition. Any Freon-containing appliances, propane tanks, tires, or other hazardous materials shall be removed from the residually contaminated portion of the real property prior to any demolition activities. The preliminary procedures described in subsection (A) shall be followed prior to demolition activities to verify the removal of all chemicals from the residually contaminated portion of the real property and to assist with characterization of the demolition wastes. The procedures for evaluating plumbing, septic, sewer, and soil described in subsection (B)(14) shall be followed prior to demolition activities. Mobile homes, travel trailers, or other recreational vehicles may be transported to the landfill prior to demolition. The demolition work shall be conducted in a manner to prevent visible dust emissions from the work area that may impact persons on adjacent property. The

demolition debris shall be properly characterized prior to disposal as required in subsection (B)(15). After demolition, any remaining building components shall be remediated as described in subsection (B).

8. Onsite workers or onsite supervisors shall conduct the removal of the contamination from the residually contaminated portion of the real property, except for porous materials from areas not highly suggestive of contamination that may be cleaned by a dry cleaning or laundry service.
9. If pre-remediation sampling and testing are performed, non-porous materials and areas shall be sampled and tested using the personnel and procedures described in subsection (C) prior to any remediation services. If the non-porous materials or areas meet the post-remediation clearance levels described in subsections (C)(2) and (4), then no removal or cleaning of these non-porous materials or areas is required. If pre-remediation sampling and testing are performed, porous materials and areas shall be sampled and tested using the personnel and procedures described in subsection (C) prior to any remediation services. If the porous materials or areas meet the post-remediation clearance levels described in subsections (C)(2) and (4), then no removal or cleaning of these porous materials or areas is required. If pre-remediation sampling and testing are performed to evaluate whether remediation is required, the pre-remediation sampling and testing shall include an evaluation of plumbing, septic, sewer, and soil described in subsection (B)(14).
10. Procedures for areas highly suggestive of contamination:
  - a. All porous materials, such as carpets, draperies, bedding, fabric covered furniture, drop ceilings, clothing, and related items that were present in the area highly suggestive of contamination at the time of the initial notice of removal (A.R.S. § 12-1000) shall be removed and properly disposed of. All items to be removed and disposed of shall be destroyed to prevent future reuse of the items.
  - b. All porous materials such as carpets, draperies, bedding, fabric covered furniture, clothing, and related items, that were moved into the area highly suggestive of contamination after the time of the initial notice of removal (A.R.S. § 12-1000) shall be removed and properly disposed of, except porous drop ceilings, which shall be HEPA vacuumed and left in place. At the owner's discretion, all or some porous materials with no evidence of staining may be cleaned by HEPA vacuuming and one of the following methods:
    - i. Steam cleaning: Hot water and detergent shall be injected into the porous materials under pressure to agitate and loosen any contamination. The water and detergent solution shall then be extracted from the porous material by a wet vacuum.
    - ii. Chemical dry cleaning: Porous materials that cannot be washed with detergent and water shall be dry cleaned using a liquid solvent dry cleaning solution in a dry cleaning machine for at least 15 minutes.
    - iii. Detergent and water solution: Porous materials shall be washed with detergent and water for at least 15 minutes. The porous materials shall be rinsed with water.
    - iv. If any porous materials are removed from the real property for cleaning, the materials shall be

- HEPA vacuumed, and the cleaning facility shall be notified in writing, by the drug laboratory site remediation firm, that the materials being cleaned are from a clandestine drug laboratory.
- c. All stained materials from the laboratory operations including wall board (sheet rock), wood furniture, wood flooring, and tile flooring shall be removed and properly disposed of, unless the owner requests cleaning and testing to meet the post remediation clearance levels contained in subsections (C)(2) and (4). If cleaned, the materials shall be washed with a detergent and water solution and then thoroughly rinsed. This procedure shall be repeated at least two additional times using new detergent solution and rinse water.
  - d. All non-porous surfaces, such as bathtubs, toilets, mirrors, windows, floors, walls, ceilings, doors, appliances, counter-tops, sinks, and non-fabric furniture may be cleaned to the point of stain removal and left in place or removed and properly disposed of. If cleaned, these surfaces shall be washed with a detergent and water solution and then thoroughly rinsed. This procedure shall be repeated at least two additional times using new detergent solution and rinse water.
  - e. All exposed concrete surfaces shall be thoroughly washed with a detergent and water solution and then thoroughly rinsed, or may be removed and properly disposed of. This cleaning procedure shall be repeated at least two additional times using new detergent solution and rinse water; and
  - f. All appliances shall be removed and properly disposed of, unless the owner requests cleaning and testing to meet the post-remediation clearance levels contained in subsections (C)(2) and (4). If cleaned, the appliances shall be washed with a detergent and water solution and then thoroughly rinsed. This cleaning procedure shall be repeated at least two additional times using new detergent solution and rinse water.
11. Procedures for areas not highly suggestive of contamination.
    - a. All porous materials, such as carpets, draperies, bedding, fabric covered furniture, clothing, and related items shall be removed and properly disposed of, except porous drop ceilings, which shall be HEPA vacuumed and left in place. At the owner's discretion, all or some porous materials with no evidence of staining may be cleaned by HEPA vacuuming and one of the following methods:
      - i. Steam cleaning: Hot water and detergent shall be injected into the porous materials under pressure to agitate and loosen any contamination. The water and detergent solution shall then be extracted from the porous material by a wet vacuum.
      - ii. Chemical dry cleaning: Porous materials that cannot be washed with detergent and water shall be dry cleaned using a liquid solvent dry cleaning solution in a dry cleaning machine for at least 15 minutes.
      - iii. Detergent and water solution: Porous materials shall be washed with detergent and water for at least 15 minutes. The porous materials shall be rinsed with water.
  - iv. If any porous materials are removed from the real property for cleaning, the materials shall be HEPA vacuumed, and the cleaning facility shall be notified in writing, by the drug laboratory site remediation firm, that the materials being cleaned are from a clandestine drug laboratory.
  - b. All non-porous surfaces, such as bathtubs, toilets, floors, countertops, sinks, walls, ceilings, mirrors, windows, doors, appliances, and non-fabric furniture, shall be thoroughly HEPA vacuumed and washed with a detergent and water solution and then thoroughly rinsed. This cleaning procedure shall be repeated at least two additional times using a new detergent solution and rinse water.
  - c. Doors or other openings to areas with no visible contamination shall be cordoned off from all other areas with at least 4-mil plastic sheeting after being cleaned, to avoid recontamination during further remediation of the residually contaminated portion of the real property.
  - d. Spray-on acoustical ceilings shall be left undisturbed, and shall be sampled and tested for asbestos, and for residual contamination to determine whether ceilings meet the post-remediation clearance levels contained in subsections (C)(2) and (4). If the post-remediation clearance levels are exceeded, these materials shall be removed and disposed of according to applicable laws relating to asbestos removal.
  - e. All exposed concrete surfaces shall be thoroughly washed with a detergent and water solution and then thoroughly rinsed. This cleaning procedure shall be repeated at least two additional times using new detergent solution and rinse water.
12. Structural Integrity and Security Procedures. If, as a result of the remediation, the structural integrity or security of the real property is compromised, the drug laboratory site remediation firm shall contact a qualified, registered professional to conduct a structural assessment and recommend corrective action for the real property.
  13. Ventilation Cleaning Procedures.
    - a. The ventilation system shall be turned off at the start of the remediation work and remain off until completion of the remediation work.
    - b. Air registers shall be removed and washed with a detergent and water solution and then thoroughly rinsed. This cleaning procedure shall be repeated at least two additional times using new detergent solution and rinse water.
    - c. Temporary filter media shall be attached to air register openings.
    - d. A fan-powered HEPA filter collection machine shall be connected to the ductwork to develop negative air pressure in the ductwork.
    - e. Air lances, mechanical agitators, or rotary brushes shall be inserted into the ducts through the air register openings to loosen all dirt, dust and other loose materials.
    - f. The air handler unit, including the return air housing, coils, each fan, each system, and each drip pan, shall be washed with a detergent and water solution and then thoroughly rinsed. This cleaning procedure shall be repeated at least two additional times using new detergent solution and rinse water.
    - g. All porous linings or filters in the ventilation system shall be removed and properly disposed of.

- h. The ventilation system shall be sealed off at all openings with at least 4-mil plastic sheeting to prevent recontamination until the residually contaminated portion of the real property meets the post-remediation clearance levels contained in subsections (C)(2) and (4).
- 14. Procedures for Plumbing, Septic, Sewer, and Soil.
  - a. All plumbing inlets to the septic or sewer system, including but not limited to sinks, floor drains, bathtubs, showers, and toilets, shall be visually assessed for any staining or other visible residual contamination. All plumbing traps shall be assessed for VOC concentrations with a PID or FID, and for mercury vapors, using a mercury vapor analyzer. If VOC concentrations or mercury vapor concentrations exceed the post-remediation clearance levels contained in subsections (C)(2) and (4), the accessible plumbing and traps where the excess levels are found shall be removed and properly disposed of, or shall be cleaned and tested to meet the post-remediation clearance levels contained in R4-30-305(C)(2) and (4).
  - b. The onsite supervisor shall determine whether the dwelling is connected to a local sewer system or to an onsite septic system. If the dwelling is connected to an onsite septic system, water from the remediation work shall not be disposed of in the septic system, and a sample of the septic tank liquids shall be obtained and tested for VOC concentrations.
    - i. If VOCs are not found in the septic tank sample or are found at concentrations less than AWQS or less than 700 milligrams per liter (mg/l) for acetone, no additional work is required in the septic system area, unless requested by the owner of the real property.
    - ii. If VOCs are found in the septic tank at concentrations exceeding the AWQS or exceeding 700 mg/l for acetone, the following shall apply:
      - (1) The discharge area, such as the leach field, seepage pit, or evaporation mounds, shall be investigated under the direct supervision of an Arizona-registered geologist or an Arizona-registered engineer;
      - (2) The septic system discharge area shall be investigated for VOCs using EPA Method 8260B or an equivalent test method and, unless there is evidence that mercury or lead was not used in the manufacturing of methamphetamine, LSD or ecstasy at the clandestine drug laboratory, the septic system discharge area shall also be investigated for mercury and lead;
      - (3) The vertical extent of any VOCs, mercury, and lead detected in the soil samples shall be delineated to concentrations at or below laboratory detection limits or to background concentrations, and the horizontal extent of any VOCs, mercury, and lead shall be delineated to concentrations at or below each compound's SRL;
      - (4) If any VOCs, mercury, or lead used by the clandestine drug laboratory migrated down to groundwater level, the extent of groundwater contamination shall be investigated under the direct supervision of an Arizona-registered geologist or an Arizona-registered engineer and the vertical and horizontal extent of the groundwater contamination shall be delineated to concentrations at or below the AWQS or below 700 mg/l for acetone; and
- (5) After complete characterization of a release, the impacted soils shall be remediated to concentrations below the SRL or background concentrations, and any impacted groundwater shall be remediated to concentrations at or below the AWQS or below 700 mg/l for acetone.
- c. The onsite supervisor shall observe the real property for evidence of burn areas, burn or trash pits, debris piles or stained areas. The on-site supervisor shall test any burn areas, burn or trash pits, debris piles or stained areas with applicable testing equipment, such as a LEL/O2 meter, pH paper, PID, FID, mercury vapor analyzer or equivalent equipment.
  - i. If the burn areas, burn or trash pits, debris piles, or stained areas are not part of the residually contaminated portion of the real property, the drug laboratory site remediation firm shall recommend to the owner of the real property that these areas be investigated. If the owner advises the drug laboratory site remediation firm not to investigate these areas, the drug laboratory site remediation firm shall take appropriate action pursuant to R4-30-301(11).
  - ii. If the burn areas, burn or trash pits, debris piles or stained areas are part of the residually contaminated portion of the real property, these areas shall be investigated and remediated by the drug laboratory site remediation firm.
    - (1) Any wastes remaining from the operation of the clandestine drug laboratory or other wastes impacted by compounds used by the clandestine drug laboratory shall be characterized, removed, and properly disposed of.
    - (2) Any potentially impacted soil or groundwater shall be investigated under the direct supervision of an Arizona-registered geologist or an Arizona-registered engineer.
    - (3) The burn areas, burn or trash pits, debris piles, or stained areas shall be investigated for the VOCs used by the drug laboratory. Unless there is evidence that mercury or lead was not used in the manufacturing of methamphetamine, LSD, or ecstasy at the clandestine drug laboratory, the burn areas, burn or trash pits, debris piles, or stained areas shall be investigated for lead and mercury.
    - (4) The vertical extent of any VOCs, lead, or mercury detected in the soil samples shall be delineated to concentrations below laboratory detection limits or to background concentrations. The horizontal extent of these compounds shall be delineated to concentrations below each compound's SRL.
    - (5) If any of the compounds used by the clandestine drug laboratory migrated down to groundwater level, the extent of groundwater contamination shall be investigated

under the direct supervision of an Arizona-registered geologist or an Arizona-registered engineer. The vertical and horizontal extent of the groundwater contamination shall be delineated to concentrations below the AWQS and below 700 mg/l for acetone.

- (6) After complete characterization of a release, the impacted soils shall be remediated to concentrations below the SRL or background concentrations, and any impacted groundwater shall be remediated to concentrations below the AWQS and below 700 mg/l for acetone.

15. Waste Characterization and Disposal Procedures.

- a. All items removed from the clandestine drug laboratory remediation site, and waste generated during the remediation or demolition work, shall be characterized and properly disposed of. All items to be removed and disposed of shall be destroyed to prevent future reuse of the items.
- b. All suspect asbestos-containing building materials shall be properly sampled and tested for asbestos pursuant to EPA rule prior to disturbance or removal.
- c. All waste shall be characterized by sampling and testing, or the waste shall be considered hazardous waste and disposed of pursuant to applicable law, except the waste shall not be deemed to be household hazardous waste.
- d. The drug laboratory site remediation firm shall comply with all federal, state, municipal, county laws, codes, ordinances and regulations pertaining to waste transportation and disposal.

C. Pre-remediation and Post-remediation Testing Procedures.

1. Remediation sampling shall be conducted under the direct supervision of an independent Certified Industrial Hygienist, Certified Safety Professional, Arizona-registered geologist or Arizona-registered engineer. The individual taking the samples and the Certified Industrial Hygienist, Certified Safety Professional, Arizona-registered geologist, or Arizona-registered engineer directing the sampling shall have experience with remediation of hazardous substances, confirmation sampling of remedial projects, and evaluation of health risks and exposures to chemicals. All sampling used to verify that no additional removal or cleaning is required shall be conducted under the direct supervision of a Certified Industrial Hygienist, Certified Safety Professional, Arizona-registered geologist, or Arizona-registered engineer. The drug laboratory site remediation firm and its employees shall not conduct the sampling and testing. All sample locations shall be photographed for documentation purposes, and these photographs shall be included in the final report.
2. Sampling and testing shall be conducted for all of the compounds listed below. All areas and materials shall meet the following remediation clearance levels:

Compound	Remediation Standard
Red Phosphorus	Removal of stained material or cleaned pursuant to these standards
Iodine Crystals	Removal of stained material or cleaned pursuant to these standards
Methamphetamine	1.5 µg Methamphetamine/100 cm <sup>2</sup>
VOCs in Air	VOC air monitoring < 1 ppm

Corrosives	Surface pH of 6 to 8
LSD	0.1 µg LSD/100 cm <sup>2</sup>
Ecstasy	0.1 µg Ecstasy/100 cm <sup>2</sup>

3. If methamphetamine, ecstasy, or LSD is detected in the pre-remediation sampling and testing of porous materials and surfaces, then the porous materials shall be disposed of or cleaned as described in subsection (B).
4. The drug laboratory site remediation firm shall conduct sampling and testing for all of the metals listed below in all cases except where there is evidence that these metals were not used in the manufacturing of methamphetamine, LSD, or ecstasy at the drug laboratory:

Compound	Remediation Standard
Lead	4.3 µg Lead/100 cm <sup>2</sup>
Mercury	3.0 µg Mercury/m <sup>3</sup> air

5. All sampling and testing shall be conducted in accordance with the following procedures:
  - a. All sample locations shall be photographed, and the photographs shall be included in the final report.
  - b. All sample locations shall also be shown on a floor plan of the residually contaminated portion of the real property, and the floor plan shall be included in the final report.
  - c. All samples shall be obtained from areas representative of the materials or surfaces being tested. All samples shall be obtained, preserved, and handled in accordance with industry standards for the types of samples and analytical testing to be conducted and maintained under chain-of-custody protocol.
  - d. The individual conducting the sampling shall wear a new pair of gloves to obtain each sample.
  - e. All reusable sampling equipment shall be decontaminated prior to sampling.
  - f. All testing equipment shall be equipped and calibrated for the types of compounds to be analyzed.
  - g. Methamphetamine, ecstasy, or LSD sampling and testing of non-porous materials and surfaces:
    - i. Whatman 40 ashless filter paper or an equivalent filter paper shall be used for all wipe sampling. The filter paper shall be wetted with analytical grade methanol or deionized water for the wipe sampling. The filter paper shall be blotted or wiped at least five times in two perpendicular directions within each sampling area. The same filter paper may be used for up to three wipe areas or a new filter paper may be used for each area, and the three filter papers combined for analytical testing.
    - ii. Three 10 cm x 10 cm areas (100 cm<sup>2</sup>) shall be wipe sampled from each room of the residually contaminated portion of the real property. The three samples shall be obtained from the non-porous floor, one wall, and the ceiling in each room.
    - iii. Three 10 cm x 10 cm areas (100 cm<sup>2</sup>) shall be wipe sampled from different areas of the ventilation system.
    - iv. If there is a kitchen in the residually contaminated portion of the real property, three 10 cm x 10 cm areas (100 cm<sup>2</sup>) shall be wipe sampled from a combination of the counter top, sink, or stove top, and from the floor in front of the stove top.

- v. If there is a bathroom in the residually contaminated portion of the real property, three 10 cm x 10 cm areas (100cm<sup>2</sup>) shall be wipe sampled from a combination of the counter top, sink, toilet, and any shower or bathtub.
- vi. If there are any cleaned appliances in the residually contaminated portion of the real property, one 10 cm x 10 cm area (100 cm<sup>2</sup>) shall be wipe sampled from the exposed portion of each appliance. If multiple appliances are present, each wipe sample may be a composite of up to three 100 cm<sup>2</sup> areas on three separate appliances.
- vii. After sampling, the wipe sample shall be placed in a new clean sample jar and sealed with a teflon-lined lid. The sample jar shall be labeled with at least the site or project identification number, date, time, and actual sample location. The sample jar shall be placed in a cooler with ice until delivered to an analytical laboratory licensed in any state in the United States to perform GC/MS testing. The sample shall be analyzed for methamphetamine, LSD, or ecstasy, depending upon the type of clandestine drug laboratory, using a GC/MS instrument, or an equivalent.
- h. Methamphetamine, ecstasy, and LSD sampling and testing of porous materials and surfaces:
  - i. Microvacuum sampling shall be conducted using a 37 mm microvac cassette equipped with a glass fiber filter and backup pad, a short piece of tygon tubing (1 to 2 inches) with one end cut at a 45 degree angle to be used as the "vacuum hose," and flexible tygon tubing to connect the pump to the filter. The person conducting the sampling shall connect the cassette with tygon tubing to a high volume sampling pump and calibrate the sampling pump, with a primary calibration standard, to a flow rate from 15 to 20 liters per minute.
  - ii. Select sampling areas of 10 cm x 10 cm (100 cm<sup>2</sup>). In general, visibly soiled, dusty, or heavily used areas are good choices for sampling. Three 10 cm x 10 cm areas (100 cm<sup>2</sup>) of carpet shall be microvacuum sampled from each room of the residually contaminated portion of the real property.
  - iii. If there are porous furniture, lamp shades, or other fixtures in the residually contaminated portion of the real property, three 10 cm x 10 cm areas (100 cm<sup>2</sup>) of these materials shall be microvacuum sampled from each room where present. If multiple porous furnishings are present, the three sampled areas shall be taken from three separate furnishings.
  - iv. If there are porous wall coverings, curtains, shades, or paintings in the residually contaminated portion of the real property, three 10 cm x 10 cm areas (100 cm<sup>2</sup>) of these materials shall be microvacuum sampled from each room where present. If multiple porous wall coverings are present, the three sampled areas shall be taken from three separate wall coverings.
  - v. If there are clothes, linens, or other porous materials in the residually contaminated portion of the real property, three 10 cm x 10 cm areas (100 cm<sup>2</sup>) of these materials shall be microvacuum sampled from each room where present. If multiple other porous materials are present, the three sampled areas shall be taken from three separate items.
- vi. Perform the first vacuuming, in one direction, from side to side, from top to bottom. Use a slow sweeping motion. During the sampling of softer materials, press the angled tubing nozzle firmly onto the sampling surface to agitate particles. Perform a second vacuuming, in one direction, from top to bottom from side to side across the entire area. Use a slow sweeping motion. During the sampling of softer materials, press the angled tubing nozzle firmly onto the sampling surface to agitate particles. The same filter may be used for up to three vacuum areas, or a new filter may be used for each area, and the three filters combined for analytical testing.
- vii. After sampling, immediately turn off the pump and remove the filter cassette from the inlet and outlet tubing sections, replace the cassette plugs and place the sample into a labeled, resealable plastic bag.
- viii. If additional samples are being collected, remove and discard the short vacuum nozzle tubing and place a clean vacuum nozzle on a new filter cassette to collect additional samples.
- ix. After all sampling has been completed, the pump exterior should be decontaminated (wiped with a 10% bleach solution or an equivalent solution.) The collection tubing should also be discarded.
- x. All sample cassette bags shall be labeled with at least the site or project identification number, date, time, and actual sample location. The samples shall be submitted to an analytical laboratory licensed in any state in the United States to perform GC/MS testing. The samples shall be analyzed for methamphetamine, LSD, and ecstasy, depending on the type of clandestine drug laboratory using a GC/MS instrument or an equivalent.
- i. VOC sampling and testing procedures:
  - i. A PID or FID calibrated to manufacturer's specifications capable of detecting VOCs shall be used for testing. The background concentration of VOCs shall be obtained by testing three exterior areas outside the limits of the residually contaminated portion of the real property and in areas with no known or suspected sources of VOCs. All VOC readings shall be recorded for each sample location.
  - ii. At least three locations in each room of the residually contaminated portion of the real property shall be tested for VOC readings. The testing equipment probe shall be held in the sample location for at least 30 seconds to obtain a reading.
  - iii. All accessible plumbing traps shall be tested for VOCs by holding the testing equipment probe in the plumbing pipe above the trap for at least 60 seconds.
- j. pH testing procedures:

- i. Surface pH measurements shall be made using deionized water and pH test strips with a visual indication for a pH between six and eight. The pH reading shall be recorded for each sample location.
  - ii. For horizontal surfaces, deionized water shall be applied to the surface and allowed to stand for at least three minutes. The pH test strip shall then be placed in the water for a minimum of 30 seconds and read.
  - iii. For vertical surfaces, a Whatman 40 ashless filter paper or equivalent filter paper shall be wetted with deionized water and wiped over a 10 cm x 10 cm area at least five times in two perpendicular directions. The filter paper shall then be placed into a clean sample container and covered with enough deionized water to cover the filter paper. The filter and water shall stand for at least three minutes prior to testing. The pH test strip shall then be placed in the water for a minimum of 30 seconds and read.
  - iv. pH testing shall be conducted on at least three locations in each room within the areas with visible contamination and within areas known to store or handle chemicals used for the clandestine drug laboratory in the residually contaminated portion of the real property.
  - k. Lead Sampling and Testing Procedures:
    - i. Unless there is evidence that lead was not used in the manufacturing of methamphetamine, LSD, or ecstasy at the clandestine drug laboratory, lead sampling shall be conducted as follows:
      - (1) Whatman 40 ashless filter paper or an equivalent filter paper shall be used for wipe sampling. The filter paper shall be wetted with analytical grade 3% nano-grade nitric acid for the wipe sampling. The filter paper shall be blotted or wiped at least five times in two perpendicular directions within each sampling area. The same filter paper may be used for up to three wipe areas or a new filter paper may be used for each area and the three filter papers combined for analytical testing.
      - (2) Three 10 cm x 10 cm areas (100 cm<sup>2</sup>) shall be sampled in each room within the areas with visible contamination or within areas known to store or handle chemicals used for the clandestine drug laboratory in the residually contaminated portion of the real property, and
      - (3) After sampling, the wipe sample shall be placed in a new clean sample jar and sealed with a teflon-lined lid. The sample jar shall be labeled with at least the site or project identification number, date, time, and actual sample location. The sample jar shall be placed in a cooler with ice until delivered to an Arizona-licensed analytical laboratory.
    - ii. The sample shall be analyzed for lead using EPA Method 6010B or an equivalent.
  - l. Mercury Sampling and Testing Procedures:
    - i. A mercury vapor analyzer calibrated in accordance with manufacturer's specifications shall be used for evaluating the remediated areas for the presence of mercury. All mercury readings shall be recorded for each sample location.
    - ii. At least three locations in each room within the areas with visible contamination or within areas known to store or handle chemicals used for the clandestine drug laboratory in the residually contaminated portion of the real property shall be tested for mercury vapor readings. The testing equipment probe shall be held in the sample location for at least 30 seconds to obtain a reading.
    - iii. All accessible plumbing traps shall be tested for mercury by holding the testing equipment probe in the plumbing pipe above the trap for at least 60 seconds.
  - m. Septic Tank Sampling and Testing Procedures:
    - i. The liquid in the septic tank shall be sampled with a new clean bailer or similar equipment.
    - ii. The liquid shall be decanted or poured with minimal turbulence into three new VOA vials prepared by the laboratory.
    - iii. The VOA vials shall be filled so that there are no air bubbles in the sealed container. If air bubbles are present, the vial must be emptied and refilled.
      - (1) The sample vials shall be labeled with at least the date, time, and sample location.
      - (2) The sample vials shall be placed in a cooler with ice until delivered to an Arizona-licensed analytical laboratory.
      - (3) The sample shall be analyzed for acetone and methanol using EPA Method 8015B or an equivalent method.
- D. Final report.**
- 1. A final report shall be:
    - a. Prepared by the drug laboratory site remediation firm,
    - b. Submitted to the owner of the remediated property and the Board within 30 days after completion of the remediation services, and
    - c. Retained by the firm for a minimum of three years.
  - 2. The final report shall include the following information and documentation:
    - a. Complete identifying information of the real property, and the drug laboratory site remediation firm, including but not limited to street address, mailing address, owner of record, legal description, county tax or parcel identification number, or vehicle identification number if a mobile home or recreational vehicle, registration number of the drug laboratory site remediation firm, name and certification number of the onsite supervisor, and name and certification numbers of the onsite workers who performed the remediation services on the residually contaminated portion of the real property;
    - b. A summary of any pre-remediation sampling and testing and all post-remediation sampling and testing including the name and certification, registration, or license number of the Certified Industrial Hygienist, Certified Safety Professional, Arizona-registered geologist, or Arizona-registered engineer supervising the sampling and testing;
    - c. A summary of the remediation and demolition services completed on the residually contaminated portion of the real property, with any deviations from



- the approved work plan, including a list of the rooms, surfaces, materials, and articles cleaned, a list of the materials and articles removed and disposed of, and the procedures used to evaluate the plumbing, septic, sewer, and soil and to document the extent of the remediation or demolition services;
- d. Photographs documenting the remediation services and showing each of the sample locations, and a drawing or sketch of the residually contaminated areas that depict the sample locations;
  - e. A copy of the sampling and testing results for VOCs and mercury, a copy of any asbestos sampling and testing results, a copy of the laboratory test results on all samples, and a copy of the chain-of-custody protocol documents for all samples from the residually contaminated portion of the real property;
  - f. A summary of the waste characterization work, and copies of any waste sampling and testing results and transportation and disposal documents, including but not limited to, bills of lading, weight tickets, and manifests for all materials removed from the real property;
  - g. A summary of the onsite supervisor's observation and testing of the real property for evidence of burn areas, burn or trash pits, debris piles, or stained areas;
  - h. A copy of any reports provided to the drug laboratory site remediation firm including:
    - i. A copy of any report prepared by the Certified Industrial Hygienist, Certified Safety Professional, Arizona-registered geologist, or Arizona-registered engineer, and
    - ii. A signed statement confirming that the sampling was conducted under direct supervision;
  - i. A statement that the residually contaminated portion of the real property has been remediated in accordance with R4-30-305; and
  - j. The total cost of any pre-remediation sampling and testing, as described in subsection (B)(9), the total

cost of all post-remediation sampling and testing, as described in subsection (C) and the total cost of the remediation decontamination services as described in subsections (B)(9), (10), (12), (13), and (14);

3. Within 24 hours after the final report described in subsection (D) has been prepared, the drug laboratory site remediation firm shall deliver, or send by certified mail, a copy of the complete and final report to the State Board of Technical Registration. The drug laboratory site remediation firm shall also deliver or send a separate document to all other individuals and entities stating that the residually contaminated portion of the real property has been remediated pursuant to A.R.S. § 12-1000 (E).

#### Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 1412, effective April 15, 2003 (Supp. 03-2). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 19 A.A.R. 1911, effective October 7, 2013 (Supp. 13-3).

#### R4-30-306. Securing and Using Identifying Markers

- A. Registered land surveyors shall obtain at their expense identifying markers such as tags, caps, or embossed nails which shall show the registrant's Arizona Registration Number as issued by the Board, and each registration number shall be prefixed by the letters L.S.
- B. Registered land surveyors shall securely attach an identifying marker to every permanent survey point set when making land boundary surveys.

#### Historical Note

Adopted effective August 3, 1983 (Supp. 83-4).  
Amended effective December 18, 1991 (Supp. 91-4).

#### R4-30-307. Repealed

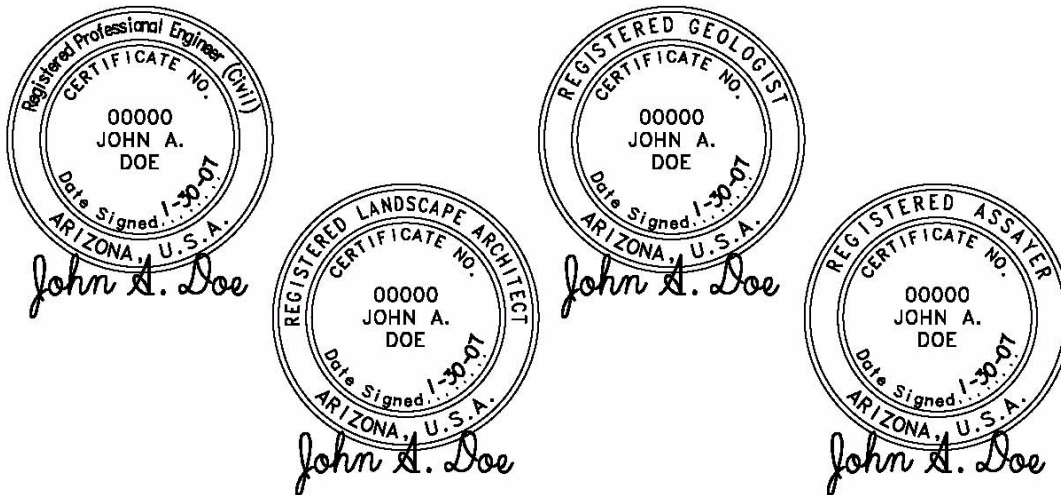
#### Historical Note

Adopted effective August 3, 1983 (Supp. 83-4). Repealed effective December 18, 1991 (Supp. 91-4).

**Appendix A. Sample Seals**

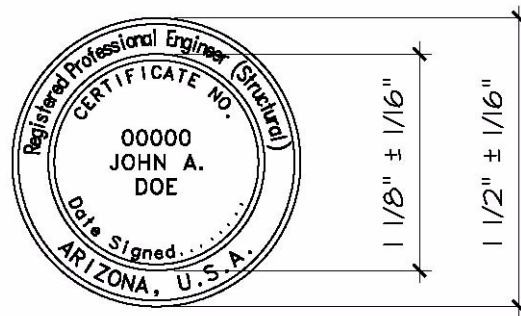
Samples:

Sign your name across lower portion of the seal. Do not cover your name or registration number with your signature.



\*\* ENGINEERS MUST LIST BRANCH – Agriculture, Architectural, Chemical, Civil, Control Systems, Electrical, Environmental, Fire Protection, Geological, Industrial, Mechanical, Mining, Metallurgical, Nuclear, Petroleum, Sanitary, or Structural.

Outer circle should be  $1\frac{1}{2}'' \pm \frac{1}{16}''$   
 Inner circle should be  $1\frac{1}{8}'' \pm \frac{1}{16}''$

**Historical Note**

Adopted effective August 3, 1983 (Supp. 83-4). Amended effective December 18, 1991 (Supp. 91-4). Appendix repealed by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1). Amended by final rulemaking at 10 A.A.R. 2798, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 14 A.A.R. 282, effective March 8, 2008 (Supp. 08-1).

## Appendix B. Sample Expiration Date Notification

### Samples:

Type or handwrite the day, month, and year of registration expiration directly below the seal, as shown:



### Historical Note

Adopted effective August 3, 1983 (Supp. 83-4).  
Amended effective December 18, 1991 (Supp. 91-4).  
Appendix repealed by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1). New Appendix made by final rulemaking at 14 A.A.R. 282, effective March 8, 2008 (Supp. 08-1).

## Appendix C. Repealed

### Historical Note

Adopted effective August 3, 1983 (Supp. 83-4). Appendix repealed by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1).

## Appendix D. Repealed

### Historical Note

Adopted effective August 3, 1983 (Supp. 83-4).  
Amended effective December 18, 1991 (Supp. 91-4).  
Appendix repealed by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1).

## Appendix E. Repealed

### Historical Note

Adopted effective August 3, 1983 (Supp. 83-4).  
Amended effective December 18, 1991 (Supp. 91-4).  
Appendix repealed by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1).

## Appendix F. Repealed

### Historical Note

Adopted effective December 18, 1991 (Supp. 91-4).  
Appendix repealed by final rulemaking at 9 A.A.R. 791, effective February 12, 2003 (Supp. 03-1).

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**Supplement to the**

**Arizona Administrative Code**

The official compilation of Arizona Rules

**Arizona Secretary of State's Office**

Public Services Division

1700 W. Washington Street, Fl 7.

Phoenix, AZ 85007

***Replacement Check List***

For rules filed within the

Third

July 1, 2014 - September 30, 2014

**Code Release Number: Supp. 14-3**

Within the stated calendar quarter, this Title contains all rules made, amended, repealed, renumbered, and recodified; or rules that have expired or were terminated due to an agency being eliminated under sunset law. These rules were either certified by the Governor's Regulatory Review Council or the Attorney General's Office; or exempt from the rulemaking process, and filed with the Office of the Secretary of State. Refer to the historical notes for more information. Please note that some rules you are about to remove may still be in effect after the publication date of this Supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

**Follow the instructions to replace the updated Chapters.**

**TITLE 06. Economic Security**

**Chapter 02. Department of Environmental Quality - Employment and Training**

Sections, Parts, Exhibits, Tables or Appendices modified

R6-2-204

REMOVE Supp. 10-1

Pages: 1 - 6

REPLACE with Supp. 14-3

Pages: 1 - 6

**Chapter 07. Department of Economic Security - Child Support Enforcement**

Sections, Parts, Exhibits, Tables or Appendices modified

REMOVE Supp. 10-2

Pages: 1 - 11

REPLACE with Supp. 14-3

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**TITLE 6. ECONOMIC SECURITY**

**CHAPTER 2. DEPARTMENT OF ECONOMIC SECURITY  
EMPLOYMENT AND TRAINING**

(Authority: A.R.S. § 41-1954 et seq.)

**ARTICLE 1. GENERAL PROVISIONS**

*Article 1, consisting of Sections R6-2-101 through R6-2-103, adopted effective December 20, 1994 (Supp. 94-4).*

*Article 1, consisting of Sections R6-2-101 through R6-2-112, repealed effective December 20, 1994 (Supp. 94-4).*

**Section**

R6-2-101.	Definitions
R6-2-102.	Complaints
R6-2-103.	Hearings and Appeals
R6-2-104.	Policy of Nondiscrimination; Schedule of Services
R6-2-105.	Repealed
R6-2-106.	Repealed
R6-2-107.	Repealed
R6-2-108.	Repealed
R6-2-109.	Repealed
R6-2-110.	Repealed
R6-2-111.	Repealed
R6-2-112.	Repealed

**ARTICLE 2. EMPLOYMENT SERVICES PROVIDED BY  
THE DEPARTMENT**

*Article 2, consisting of Sections R6-2-201 through R6-2-210, adopted effective December 20, 1994 (Supp. 94-4).*

*Article 2, consisting of Sections R6-2-201 through R6-2-210, repealed effective December 20, 1994 (Supp. 94-4).*

**Section**

R6-2-201.	Worker Services
R6-2-202.	Employer Services
R6-2-203.	Repealed
R6-2-204.	Expired
R6-2-205.	Repealed
R6-2-206.	Repealed
R6-2-207.	Repealed
R6-2-208.	Repealed
R6-2-209.	Repealed
R6-2-210.	Repealed

**ARTICLE 3. REPEALED**

*Article 3, consisting of Sections R6-2-301 through R6-2-304, repealed by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2).*

*Article 3, consisting of Sections R6-2-301 through R6-2-304, adopted effective December 20, 1994 (Supp. 94-4).*

*Article 3, consisting of Sections R6-2-301 through R6-2-303, repealed effective December 20, 1994 (Supp. 94-4).*

**ARTICLE 4. OTHER EMPLOYMENT SERVICES AND  
PROGRAMS**

*Article 4, consisting of Sections R6-2-401 and R6-2-402, adopted effective December 20, 1994 (Supp. 94-4).*

*Article 4, consisting of Sections R6-2-401 through R6-2-409, repealed effective December 20, 1994 (Supp. 94-4).*

**Section**

R6-2-401.	Repealed
R6-2-402.	Expired
R6-2-403.	Repealed
R6-2-404.	Repealed

R6-2-405.	Repealed
R6-2-406.	Repealed
R6-2-407.	Repealed
R6-2-408.	Repealed
R6-2-409.	Repealed

**ARTICLE 5. RESERVED**

**ARTICLE 6. REPEALED**

*Article 6, consisting of Sections R6-2-601 through R6-2-620, repealed effective July 30, 1993 (Supp. 93-3).*

**ARTICLE 1. GENERAL PROVISIONS**

**R6-2-101. Definitions**

The following definitions apply to this Chapter:

1. "America's Job Bank" means a nationwide computer database linking more than 1800 local Employment Service offices. The services of America's Job Bank are available to job seekers and employers via the Internet.
2. "Applicant" means a person who has applied to the Department for worker services and who is a United States citizen or a non-citizen who is legally authorized to work in the United States.
3. "Apprentice" means a worker who is at least age 16 if a higher minimum age standard is otherwise fixed by law, who is employed to learn a skilled trade under standards of apprenticeship that meet the requirements of 29 CFR 29.5 (Office of the Federal Register, National Archives and Records Administration, July 1, 1998), which is incorporated by reference in this rule. This incorporation by reference does not include any later amendments or editions. Copies of the incorporated material are available for inspection at the Department's Authority Library, 1789 West Jefferson, Phoenix, Arizona, and in the Office of the Secretary of State, Public Service Department, 1700 West Washington, Phoenix, Arizona.
4. "Apprenticeship agreement" means a written agreement between an apprentice and an employer or a committee acting on behalf of the employer, containing the terms and conditions for employment of the apprentice.
5. "Apprenticeship program" means a plan containing all terms and conditions for the qualification, recruitment, selection, employment, and training of apprentices.
6. "Apprenticeship program registration" means the acceptance and centralized recording of an apprenticeship program by the ESA that meets the basic standards and requirements established for apprenticeship programs under federal law.
7. "Apprenticeship program sponsor" means a person, association, committee, or organization operating an apprenticeship program and in whose name the program is registered and approved.
8. "BFOQ" or "bona fide occupational qualification" means a finding by an employer that age, sex, national origin, or religion is a characteristic necessary to an individual's ability to perform the job.
9. "Department" means the Arizona Department of Economic Security.
10. "DOT" or "Dictionary of Occupational Titles" means the reference work published by the United States Employ-

- ment Service, which contains brief, non-technical definitions of job titles, distinguishing numeric codes, and worker trait data.
11. "Disabled veteran" means:
    - a. A veteran who is entitled to compensation under laws administered by the United States Secretary of Veterans Affairs, or
    - b. A person who is discharged or released from active military duty because of a service-connected disability.
  12. "Employer job referral services" means Department activities that help an employer obtain workers with the occupational qualifications needed by the employer.
  13. "Employment counseling" means formulation of a vocational plan that is consistent with a person's vocational skills and interests, and advice on appropriate measures for implementation of that plan.
  14. "Employment test" means a standardized method or device for measuring a person's possession of, interest in, or ability to acquire job skills and knowledge.
  15. "ESA" or "Employment Security Administration" means the administrative unit within the Department's Division of Employment and Rehabilitation Services with responsibility for all worker and employer services.
  16. "Essential functions of a job" means the fundamental job duties of a particular employment position.
  17. "Geographic labor clearance" means Department efforts to facilitate labor mobility by encouraging and guiding migration of workers between geographical areas.
  18. "Industrial analysis services" means Department activities to assist employers and labor organizations in determining the cause of worker resource problems in a particular business, and provision of information developed by the USES for resolving such problems.
  19. "Job bank" means a computerized list of all currently available jobs and employment opportunities listed with the Department.
  20. "Job development" means the process by which the Department obtains a job or interview with an employer for a specific applicant for whom the local ESA office has no suitable job opening on file.
  21. "Job order" means a request by an employer for the referral of job seekers made available to job seekers via the Department's Job Bank.
  22. "JTPA" means the federal Job Training Partnership Act found at 29 U.S.C. 1501 et seq.
  23. "Labor market area" means a geographic area consisting of a central city, or group of cities, and the surrounding territory within a reasonable commuting distance.
  24. "Major life activities" means functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.
  25. "Occupational labor clearance" means Department efforts to facilitate labor mobility by encouraging and guiding migration of workers between occupations and industry types.
  26. "Older worker" means a person age 40 or older who is working or who is unemployed and wishes to work.
  27. "Person with a disability" or "disabled worker" means a person who:
    - a. Has a physical or mental impairment that substantially limits 1 or more of that person's major life activities;
    - b. Has a record of such an impairment; or
    - c. Is regarded as having such an impairment.
  28. "Physical or mental impairment" means:
    - a. Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting 1 or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or
    - b. Any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
  29. "Placement" means that a public or private employer has hired an applicant that the Department referred to the employer for a job or interview.
  30. "Qualified worker" means a worker who possesses the skills, knowledge, and abilities to perform the essential functions of a job.
  31. "Reasonable accommodation" means a modification of, or an adjustment to a process, position, or term of employment, that will permit a disabled worker to enjoy the same benefits and privileges of employment as those enjoyed by persons without disabilities.
  32. "Substandard work order" means a work order:
    - a. Containing employment terms that violate employment-related laws, or
    - b. Offering work at wages or conditions that are substantially inferior to those generally prevailing in the labor market area for the same or similar work.
  33. "Substantially limits" when used in reference to a disability, means:
    - a. Unable to perform a major life activity that the average person in the general population can perform; or
    - b. Significantly restricted as to the condition, manner, or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity.
  34. "Targeted jobs tax credit" means an income tax credit available to businesses that hire persons whom ESA has certified as meeting certain criteria described in 26 U.S.C. 51 (Office of the Federal Register, National Archives and Records Administration, August 10, 1993), which is incorporated by reference in this rule. This incorporation by reference does not include any later amendments or editions. Copies of the incorporated material are available for inspection at the Department's Authority Library, 1789 West Jefferson, Phoenix, Arizona, and in the Office of the Secretary of State, Public Service Department, 1700 West Washington, Phoenix, Arizona.
  35. "USES" means the United States Employment Service, which is the unit in the United States Department of Labor's Employment and Training Administration designed to promote a national system of public job service offices.
  36. "Veteran" means a person who served in the active military service, and who was discharged or released from service under conditions other than dishonorable.
  37. "Vocational plan" means a plan developed jointly by an ESA counselor or counselor-trainee and an applicant that describes:
    - a. The applicant's short-range and long-range occupational goals, and
    - b. The actions to be taken to implement the plan.



## Department of Economic Security - Employment and Training

38. "Worker" means a U.S. citizen or a non-citizen who is legally authorized to work in the United States and who is employed or who is unemployed and wishes to work.
39. "Worker services" means the functions the Department performs for the benefit of applicants and workers, including employment counseling, employment testing, preparation of a vocational plan, and referral for employment opportunity.
40. "Worker job referral services" means Department activities to help a worker promptly obtain a job for which the worker is occupationally qualified.
41. "Youth worker" means a worker younger than age 22.

**Historical Note**

Adopted effective September 24, 1975 (Supp. 75-1).  
Section repealed, new Section adopted effective December 20, 1994 (Supp. 94-4). Amended by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2).

**R6-2-102. Complaints**

The Department shall process all complaints related to the provision of employment services under 20 CFR 658.400 through 658.416 (Office of the Federal Register, National Archives and Records Administration, April 1, 1998), which are incorporated by reference in this rule. This incorporation by reference does not include any later amendments or editions. Copies of the incorporated material are available for inspection at the Department's Authority Library, 1789 West Jefferson, Phoenix, Arizona, and in the Office of the Secretary of State, Public Service Department, 1700 West Washington, Phoenix, Arizona.

**Historical Note**

Adopted effective September 24, 1975 (Supp. 75-1).  
Section repealed, new Section adopted effective December 20, 1994 (Supp. 94-4). Amended by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2).

**R6-2-103. Hearings and Appeals**

The Department shall conduct any hearing or appeal to which an employer, applicant, or worker may be entitled under applicable state or federal employment services laws, and 20 CFR 658.417 and 658.418 (Office of the Federal Register, National Archives and Records Administration, April 1, 1998), which are incorporated by reference in this rule. This incorporation by reference does not include any later amendments or editions. Copies of the incorporated material are available for inspection at the Department's Authority Library, 1789 West Jefferson, Phoenix, Arizona, and in the Office of the Secretary of State, Public Service Department, 1700 West Washington, Phoenix, Arizona.

**Historical Note**

Adopted effective September 24, 1975 (Supp. 75-1).  
Section repealed, new Section adopted effective December 20, 1994 (Supp. 94-4). Amended by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2).

**R6-2-104. Policy of Nondiscrimination; Schedule of Services**

In the administration of the state employment office, the Department shall:

- A. Not discriminate against any applicant or employer because of age, race, sex, color, religious creed, national origin, disability or political affiliation or belief unless a BFOQ exists;
- B. Actively promote employment opportunities for disadvantaged workers and encourage employers to hire workers on the basis of objective qualifications; and

- C. Use the following priority schedule to select and refer qualified applicants for work:

1. Disabled veteran applicants;
2. Other veteran applicants;
3. Other applicants.

**Historical Note**

Adopted effective September 24, 1975 (Supp. 75-1).  
Section repealed effective December 20, 1994 (Supp. 94-4). New Section adopted by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2).

**R6-2-105. Repealed****Historical Note**

Adopted effective September 24, 1974 (Supp. 75-1).  
Section repealed effective December 20, 1994 (Supp. 94-4).

**R6-2-106. Repealed****Historical Note**

Adopted effective September 24, 1975 (Supp. 75-1).  
Section repealed effective December 20, 1994 (Supp. 94-4).

**R6-2-107. Repealed****Historical Note**

Adopted effective September 24, 1975 (Supp. 75-1).  
Section repealed effective December 20, 1994 (Supp. 94-4).

**R6-2-108. Repealed****Historical Note**

Adopted effective September 24, 1975 (Supp. 75-1).  
Section repealed effective December 20, 1994 (Supp. 94-4).

**R6-2-109. Repealed****Historical Note**

Adopted effective September 24, 1975 (Supp. 75-1).  
Section repealed effective December 20, 1994 (Supp. 94-4).

**R6-2-110. Repealed****Historical Note**

Adopted effective September 24, 1975 (Supp. 75-1).  
Section repealed effective December 20, 1994 (Supp. 94-4).

**R6-2-111. Repealed****Historical Note**

Adopted effective September 24, 1975 (Supp. 75-1).  
Section repealed effective December 20, 1994 (Supp. 94-4).

**R6-2-112. Repealed****Historical Note**

Adopted effective September 24, 1975 (Supp. 75-1).  
Section repealed effective December 20, 1994 (Supp. 94-4).

## ARTICLE 2. EMPLOYMENT SERVICES PROVIDED BY THE DEPARTMENT

**R6-2-201. Worker Services**

- A. As permitted by available resources, the Department shall provide services to a worker who is a United States citizen or a

non-citizen authorized to work in the United States. The services include but are not limited to the following:

1. Employment counseling;
2. Aptitude testing;
3. Apprenticeship training; and
4. Job referral services.

- B.** A worker applying for services shall file an application with the Department. The application shall include the worker's:
1. Name, address, telephone number, social security number, and date of birth;
  2. Prior work experience, including information on salary, job duties, and any past military service;
  3. Educational background, including technical or other vocational training the worker has completed;
  4. Career goals, hobbies, and volunteer work;
  5. Availability for work, including a willingness to travel or relocate, desire for full or part-time employment, and desired working hours; and
  6. Special skills or proficiencies, including a language other than English or the use of equipment.
- C.** The Department shall obtain information about a worker's disability as is necessary to provide the worker with appropriate services. This information may include asking the worker whether the worker can perform the essential functions of a particular job, with or without reasonable accommodation.
- D.** When the Department conducts employment testing, the Department shall:
1. Use only standardized tests and techniques approved by the United States Employment Service; and
  2. Not release the results of the tests without the written consent of the tested worker.

#### Historical Note

Adopted effective September 24, 1975 (Supp. 75-1).  
 Section repealed, new Section adopted effective December 20, 1994 (Supp. 94-4). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2).

#### R6-2-202. Employer Services

- A.** The Department shall require the following information from an employer who places a job order:
1. A description of the essential functions of the job in sufficient detail to permit the Department to ascertain the qualifications a worker needs to satisfactorily perform the work, with or without reasonable accommodation;
  2. An employer's hiring requirements, including the type of license or certification needed, or the type of equipment or tools the worker must supply;
  3. The terms and conditions of work, including hours, salary, benefits, promotional opportunities, and travel requirements;
  4. The job location and instructions for arranging a job interview.
- B.** The Department shall refer workers to the employer who most closely match the requirements in the job order. If qualified workers are not available from the Department's files and, if resources are available, the Department shall recruit qualified workers to fill the employer's order.
- C.** The Department shall not accept a job order from an employer for processing if:
1. The employer's requirements are discriminatory based on age, sex, national origin, or religion, unless the discriminatory characteristic is a bona fide occupational qualification necessary to perform the job. An example of a bona fide occupational qualification that is not discriminatory

is the requirement for a female worker in a female intimate apparel retail outlet.

2. The terms and conditions of work are substandard under A.R.S. § 23-776(C)(2).
  3. The position is vacant due directly to a strike, lockout, or other labor dispute or conflict between employers and workers, including wage disputes and collective bargaining efforts.
  4. A worker is required to pay a fee for the job.
- D.** If an employer refuses to modify a job order deemed unacceptable by subsection (C), the Department shall notify the employer in writing of discontinuance of services. The notification shall include the employer's right of appeal.

#### Historical Note

Adopted effective September 24, 1975 (Supp. 75-1).  
 Section repealed, new Section adopted effective December 20, 1994 (Supp. 94-4). Section repealed, new Section adopted at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2).

#### R6-2-203. Repealed

#### Historical Note

Adopted effective September 24, 1975 (Supp. 75-1).  
 Section repealed, new Section adopted effective December 20, 1994 (Supp. 94-4). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2). Section repealed by final rulemaking at 16 A.A.R. 510, effective March 2, 2010 (Supp. 10-1).

#### R6-2-204. Expired

#### Historical Note

Adopted effective September 24, 1975 (Supp. 75-1).  
 Section repealed, new Section adopted effective December 20, 1994 (Supp. 94-4). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2615, effective June 30, 2014 (Supp. 14-3).

#### R6-2-205. Repealed

#### Historical Note

Adopted effective September 24, 1975 (Supp. 75-1).  
 Section repealed, new Section adopted effective December 20, 1994 (Supp. 94-4). Section repealed by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2).

#### R6-2-206. Repealed

#### Historical Note

Adopted effective September 24, 1975 (Supp. 75-1).  
 Section repealed, new Section adopted effective December 20, 1994 (Supp. 94-4). Section repealed by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2).

#### R6-2-207. Repealed

#### Historical Note

Adopted effective September 24, 1975 (Supp. 75-1).  
 Section repealed, new Section adopted effective December 20, 1994 (Supp. 94-4). Section repealed by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2).

**R6-2-208. Repealed****Historical Note**

Adopted effective September 24, 1975 (Supp. 75-1).  
Section repealed, new Section adopted effective December 20, 1994 (Supp. 94-4). Section repealed by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2).

**R6-2-209. Repealed****Historical Note**

Adopted effective September 24, 1975 (Supp. 75-1).  
Section repealed, new Section adopted effective December 20, 1994 (Supp. 94-4). Section repealed by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2).

**R6-2-210. Repealed****Historical Note**

Adopted effective September 24, 1975 (Supp. 75-1).  
Section repealed, new Section adopted effective December 20, 1994 (Supp. 94-4). Section repealed by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2).

**ARTICLE 3. REPEALED****R6-2-301. Repealed****Historical Note**

Adopted effective September 24, 1975 (Supp. 75-1).  
Former Section R6-2-301 repealed, new Section R6-2-301 adopted effective May 2, 1978 (Supp. 78-3).  
*Apprenticeship Program Handbook* amended effective August 8, 1978 (Supp. 78-4). Section repealed, new Section adopted effective December 20, 1994 (Supp. 94-4). Section repealed by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2).

**R6-2-302. Repealed****Historical Note**

Adopted effective September 24, 1975 (Supp. 75-1).  
Section repealed, new Section adopted effective December 20, 1994 (Supp. 94-4). Section repealed by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2).

**R6-2-303. Repealed****Historical Note**

Adopted effective September 24, 1975 (Supp. 75-1).  
Amended effective May 6, 1976 (Supp. 76-3). Amended effective August 1, 1979 (Supp. 79-4). Section repealed, new Section adopted effective December 20, 1994 (Supp. 94-4). Section repealed by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2).

**R6-2-304. Repealed****Historical Note**

Adopted effective December 20, 1994 (Supp. 94-4).  
Section repealed by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2).

**ARTICLE 4. OTHER EMPLOYMENT SERVICES AND PROGRAMS****R6-2-401. Repealed****Historical Note**

Adopted effective August 3, 1978 (Supp. 78-4). Section

repealed, new Section adopted effective December 20, 1994 (Supp. 94-4). Section repealed by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2).

**R6-2-402. Expired****Historical Note**

Adopted effective August 3, 1978 (Supp. 78-4). Section repealed, new Section adopted effective December 20, 1994 (Supp. 94-4). Amended by final rulemaking at 5 A.A.R. 2155, effective June 18, 1999 (Supp. 99-2).  
Section expired under A.R.S. § 41-1056(E) at 11 A.A.R. 617, effective October 31, 2004 (Supp. 05-1).

**R6-2-403. Repealed****Historical Note**

Adopted effective August 3, 1978 (Supp. 78-4). Section repealed effective December 20, 1994 (Supp. 94-4).

**R6-2-404. Repealed****Historical Note**

Adopted effective August 3, 1978 (Supp. 78-4). Section repealed effective December 20, 1994 (Supp. 94-4).

**R6-2-405. Repealed****Historical Note**

Adopted effective August 3, 1978 (Supp. 78-4). Section repealed effective December 20, 1994 (Supp. 94-4).

**R6-2-406. Repealed****Historical Note**

Adopted effective August 3, 1978 (Supp. 78-4). Section repealed effective December 20, 1994 (Supp. 94-4).

**R6-2-407. Repealed****Historical Note**

Adopted effective August 3, 1978 (Supp. 78-4). Section repealed effective December 20, 1994 (Supp. 94-4).

**R6-2-408. Repealed****Historical Note**

Adopted effective August 3, 1978 (Supp. 78-4). Section repealed effective December 20, 1994 (Supp. 94-4).

**R6-2-409. Repealed****Historical Note**

Adopted effective August 3, 1978 (Supp. 78-4). Section repealed effective December 20, 1994 (Supp. 94-4).

**ARTICLE 5. RESERVED****ARTICLE 6. REPEALED****R6-2-601. Repealed****Historical Note**

Adopted effective September 27, 1979 (Supp. 79-5).  
Repealed effective July 30, 1993 (Supp. 93-3).

**R6-2-602. Repealed****Historical Note**

Adopted effective September 27, 1979 (Supp. 79-5).  
Repealed effective July 30, 1993 (Supp. 93-3).

**R6-2-603. Repealed****Historical Note**

Adopted effective September 27, 1979 (Supp. 79-5).  
Repealed effective July 30, 1993 (Supp. 93-3).

**R6-2-604. Repealed****Historical Note**

Adopted effective September 27, 1979 (Supp. 79-5).  
Repealed effective July 30, 1993 (Supp. 93-3).

**R6-2-605. Repealed****Historical Note**

Adopted effective September 27, 1979 (Supp. 79-5).  
Repealed effective July 30, 1993 (Supp. 93-3).

**R6-2-606. Repealed****Historical Note**

Adopted effective September 27, 1979 (Supp. 79-5).  
Repealed effective July 30, 1993 (Supp. 93-3).

**R6-2-607. Repealed****Historical Note**

Adopted effective September 27, 1979 (Supp. 79-5).  
Repealed effective July 30, 1993 (Supp. 93-3).

**R6-2-608. Repealed****Historical Note**

Adopted effective September 27, 1979 (Supp. 79-5).  
Repealed effective July 30, 1993 (Supp. 93-3).

**R6-2-609. Repealed****Historical Note**

Adopted effective September 27, 1979 (Supp. 79-5).  
Repealed effective July 30, 1993 (Supp. 93-3).

**R6-2-610. Repealed****Historical Note**

Adopted effective September 27, 1979 (Supp. 79-5).  
Repealed effective July 30, 1993 (Supp. 93-3).

**R6-2-611. Repealed****Historical Note**

Adopted effective September 27, 1979 (Supp. 79-5).  
Repealed effective July 30, 1993 (Supp. 93-3).

**R6-2-612. Repealed****Historical Note**

Adopted effective September 27, 1979 (Supp. 79-5).

Repealed effective July 30, 1993 (Supp. 93-3).

**R6-2-613. Repealed****Historical Note**

Adopted effective September 27, 1979 (Supp. 79-5).  
Repealed effective July 30, 1993 (Supp. 93-3).

**R6-2-614. Repealed****Historical Note**

Adopted effective September 27, 1979 (Supp. 79-5).  
Repealed effective July 30, 1993 (Supp. 93-3).

**R6-2-615. Repealed****Historical Note**

Adopted effective September 27, 1979 (Supp. 79-5).  
Repealed effective July 30, 1993 (Supp. 93-3).

**R6-2-616. Repealed****Historical Note**

Adopted effective September 27, 1979 (Supp. 79-5).  
Repealed effective July 30, 1993 (Supp. 93-3).

**R6-2-617. Repealed****Historical Note**

Adopted effective September 27, 1979 (Supp. 79-5).  
Repealed effective July 30, 1993 (Supp. 93-3).

**R6-2-618. Repealed****Historical Note**

Adopted effective September 27, 1979 (Supp. 79-5).  
Repealed effective July 30, 1993 (Supp. 93-3).

**R6-2-619. Repealed****Historical Note**

Adopted effective September 27, 1979 (Supp. 79-5).  
Repealed effective July 30, 1993 (Supp. 93-3).

**R6-2-620. Repealed****Historical Note**

Adopted effective September 27, 1979 (Supp. 79-5).  
Repealed effective July 30, 1993 (Supp. 93-3).

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# Chapter Divider Page

**TITLE 6. ECONOMIC SECURITY**  
**CHAPTER 7. DEPARTMENT OF ECONOMIC SECURITY**  
**CHILD SUPPORT ENFORCEMENT**

*Editor's Note: New 6 A.A.C. 7 made by final rulemaking at 10 A.A.C. 1973, effective April 23, 2004 (Supp. 04-2).*

**ARTICLE 1. GENERAL PROVISIONS**

*Article 1, consisting of R6-7-101 through R6-7-102, made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).*

Section

- R6-7-101. Definitions
- R6-7-102. Interest on Support and Related Payments
- R6-7-103. Payment Handling Fee

**ARTICLE 2. RESERVED**

**ARTICLE 3. RESERVED**

**ARTICLE 4. PASSPORT DENIAL**

*Article 4, consisting of R6-7-401 through R6-7-406, made by final rulemaking at 11 A.A.R. 4540, effective December 17, 2005 (Supp. 05-4).*

Section

- R6-7-401. Definitions
- R6-7-402. Certification and Criteria
- R6-7-403. Notice
- R6-7-404. Administrative Review
- R6-7-405. Withdrawal of Certification for Passport Denial
- R6-7-406. Appeal from Administrative Review

**ARTICLE 5. RESERVED**

**ARTICLE 6. TITLE IV-D DISTRIBUTION**

*Article 6, consisting of R6-7-601 through R6-7-609, made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).*

Section

- R6-7-601. Distribution
- R6-7-602. Receipt and Use of Foreign Currency or Other Foreign Payment
- R6-7-603. Allocation of Monies Received from Federal Income Tax Refund Offset to Arrearages
- R6-7-604. Allocation of Other Than Internal Revenue Service Payments to Multiple Obligees
- R6-7-605. Distribution of Monies Received from Federal Income Tax Refund Offset to Arrearages
- R6-7-606. Distribution of Futures
- R6-7-607. Distribution of Prepaid Support
- R6-7-608. Distribution in Title IV-E Cases
- R6-7-609. Distribution in Current Assistance Cases with a Child Exempt from Assignment
- R6-7-610. Distribution of Cash Medical Support in Title XIX Cases
- R6-7-611. Distribution of the Mandatory Annual Fee on and after October 1, 2007

**ARTICLE 7. TITLE IV-D DISBURSEMENT**

*Article 7, consisting of R6-7-701 through R6-7-716, made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).*

Section

- R6-7-701. Disbursement

- R6-7-702. Disbursement in Never Assistance Cases through December 31, 2002
- R6-7-703. Disbursement in Never Assistance Cases on and after January 1, 2003
- R6-7-704. Disbursement in Current Assistance Cases through December 31, 2002
- R6-7-705. Disbursement in Current Assistance Cases on and after January 1, 2003
- R6-7-706. Disbursement in Current Assistance Cases with a Child Exempt from Assignment
- R6-7-707. Disbursement Under Federal Law from October 1, 1997 through September 30, 2000 for Former Assistance Cases
- R6-7-708. Disbursement Under Federal Law from October 1, 2000 through December 31, 2002 for Former Assistance Cases
- R6-7-709. Disbursement Under Federal Law on and after January 1, 2003 for Former Assistance Cases
- R6-7-710. Disbursement of Federal Income Tax Refund Offsets Under Federal Law from October 1, 1997 through September 30, 2000
- R6-7-711. Disbursement of Federal Income Tax Refund Offsets Under Federal Law on and after October 1, 2000
- R6-7-712. Caretaker Disbursement
- R6-7-713. Past Support Judgments
- R6-7-714. Interest on Arrearages
- R6-7-715. Unassigned Arrearages
- R6-7-716. Interstate Collections in UIFSA Cases

**ARTICLE 8. ADMINISTRATIVE REVIEW**

*Article 8, consisting of R6-7-801, made by final rulemaking at 10 A.A.C. 1973, effective April 23, 2004 (Supp. 04-2).*

Section

- R6-7-801. Obligor Request for Administrative Review of Distribution or Disbursement of Support or Related Payments

**ARTICLE 1. GENERAL PROVISIONS**

**R6-7-101. Definitions**

The following definitions apply in this Chapter unless otherwise provided in a specific Article of this Chapter:

1. "Allocation" means the prorated division of collections.
2. "Annual fee" means the amount owed by the recipient of services when the Title IV-D Agency has collected \$500.00 of support in a federal fiscal year.
3. "Arrearages" means unpaid amounts of support owed.
4. "Assistance unit" means a group of persons whose needs, income, resources, and other circumstances are considered as a whole for the purpose of determining eligibility and benefit amount for cash assistance.
5. "Business day" means a day on which state offices are open for regular business. A.R.S. § 46-408.
6. "Caretaker" means an individual other than a parent in a Title IV-D case who has physical custody of a child and may have the right to support of that child under A.R.S. § 46-444.
7. "Cash assistance" means temporary payments for needy families paid to a recipient for the purpose of meeting

- basic living expenses, as described by the Department at 6 A.A.C. 12.
8. “Cash medical support” means the court ordered monthly amount to be paid as an alternative when medical insurance is not accessible or available at a reasonable cost in accordance with A.R.S. § 25-320.
  9. “Child Not on Grant” means a child who:
    - a. Resides with an assistance unit receiving cash assistance,
    - b. Is not eligible for cash assistance due to the receipt of Social Security income, and
    - c. Is exempt from the assignment under A.R.S. § 46-407.
  10. “Child Support Case Registry” or “Registry” means certain automated records of all Title IV-D cases, and all other cases in which a support order is established, modified, or registered in Arizona on or after October 1, 1998.
  11. “Conditionally assigned arrearages” are arrearages that:
    - a. Do not exceed the total cumulative amount of unreimbursed cash assistance paid to a family as of the date the family stops receiving cash assistance;
    - b. Were temporarily assigned arrearages; and
    - c. Became conditionally assigned on the date that the family stopped receiving cash assistance or October 1, 2000, whichever date is later.
  12. “Current assistance case” means a Title IV-D case in which an assistance unit is currently receiving cash assistance.
  13. “Current support” means the monthly amount of money ordered by a court or an administrative entity for the support of a child, spouse, or former spouse and may include cash medical support.
  14. “Department” means the Department of Economic Security.
  15. “Disbursement” means the payment of monies to an obligee or other authorized recipient.
  16. “Distribution” means application of support and related collections to one or more specific obligations or debts.
  17. “F.A.A.” means the Family Assistance Administration, the entity within the Department responsible for administering the Department’s Cash Assistance Program.
  18. “Federal fiscal year” means the 12 consecutive months beginning October 1 and ending September 30 for which the Office of Child Support Enforcement in the United States Department of Health and Human Services plans the use of its funds.
  19. “Federal income tax refund offset” means the intercept of Internal Revenue Service income tax refunds to pay support as provided in 26 U.S.C. 6402 and 42 U.S.C. 664.
  20. “Fees and costs” means amounts ordered by the court or administrative entity or agreed to be paid to the Title IV-D Agency for genetic testing, service of process, or other expenses.
  21. “Former assistance case” means a Title IV-D case in which an assistance unit formerly received cash assistance and is no longer receiving cash assistance.
  22. “Futures” means an amount of support received by the Title IV-D Agency, excluding any federal or state income tax refund offset, which when received exceeds the amount of current support owed in a Title IV-D case with no arrearages or other unpaid obligations as stated in 45 CFR 302.51(b). Futures do not include prepaid support.
  23. “Handling fee” means the monthly charge prescribed in A.R.S. § 25-510, which is set by the Department director, and is payable to the Title IV-D Agency’s Clearinghouse.
  24. “Income withholding order” means an order that directs an obligor’s employer, payor, or the obligor to withhold monies from the obligor’s income.
  25. “Initiating state” means a state from which a proceeding is forwarded or in which a proceeding is filed for forwarding to a responding state under A.R.S. Title 25, Chapter 9 or a law or procedure substantially similar to A.R.S. Title 25, Chapter 9. A.R.S. § 25-1202.
  26. “Injured spouse claim” means a written request from the spouse of an obligor stating that the spouse has an interest in an income tax refund based on a joint federal income tax return.
  27. “IRS tax reversal” means a rescission by the Internal Revenue Service of a federal income tax refund offset that was previously received by the Title IV-D Agency.
  28. “Issuing state” means the state in which a tribunal issues a support order or renders a judgment determining parentage. A.R.S. § 25-1202.
  29. “Medical assistance” means benefits received from a state agency under Title XIX of the Social Security Act.
  30. “Medical support judgment” means a judgment for the costs of medical insurance coverage or uncovered medical expenses of the child.
  31. “Never assigned arrearages” means arrearages that:
    - a. Accrue in a never assistance case, or in a former assistance case after an assistance unit’s most recent period of cash assistance ends; and
    - b. Are not assigned.
  32. “Never assistance case” means a Title IV-D case in which a family never received cash assistance, but could be receiving or has received medical assistance under Title XIX of the Social Security Act.
  33. “Nonobligated spouse” means the spouse who filed an Arizona state income tax return jointly with an obligor.
  34. “Non-periodic payment” means a non-recurring amount or an amount that is not paid at regular intervals.
  35. “Obligee” means a person or agency entitled to receive support. A.R.S. § 25-500.
  36. “Obligor” means a person obligated to pay support. A.R.S. § 25-500.
  37. “OCSE” means the Office of Child Support Enforcement in the United States Department of Health and Human Services.
  38. “Order” means a legal directive issued by an officer or entity legally authorized to issue orders.
  39. “Past support” means the amount of support reduced to a written judgment for the care and support of a child for the period before a current child support order is established.
  40. “Permanently assigned arrearages” means arrearages that do not exceed the total cumulative amount of unreimbursed cash assistance paid to an assistance unit at the time the assistance unit leaves assistance, and
    - a. Accrued before the family received assistance and were assigned to the state before October 1, 1997; or
    - b. Accrue during any period in which the assistance unit received cash assistance and were assigned to the state on or after October 1, 1997.
  41. “Pregnancy and childbirth expenses” means the costs of pregnancy and childbirth, which may be reduced to a written judgment under A.R.S. § 25-809.
  42. “Pregnancy and childbirth judgment” means a final court order for the costs of pregnancy and childbirth.
  43. “Prepaid support” means payments for monthly support that the obligor or the obligor’s agent designate in writing



- as payments for support in future months, even in cases with arrearages.
44. “Related payments” means monies other than support received under an order or agreement.
  45. “Responding state” means a state in which a proceeding is filed or to which a proceeding is forwarded for filing from an initiating state under A.R.S. Title 25, Chapter 9 or a law substantially similar to A.R.S. Title 25, Chapter 9. A.R.S. § 25-1202.
  46. “Spousal maintenance” or “spousal support” means an amount of money ordered under A.R.S. § 25-319 or a similar law of another state, for the support or maintenance of a spouse or former spouse.
  47. “State” has the meaning in A.R.S. § 25-1202(22).
  48. “Support” means the provision of maintenance or subsistence and includes medical insurance coverage, or cash medical support, and uncovered medical costs for the child, arrearages, interest on arrearages, past support, interest on past support and reimbursement for expended public assistance. In a Title IV-D case, support includes spousal maintenance or spousal support that is included in the same order that directs child support. A.R.S. § 25-500.
  49. “Support Payment Clearinghouse” or “Clearinghouse” means the state disbursement unit for the Title IV-D Agency established under A.R.S. § 46-441 to collect and disburse all payments under support orders or agreements.
  50. “Temporarily assigned arrearages”
    - a. Means arrearages that:
      - i. Do not exceed the total cumulative amount of unreimbursed cash assistance paid to an assistance unit as of the date the unit stops receiving cash assistance;
      - ii. Accrue before any period in which the assistance unit receives cash assistance for arrearages assigned to the state on or after October 1, 1997; and
      - iii. Are not permanently assigned arrearages; and
    - b. The temporary assignment is no longer effective on October 1, 2000, or when the assistance unit stops receiving cash assistance, whichever is later.
    - c. Effective on and after October 1, 2009, no new temporary assignments of unpaid support begin.
  51. “Temporary assistance for needy families” (TANF) means assistance granted under § 403 of Title IV of the Social Security Act, as it exists after August 21, 1996. A.R.S. § 46-101.
  52. “Title IV-A” means Title IV-A of the Social Security Act, 42 U.S.C. 601 et seq.
  53. “Title IV-D” means Title IV-D of the Social Security Act, 42 U.S.C. 651 et seq.
  54. “Title IV-D Agency” means the Division of Child Support Enforcement and all of its contracting entities that administer Title IV-D services.
  55. “Title IV-E” means Title IV-E of the Social Security Act, 42 U.S.C. 670 et seq.
  56. “Title XIX” means Title XIX of the Social Security Act, 42 U.S.C. 1396 et seq.
  57. “Title XIX Agency” means the Arizona Health Care Cost Containment System (AHCCCS).
  58. “Tribunal” means a court, administrative agency or quasi-judicial entity authorized to establish, enforce or modify support orders or to determine parentage. A.R.S. § 25-1202.
  59. “UIFSA” means the Uniform Interstate Family Support Act, A.R.S. §§ 25-1201 et seq.
  60. “Unassigned arrearages” means previously permanently assigned and temporarily assigned arrearages that exceed the total cumulative amount of unreimbursed cash assistance paid to a family as of the date the family stops receiving cash assistance and includes both unassigned during-assistance arrearages and unassigned pre-assistance arrearages.
  61. “Unassigned during-assistance arrearages” means all previously permanently assigned arrearages that:
    - a. Exceed the total cumulative amount of unreimbursed cash assistance paid to an assistance unit as of the date the assistance unit stops receiving cash assistance; and
    - b. Accrue during any period in which the assistance unit receives cash assistance for arrearages assigned to the state on or after October 1, 1997.
  62. “Unassigned pre-assistance arrearages” means all previously temporarily assigned arrearages that:
    - a. Exceed the total cumulative amount of unreimbursed cash assistance paid to an assistance unit as of the date the assistance unit stops receiving cash assistance; and
    - b. Accrue before any period in which the assistance unit receives cash assistance for arrearages assigned to the state on or after October 1, 1997 but before October 1, 2009.
  63. “Unreimbursed cash assistance” means the total, cumulative amount of cash assistance for which the state of Arizona has not received reimbursement.
  64. “Voluntary payment” means monies received by the Title IV-D Agency on behalf of a child for whom no order for support is established.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4). Amended by final rulemaking at 15 A.A.R. 1250, effective September 5, 2009 (Supp. 09-3). Amended by exempt rulemaking at 16 A.A.R. 1138, effective July 1, 2010 (Supp. 10-2).

#### R6-7-102. Interest on Support and Related Payments

Interest shall not accrue on support and related payments retained by the Clearinghouse for disbursement and the Clearinghouse shall not pay interest on these monies unless state or federal statutes require payment of interest.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

#### R6-7-103. Payment Handling Fee

Under A.R.S. § 25-510, the monthly payment handling fee shall be \$5.00.

#### Historical Note

New Section made by exempt rulemaking at 16 A.A.R. 1138, effective July 1, 2010 (Supp. 10-2).

#### ARTICLE 2. RESERVED

#### ARTICLE 3. RESERVED

#### ARTICLE 4. PASSPORT DENIAL

#### R6-7-401. Definitions

The following definitions apply in this Article unless otherwise provided in a specific Section of this Article:

1. “Certification” means to furnish OCSE with the name, identifying information, and amount of the arrearage owed by an individual determined delinquent in fulfilling a child support obligation.
2. “Federal administrative offset” means the interception of certain federal payments in order to collect past-due child support. Based on the Debt Collection Improvement Act (DCIA) of 1996, the process is managed by the Federal Office of Child Support Enforcement (OCSE), through the Financial Management Service (FMS) of the Department of the Treasury, in conjunction with the Federal Tax Refund Offset Program.
3. “Passport denial” means the certification process followed by the Title IV-D Agency and the United States Secretary of State, to refuse to issue a passport or to revoke, restrict, or limit a passport that was previously issued, because the obligor in a Title IV-D case has an arrearage in an amount that qualifies for certification under federal statute.
4. “Secretary” means the United States Secretary of State.
5. “Title IV-D case” means a proceeding for support managed by the Title IV-D Agency as required by Title IV-D of the Social Security Act, 42 U.S.C. 651 et seq.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 4540, effective December 17, 2005 (Supp. 05-4).

**R6-7-402. Certification and Criteria**

- A. The Title IV-D Agency shall:
  1. Submit and certify to OCSE for passport denial any Title IV-D case with an arrearage that qualifies for certification under federal statute; and
  2. Refer the case to OCSE for federal income tax refund offset and federal administrative offset under federal statute.
- B. The Title IV-D Agency shall submit and certify a case for passport denial if the case meets both of the following criteria:
  1. A support obligation has been established by a court or an administrative order; and
  2. The arrearage is in an amount that qualifies for certification under federal statute.
- C. The Title IV-D Agency shall not submit the following cases for passport denial:
  1. Interstate cases in which the obligee receives temporary assistance for needy families and the state of Arizona does not have an assignment of rights.
  2. Cases in which federal law precludes action.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 4540, effective December 17, 2005 (Supp. 05-4).

**R6-7-403. Notice**

- A. The Title IV-D Agency shall provide written notice to an obligor that the obligor has a support arrearage in an amount that qualifies for certification under federal statute, and that the obligor has been referred for federal administrative offset, federal income tax refund offset, and passport denial.
- B. The Title IV-D Agency shall send the notice to an obligor by first class mail. The mailing of the notice to the obligor’s last known address of record with Title IV-D Agency constitutes proper and sufficient notice.
- C. The notice shall inform the obligor of the right to contest the enforcement action.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 4540, effective December 17, 2005 (Supp. 05-4).

**R6-7-404. Administrative Review**

- A. An obligor may file a written request for administrative review by the Title IV-D Agency within 30 business days from the date on the notice mailed in accordance with R6-7-403.
- B. An obligor has the burden of proof regarding each issue raised in an administrative review.
- C. The issues in an administrative review are limited to:
  1. Whether there has been a mistake regarding the identity of the obligor; and
  2. The amount of the obligor’s arrearage, if any.
- D. If an obligor alleges that there has been a mistake regarding the identity of the obligor, the Title IV-D Agency shall issue a final written determination by first class mail to all parties within two business days after receipt of the request for administrative review.
- E. For all circumstances other than a mistake regarding the identity of the obligor, the Title IV-D Agency shall issue a final written determination by first class mail to all parties within 45 business days after receipt of the request for administrative review, or if additional information is required and provided, 45 business days after receipt of this information.
- F. In an interstate case, only the certifying state has the authority to withdraw an obligor from the passport denial process.
- G. If an obligor does not request an administrative review within 30 business days, the Title IV-D Agency’s certification for purposes of passport denial remains in effect.
- H. If an obligor requests an administrative review within 30 business days and meets the requirements for withdrawal of certification for passport denial in R6-7-405, the Title IV-D Agency shall notify OCSE to withdraw certification for passport denial in accordance with OCSE requirements.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 4540, effective December 17, 2005 (Supp. 05-4).

**R6-7-405. Withdrawal of Certification for Passport Denial**

- A. The Title IV-D Agency shall notify OCSE to withdraw certification for passport denial for an obligor if one or more of the following applies:
  1. The Title IV-D Agency makes a final determination during an administrative review that:
    - a. The case does not meet the criteria for passport denial in R6-7-402; or
    - b. There has been a mistake regarding the identity of the obligor;
  2. The obligor has paid the arrearage down to:
    - a. An amount less than the amount that qualifies for certification under federal statute, and has entered into a payment agreement with the Title IV-D Agency; or
    - b. Zero; or
    - c. An amount agreed to by the Title IV-D Agency, if the arrearage is owed to both the state and the obligee, provided the obligor agrees to and complies with any other terms required by the Title IV-D Agency, and the provisions of R6-7-405(B).
- B. The Title IV-D Agency shall also notify OCSE to withdraw certification for passport denial for an obligor if all of the following apply:
  1. The obligee agrees to accept partial payment of the total arrearages owed by the obligor to the obligee, even though the payment does not comply with the requirements of R6-7-405(A)(2) to pay arrearages down to zero or an amount less than that which qualifies for certification under federal statute;

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2. The obligor and obligee agree to the amount of the partial payment in writing, and the document is signed by both parties and submitted to the Title IV-D Agency;
  3. The Title IV-D Agency advises the obligee that the Title IV-D Agency may not have the opportunity to request passport denial for another 10 years;
  4. The obligee provides the Title IV-D Agency with a signed, notarized statement acknowledging receipt of the advisement in subsection (3) before the notification to OCSE to withdraw certification for passport denial;
  5. The obligor enters into a payment agreement with the Title IV-D Agency for the remainder of the arrearages owed; and
  6. The Title IV-D Agency consents to the agreement between the obligor and the obligee.
- C.** The Title IV-D Agency shall notify OCSE by facsimile, computer, or other electronic or non-electronic means to withdraw certification for passport denial, in accordance with OCSE requirements.
- D.** If an obligor fails to comply with the terms of any payment agreement with the Title IV-D Agency, and the arrearage qualifies for certification under federal statute, the Title IV-D Agency shall re-certify the obligor to OCSE for passport denial.
14. IRS tax reversals;
  15. Other fees or costs; and
  16. Futures.
- B.** Arrearage payments distributed in a Title IV-D case are applied first to the principal and then to the interest that accrued on that principal in the following order:
1. The oldest written judgment's principal and interest and then to each successive written judgment's principal and interest.
  2. Arrearages not reduced to a written judgment and the corresponding interest.
- C.** The Title IV-D Agency shall credit amounts received as support from or on behalf of the obligor as the required support obligation for the month in which they are received unless they are submitted by an employer. Payments submitted by an employer as the result of an income withholding order are considered received in the month in which the income was withheld by the employer. The date of receipt for income withholding order payments is the last day of the pay period from which the payment is withheld.
- D.** A voluntary payment received in a cash assistance case shall be retained by the Title IV-D Agency and shared with the federal government. Any monies received in excess of cash assistance owed to the state and federal government shall be paid to the obligee.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 5201, effective December 17, 2005 (Supp. 05-4).

**R6-7-406. Appeal from Administrative Review**

A Title IV-D Agency determination made under this Article is subject to judicial review under A.R.S. Title 12, Chapter 7, Article 6 (Judicial Review of Administrative Decisions), or other applicable law.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 5201, effective December 17, 2005 (Supp. 05-4).

**ARTICLE 5. RESERVED****ARTICLE 6. TITLE IV-D DISTRIBUTION****R6-7-601. Distribution**

- A.** The Title IV-D Agency shall distribute monies collected in a Title IV-D case in accordance with state and federal law and the provisions of this Article in the following sequence to:
1. Current child support;
  2. Current spousal maintenance;
  3. Current cash medical support;
  4. Child support judgments for arrearage or past support, and the applicable corresponding interest;
  5. Spousal maintenance judgments for arrearage or past support and the applicable corresponding interest;
  6. Pregnancy and childbirth judgments and the corresponding interest;
  7. Cash medical support judgments and the corresponding interest;
  8. Judgments for uncovered medical costs and the corresponding interest;
  9. Child support arrearages not reduced to a written judgment and the corresponding interest;
  10. Spousal maintenance arrearages not reduced to a written judgment and the corresponding interest;
  11. Cash medical support arrearages not reduced to a written judgment, and the corresponding interest;
  12. Current month's handling fee;
  13. Handling fees owed to the Support Payment Clearinghouse;
- B.** If an obligor or payor tenders payment in a foreign currency, draft, check, or other negotiable form of payment under a U.S. support order and the equivalent value in U.S. dollars is less than the ordered amount, the difference between the ordered amount and the amount tendered constitutes an unpaid amount owed.
- C.** If an obligor or payor tenders payment in a foreign currency, draft, check, or other negotiable form of payment under a U.S. support order, and the equivalent value in U.S. dollars is more than the ordered amount, the Title IV-D Agency shall distribute the excess amount according to R6-7-601(A).
- D.** If an obligor or payor tenders payment in a foreign currency, draft, check, or other negotiable form of payment as required under a foreign support order, the Title IV-D Agency shall give the obligor credit for the amount tendered regardless of the conversion value in U.S. dollars.
- E.** The Clearinghouse shall disburse support and related payments it receives in U.S. dollars.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

**R6-7-603. Allocation of Monies Received from Federal Income Tax Refund Offset to Arrearages**

If monies received from a federal income tax refund offset do not satisfy the total arrearages for all cases submitted by the Title IV-D Agency to OCSE for payment owed by an obligor to multiple obligees, the Title IV-D Agency shall make a proportionate allocation to each obligee whose case was submitted for federal income tax refund offset. The Title IV-D Agency shall determine the proportionate share by dividing the total arrearages owed to each obligee by the total arrearages owed by the obligor and multiplying the resulting percentage by the amount of the federal income tax refund offset.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

**R6-7-604. Allocation of Other Than Internal Revenue Service Payments to Multiple Obligees**

- A. If the Title IV-D Agency receives a support payment not paid by an income withholding order that is undesignated as to case or obligee and it does not satisfy the total current support owed by one obligor to multiple obligees, the Title IV-D Agency shall use the following procedure to determine the amount of support allocated to each obligee:
  1. Determine the total current support owed by the obligor to all obligees,
  2. Divide the current support that the obligor owes to each obligee by the total current support that the obligor owes to all obligees, and
  3. Multiply the resulting percentage by the payment.
- B. If the Title IV-D Agency receives a support payment not paid by an income withholding order that is undesignated as to case or obligee and it does not satisfy the total arrearages or past support owed by one obligor to multiple obligees, the Title IV-D Agency shall use the following procedure to determine the amount of support allocated to each obligee:
  1. Determine the total arrearages owed by the obligor to all obligees,
  2. Divide the arrearages that the obligor owes to each obligee by the total arrearages that the obligor owes to all obligees, and
  3. Multiply the resulting percentage by the arrearage or past support payment.
- C. The Title IV-D Agency shall not use this procedure if:
  1. The payment source is an income withholding order and the employer or payor has allocated under A.R.S. §§ 25-504 or 25-505.01;
  2. The case is governed by R6-7-715; or
  3. The support owed to an obligee was not submitted for the enforcement action that resulted in the collection.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

**R6-7-605. Distribution of Monies Received from Federal Income Tax Refund Offset to Arrearages**

If the federal income tax refund offset received from the Internal Revenue Service on behalf of an obligor is greater than the total arrearages owed for all cases submitted for federal income tax refund offset, the Title IV-D Agency shall refund any excess monies to the obligor, unless the obligor agrees in writing that the monies may be applied to other obligations owed.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

**R6-7-606. Distribution of Futures**

The Title IV-D Agency shall apply futures as provided in 45 CFR 302.51(b) (Office of the Federal Register, National Archives and Records Administration, October 1, 2004), which is incorporated by reference and on file with the Department. This incorporation by reference does not include any later amendments or editions. The Title IV-D Agency shall also follow the same regulation in never assistance and former assistance cases.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

**R6-7-607. Distribution of Prepaid Support**

- A. The Title IV-D Agency shall treat payments as prepaid support only if there is no alternative that would allow for prompt payment of support owed to an obligee in a future month.
- B. The Title IV-D Agency shall release any prepaid support in the applicable future month for distribution in accordance with R6-7-601(A).

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

**R6-7-608. Distribution in Title IV-E Cases**

- A. The Department shall retain monies collected in a Title IV-E case for reimbursement of Title IV-E expenditures under A.R.S. § 8-243.02.
- B. While a case is current Title IV-E, all support collected shall be disbursed in accordance with 45 CFR 302.52 (Office of the Federal Register, National Archives and Records Administration, October 1, 2004), which is incorporated by reference and on file with the Department. This incorporation by reference does not include any later amendments or editions. If the collection is more than the current monthly support and exceeds the total Title IV-E expenditures, then the Department shall use the collection to pay any arrearages assigned to the state under A.R.S. § 46-407. If arrearages have been paid, the Department shall pay any excess in a current Title IV-E case to the Title IV-E Agency for the benefit of the Title IV-E child.
- C. When a case is former Title IV-E and former assistance with arrearages assigned to the state under A.R.S. § 46-407 and A.R.S. § 8-243.02, the Department shall first apply arrearage collections to the arrearages assigned under A.R.S. § 46-407.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

**R6-7-609. Distribution in Current Assistance Cases with a Child Exempt from Assignment**

- A. In a current assistance case, when a child is determined to be a Child Not on Grant, the Title IV-D Agency shall distribute current support collected for a Child Not on Grant on or after the end of the month in which the current support is collected. Arrearages that accrue and are collected while the assistance unit is receiving cash assistance shall be distributed on or after the end of the month in which the arrearages are collected.
- B. If a child support order for a Child Not on Grant covers children who are not subject to A.R.S. § 46-407(B), the Title IV-D agency shall divide the ordered child support amount by the number of children in the order. The Title IV-D Agency shall distribute the prorated share of the child support collected for the benefit of the Child Not on Grant.
- C. Beginning July 1, 2003, for current child support and any child support arrearages that accrue during the period of assistance, the Title IV-D Agency shall distribute the prorated share of child support collected for the benefit of a child who is subject

to A.R.S. § 46-292(G) on or after the end of the month in which it is collected.

- D. If a child support order for a child subject to A.R.S. § 46-292(G) also covers children who are not subject to A.R.S. § 46-292(G), the Title IV-D Agency shall divide the ordered child support amount by the number of children in the order. The Title IV-D Agency shall distribute the prorated share of the child support collected for the benefit of the child subject to A.R.S. § 46-292(G).

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

#### R6-7-610. Distribution of Cash Medical Support in Title XIX Cases

- A. The Title IV-D Agency shall retain current cash medical support monies for a child receiving Title XIX services under A.R.S. § 46-407 where the recipient of services is an individual to whom court ordered medical support is owed.
- B. When a child is receiving Title XIX services, the Title IV-D Agency shall disburse all current cash medical support for that child to the Title XIX Agency in accordance with 45 CFR 302.51 on or after the end of the month in which the current cash medical support is collected. The Title IV-D Agency shall distribute arrearages that accrue and are collected while the child is receiving Title XIX services on or after the end of the month in which the arrearages are collected.
- C. When a child is no longer receiving Title XIX services, the Title IV-D Agency shall disburse current cash medical support in accordance with R6-7-701. The Title IV-D Agency shall distribute collections of cash medical support arrears that accrued while the child was receiving Title XIX services in accordance with R6-7-601 to the Title XIX Agency.
- D. If a cash medical support order covers children who are not receiving Title XIX services and children who are receiving Title XIX services, the Title IV-D Agency shall divide the ordered cash medical support amount by the number of children in the order. The Title IV-D Agency shall distribute the prorated share of cash medical support for the benefit of the children receiving Title XIX services to the Title XIX Agency and the prorated share of cash medical support for the benefit of the children not receiving Title XIX services to the obligee.
- E. When a case is former Title XIX and former assistance with arrearages assigned to the state under A.R.S. § 46-407, the Title IV-D Agency shall first apply arrearage collections to the child and spousal support arrearages assigned under A.R.S. § 46-407.

#### Historical Note

New Section made by final rulemaking at 15 A.A.R. 1250, effective September 5, 2009 (Supp. 09-3).

#### R6-7-611. Distribution of the Mandatory Annual Fee on and after October 1, 2007

- A. The Title IV-D Agency shall charge a \$25.00 annual fee to a recipient of services who has never received assistance under a state or tribal Title IV-A program for each Title IV-D case. The Title IV-D Agency shall retain the \$25.00 fee from collections of support that exceed \$500.00 within a federal fiscal year for each Title IV-D case.
- B. After the first \$500.00 of support collections in a federal fiscal year, the Title IV-D Agency shall retain the fee from future collections and pay the mandatory fee before distributing collections pursuant to R6-7-601.
- C. If, after the \$500.00 collection threshold has been met, no further collections are received, or less than \$25.00 is collected within that year, the Title IV-D Agency shall charge the bal-

ance of the fee to the recipient of services after notice of a deadline for payment of the fee. If the recipient does not pay the fee by the deadline, the Title IV-D Agency shall retain the fee from future collections of support in subsequent federal fiscal years.

- D. If a foreign country has requested enforcement of a support order in a Title IV-D case, the annual fee of \$25.00, owed pursuant to R6-7-611(A), shall be charged to the obligor.

#### Historical Note

New Section made by final rulemaking at 15 A.A.R. 1250, effective September 5, 2009 (Supp. 09-3).

#### ARTICLE 7. TITLE IV-D DISBURSEMENT

##### R6-7-701. Disbursement

- A. The Title IV-D Agency shall disburse support and related payments that the Title IV-D Agency receives in a Title IV-D case to one or more of the following recipients:
  1. An obligee or an agent authorized in writing by an obligee or as determined by law;
  2. A Title IV-D agency of another state if the agency submits a request for support establishment or enforcement services and is authorized to receive support under U.I.F.S.A.;
  3. The federal government, if Arizona is providing or has provided cash assistance to the assistance unit, or a member of the assistance unit, or if Arizona is providing or has provided Title IV-E foster care maintenance payments, or if the annual \$25.00 fee is owed, pursuant to R6-7-611;
  4. A state, if the state is providing or has provided cash assistance to the assistance unit that does not exceed the total amount of unreimbursed cash assistance;
  5. An obligor, if a refund is due;
  6. A bankruptcy trustee;
  7. A state or federal agency as authorized by law;
  8. A caretaker under Arizona statute and R6-7-712.
- B. The Title IV-D Agency shall issue payments due to an obligee at the last known address filed with the Child Support Case Registry or the last address known to F.A.A.
- C. If a payment to an obligee is returned to the Title IV-D Agency because it was undeliverable, the Title IV-D Agency shall make a reasonable effort to locate the obligee for the period authorized in A.R.S. § 25-503.
- D. If the Title IV-D Agency is unable to locate the obligee by the end of the period authorized in A.R.S. § 25-503, the Title IV-D Agency shall contact the obligor to request oral or written approval to apply the funds to arrearages and any other unpaid obligations owed to the state. If the Title IV-D Agency is unable after a reasonable effort to locate the obligee or obligor, and an arrearage is still owed to the state, the Title IV-D Agency shall apply the payments to the arrearage. Any remaining amounts shall be handled consistent with applicable law.
- E. If an obligee requests that the Title IV-D Agency directly deposit support in a financial institution and the financial institution returns those monies because the obligee's account is closed, or the financial institution will not accept the deposit, the Title IV-D Agency shall make a reasonable effort to locate the obligee for the period authorized in A.R.S. § 25-503, after receiving notice that the account is closed or that the financial institution will not accept the deposit.
- F. Neither the return of monies to an obligor due to an inability to locate the obligee, nor the application of monies to arrearages or other support-related debts terminates an obligor's obligation ordered by a court or administrative entity.
- G. The Title IV-D Agency shall disburse support that the Title IV-D Agency receives for a current assistance case within two

business days of the last day of the month in which the Clearinghouse receives the payment.

- H.** Except as provided in subsections (G), (I), (J), (K), (L), and (M), the Title IV-D Agency shall disburse support within two business days of receipt by the Clearinghouse unless the Clearinghouse is unable to disburse the support for one or more of the following reasons:

1. The Title IV-D Agency does not have the obligee's current address;
2. The Title IV-D Agency or its payment posting contractor lacks sufficient information to identify the case to which the payment must be applied;
3. An action is pending before the Title IV-D Agency to determine whether:
  - a. An administrative income withholding order is enforceable under A.R.S. § 25-505.01, or
  - b. A limited income withholding order is enforceable under A.R.S. § 25-505;
4. The payment is for futures that federal law requires the Title IV-D Agency to hold for disbursement in a future month, or for prepaid support;
5. A court or administrative order, bankruptcy stay, or state or federal law requires the Title IV-D Agency to retain support or to use a different disbursement method or time-frame;
6. The Title IV-D Agency lacks information regarding a support order, an agreement, or any other obligation owed to the Department;
7. Support is returned to the Title IV-D Agency or the Clearinghouse due to the obligee's incarceration or because the obligee or only child still covered by the order is deceased;
8. A check received from an obligor or other payor has previously been dishonored, precluding the acceptance of a personal check under A.R.S. § 25-503; or
9. Other circumstances exist that prevent proper and timely disbursement of support through no fault or lack of diligence on the part of the Title IV-D Agency.

- I.** If a federal income tax refund offset is based on a joint federal income tax return, the Title IV-D Agency shall retain the offset for 180 days after receipt of the refund monies unless the Internal Revenue Service notifies the Title IV-D Agency of the resolution of an injured spouse claim, or until the spouse signs a waiver of any right to claim a portion of the refund. The Title IV-D Agency shall distribute and disburse a federal income tax refund offset that is based on a joint tax return in accordance with R6-7-709, R6-7-710 and R6-7-711. The offset collections do not accrue interest and the Title IV-D Agency shall not pay interest on these monies.

- J.** *If a [state income] tax refund is based on a joint income tax return and the department of economic security receives a written claim from the nonobligated spouse within forty-five days after the notice of a setoff for overdue child support, the setoff only applies to that portion of the refund due to the obligor. The nonobligated spouse shall provide to the department of economic security copies of both the obligated and nonobligated spouse's federal W-2 forms and evidence of estimated tax payments supporting the proportionate share of each spouse's payment of tax. The department of economic security shall retain the amount of the set off refund due to the obligated spouse determined by a proration based on the tax payments of each spouse by estimated tax payment or tax withheld from wages.* A.R.S. § 42-1122(S).

- K.** The Title IV-D Agency shall distribute and disburse an Arizona income tax refund setoff that is based on a joint income tax return in accordance with R6-7-601. The Title IV-D

Agency shall not pay interest on these monies except as provided in A.R.S. §§ 42-1122 and 42-1123.

- L.** The Title IV-D Agency shall retain a state lottery prize that has been set off under A.R.S. § 5-525 for 30 days after the date on the notice of setoff and right to appeal as prescribed in A.R.S. § 5-525. The Title IV-D Agency shall not pay interest on these monies except as provided in A.R.S. § 5-525.
- M.** In addition to the reasons for retaining support already stated in this rule, the Title IV-D Agency may retain support for more than two business days if:
1. The amount received exceeds the amount due or owing, but is neither futures nor prepaid support;
  2. The obligee's and obligor's financial accounts maintained by the Title IV-D Agency are out of balance;
  3. An obligor has multiple cases and, in at least one case, has no known obligation to support a child, or a child covered by the support order is receiving Social Security benefits and A.R.S. § 46-407 applies;
  4. A personal or business check received for support in one case exceeds \$2,500 and there is no history of checks that exceed \$2,500 clearing in that case. In no event shall the Title IV-D Agency retain these monies for more than 10 business days;
  5. The Title IV-D Agency has received a notice of a stop payment order on a payment; or
  6. The amount to be disbursed in a check is less than \$3.00. When the amount held reaches \$3.00 or more, the Title IV-D Agency shall disburse the amount.
- N.** If a support payment received by the Title IV-D Agency exceeds the amount due or owing and is neither futures nor prepaid support, the Title IV-D Agency shall refund the excess to the obligor at the last known address provided to the Child Support Case Registry.
- O.** If an obligee cannot be located before a case is closed, the Title IV-D Agency shall send any undisbursed amounts owed to the obligee back to the obligor.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R.

5201, effective November 15, 2005 (Supp. 05-4).

Amended by final rulemaking at 15 A.A.R. 1250, effective September 5, 2009 (Supp. 09-3).

#### **R6-7-702. Disbursement in Never Assistance Cases through December 31, 2002**

Except as provided in R6-7-710 and R6-7-711 for federal income tax refund offsets, the Title IV-D Agency shall disburse support and related payments collected for an Arizona never assistance case to a recipient of services under Title IV-D or Title XIX of the Social Security Act as follows:

1. First, to current support;
2. Second, to the handling fee for the month in which the Title IV-D Agency receives the support;
3. Third, to never assigned arrearages;
4. Fourth, to fees and costs and unpaid handling fees;
5. Fifth, to futures.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R.

5201, effective November 15, 2005 (Supp. 05-4).

#### **R6-7-703. Disbursement in Never Assistance Cases on and after January 1, 2003**

Except as provided in R6-7-710 and R6-7-711 for federal income tax refund offsets, and R6-7-611 for the mandatory annual fee effective on and after October 1, 2009, the Title IV-D Agency shall disburse support and related payments collected for an Arizona

never assistance case to a recipient of services under Title IV-D or Title XIX of the Social Security Act as follows:

1. First, to current support;
2. Second, to never assigned arrearages;
3. Third, to the handling fee for the month in which the Title IV-D Agency receives the support and unpaid handling fees;
4. Fourth, to fees and costs;
5. Fifth, to futures.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R.

5201, effective November 15, 2005 (Supp. 05-4).

Amended by final rulemaking at 15 A.A.R. 1250, effective September 5, 2009 (Supp. 09-3). Historical note year corrected from 2010 to 2009 for amendment in Supp. 09-3 (Supp. 14-3).

#### **R6-7-704. Disbursement in Current Assistance Cases through December 31, 2002**

Except as provided in R6-7-710 and R6-7-711 for federal income tax refund offsets, the Title IV-D Agency shall disburse support and related payments collected for an Arizona Title IV-D current assistance case as follows:

1. First to current support assigned to the state of Arizona, not to exceed the total amount of unreimbursed cash assistance;
2. Second, to the handling fee for the month in which the Title IV-D Agency receives the support;
3. Third, to temporarily assigned arrearages;
4. Fourth, to permanently assigned arrearages;
5. Fifth, to unassigned arrearages;
6. Sixth, to fees and costs;
7. Seventh, to futures.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R.

5201, effective November 15, 2005 (Supp. 05-4).

#### **R6-7-705. Disbursement in Current Assistance Cases on and after January 1, 2003**

A. For all recipients who applied for current assistance prior to October 1, 2009 and therefore assigned their rights to support to the state, the Title IV-D Agency shall disburse support and related payments, except as provided in R6-7-710 and R6-7-711 for federal income tax refund offsets, collected for an Arizona Title IV-D current assistance case as follows:

1. First, to current support assigned to the state of Arizona, not to exceed the total amount of unreimbursed cash assistance;
2. Second, to temporarily assigned arrearages;
3. Third, to permanently assigned arrearages;
4. Fourth, to unassigned arrearages;
5. Fifth, to the handling fee for the month in which the Title IV-D Agency receives the support and other unpaid handling fees;
6. Sixth, to fees and costs;
7. Seventh, to futures.

B. For all recipients who applied for current assistance on and after October 1, 2009, the Title IV-D Agency shall disburse support and related payments, except as provided in R6-7-710 and R6-7-711 for federal income tax refund offsets, collected for an Arizona Title IV-D current assistance case as follows:

1. First, to current support assigned to the state of Arizona, not to exceed the total amount of unreimbursed cash assistance;
2. Second, to temporarily assigned arrearages which were assigned prior to October 1, 2009;

3. Third, to permanently assigned arrearages;
4. Fourth, to never assigned arrearages;
5. Fifth, to conditionally assigned arrearages based on assignments entered prior to October 1, 2009;
6. Sixth, to unassigned pre-assistance arrearages;
7. Seventh, to unassigned during-assistance arrearages;
8. Eighth, to the handling fee for the month in which the Title IV-D Agency receives the support and other unpaid handling fees;
9. Ninth, to fees and costs;
10. Tenth, to futures.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R.

5201, effective November 15, 2005 (Supp. 05-4).

Amended by final rulemaking at 15 A.A.R. 1250, effective September 5, 2009 (Supp. 09-3). Historical note year corrected from 2010 to 2009 for amendment in Supp. 09-3 (Supp. 14-3).

#### **R6-7-706. Disbursement in Current Assistance Cases with a Child Exempt from Assignment**

- A. The Title IV-D Agency shall disburse the prorated share of support received for a Child Not on Grant to the obligee after the end of the month in which it is received.
- B. If the Title IV-D Agency determines that a child is a Child Not on Grant, the unpaid share of support accrues as never assigned arrearages.
- C. If a Child Not on Grant is no longer subject to A.R.S. § 46-407(B), and instead is subject to the remaining provisions of A.R.S. §§ 46-407 and 46-408, all previously unpaid arrearages are assigned to the state.
- D. While an assistance unit is receiving cash assistance, the Title IV-D Agency shall disburse the prorated share of support received for a child subject to the provisions of A.R.S. § 46-292(G) to the obligee after the end of the month of current assistance.
- E. If the Title IV-D Agency determines that a child in an assistance unit is subject to the provisions of A.R.S. § 46-292(G), the unpaid prorated share of support accrues as never assigned arrearages.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R.

5201, effective November 15, 2005 (Supp. 05-4).

#### **R6-7-707. Disbursement Under Federal Law from October 1, 1997 through September 30, 2000 for Former Assistance Cases**

Except as provided in R6-7-710 and R6-7-711 for federal income tax refund offsets, the Title IV-D Agency shall disburse support and related payments for a former cash assistance case as follows:

1. First, to current support;
2. Second, to the handling fee for the month in which the Title IV-D Agency receives the support;
3. Third, to never assigned arrearages;
4. Fourth, to temporarily assigned arrearages;
5. Fifth, to the permanently assigned arrearages;
6. Sixth, to unassigned arrearages;
7. Seventh, to unpaid handling fees;
8. Eighth, to fees and costs;
9. Ninth, to futures as provided in R6-7-606.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R.

5201, effective November 15, 2005 (Supp. 05-4).

**R6-7-708. Disbursement Under Federal Law from October 1, 2000 through December 31, 2002 for Former Assistance Cases**

Except as provided in R6-7-710 and R6-7-711 for federal income tax refund offsets, the Title IV-D Agency shall disburse support and related payments for a former cash assistance case as follows:

1. First, to current support;
2. Second, to the handling fee for the month in which the Title IV-D Agency receives the support;
3. Third, to never assigned arrearages;
4. Fourth, to unassigned pre-assistance arrearages;
5. Fifth, to conditionally assigned arrearages;
6. Sixth, to permanently assigned arrearages;
7. Seventh, to unassigned during-assistance arrearages;
8. Eighth, to fees and costs;
9. Ninth, to futures.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

**R6-7-709. Disbursement Under Federal Law on and after January 1, 2003 for Former Assistance Cases**

Except as provided in R6-7-710 and R6-7-711 for federal income tax refund offsets, the Title IV-D Agency shall disburse support and related payments collected for a former assistance case, as follows:

1. First, to current support;
2. Second, to never assigned arrearages;
3. Third, to unassigned pre-assistance arrearages;
4. Fourth, to conditionally assigned arrearages;
5. Fifth, to permanently assigned arrearages;
6. Sixth, to unassigned during-assistance arrearages;
7. Seventh, to the handling fee for the month in which the Title IV-D Agency receives the support and other unpaid handling fees;
8. Eighth, to fees and costs;
9. Ninth, to futures.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

**R6-7-710. Disbursement of Federal Income Tax Refund Offsets Under Federal Law from October 1, 1997 through September 30, 2000**

The Title IV-D Agency shall disburse support collected through federal income tax refund offset in accordance with 26 U.S.C. 6402 and 42 U.S.C. 664, as follows:

1. First, to temporarily assigned arrearages;
2. Second, to permanently assigned arrearages; and
3. Third, to never assigned and unassigned arrearages.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

**R6-7-711. Disbursement of Federal Income Tax Refund Offsets Under Federal Law on and after October 1, 2000**

A. The Title IV-D Agency shall disburse arrearages collected through federal income tax refund offset in accordance with 26 U.S.C. 6402 and 42 U.S.C. 664, as follows:

1. First, to temporarily or conditionally assigned arrearages owed to the state of Arizona;
2. Second, to permanently assigned arrearages; and
3. Third, to never assigned and unassigned arrearages.

B. The Title IV-D Agency shall retain conditionally assigned arrearages collected through the federal income tax refund offset to reimburse the state and federal governments for unreimbursed cash assistance paid to the assistance unit. The Title IV-

D Agency shall pay conditionally assigned arrearages, collected from any source other than a federal income tax refund offset, to the obligee.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

**R6-7-712. Caretaker Disbursement**

If an obligee with a child support case becomes the caretaker of a child who is not the obligee's child, the Title IV-D Agency shall disburse support and related payments owed to the obligee in accordance with R6-7-703, R6-7-704, R6-7-707, and R6-7-708, as applicable. The support and related payments for the assistance unit shall be disbursed in accordance with R6-7-705.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

**R6-7-713. Past Support Judgments**

If a court or an administrative entity orders past support that covers a period in which the obligee was on cash assistance, the amount for that period is assigned to the state and the Title IV-D Agency shall distribute collections in accordance with A.R.S. § 46-408 and disburse support in accordance with this Article. If a child covered by the order was receiving Title IV-E foster care maintenance payments for any of the period covered by the judgment, the amount for that period is assigned to the state and collections shall be distributed in accordance with R6-7-608. A past support judgment ordered on and after September 26, 2008 does not accrue interest.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).  
Amended by final rulemaking at 15 A.A.R. 1250, effective September 5, 2009 (Supp. 09-3). Historical note year corrected from 2010 to 2009 for amendment in Supp. 09-3 (Supp. 14-3).

**R6-7-714. Interest on Arrearages**

- A. The Title IV-D Agency shall retain interest paid on arrearages assigned to the state of Arizona that do not exceed the total amount of unreimbursed cash assistance.
- B. From October 1, 1997 through September 31, 2000, the Title IV-D Agency shall allocate the amount of interest on permanently assigned, temporarily assigned, never assigned, and unassigned arrearages based on a proportionate share of the total amount of arrearages owed. The Title IV-D Agency shall determine the percentage allocated to each arrearage type by dividing each arrearage type by the total arrearages and multiplying the resulting percentages by the total amount of interest accrued.
- C. On and after October 1, 2000, the Title IV-D Agency shall allocate the amount of interest on permanently assigned, temporarily assigned, conditionally assigned, never assigned, and unassigned arrearages based on a proportionate share of the total amount of arrearages owed. The Title IV-D Agency shall determine the percentage allocated to each arrearage type by dividing each arrearage type by the total arrearages and multiplying the resulting percentages by the total amount of interest accrued.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

**R6-7-715. Unassigned Arrearages**

- A. If a family stops receiving cash assistance, the Title IV-D Agency shall compare unreimbursed cash assistance and



assigned arrearages as of the last day of the month when the family leaves assistance. If the total amount of assigned arrearages and accrued interest exceeds unreimbursed cash assistance, the Title IV-D Agency shall unassign the excess amount. These amounts are unassigned arrearages. The Title IV-D Agency shall unassign arrearages as follows:

1. First, from the interest owed on temporarily assigned arrearages;
  2. Second, from the corresponding principal of the temporarily assigned arrearages;
  3. Third, from the interest owed on permanently assigned arrearages; and
  4. Fourth, from the corresponding principal on the permanently assigned arrearages.
- B.** On and after October 1, 2000, if the Title IV-D Agency unassigns arrearages from temporarily assigned amounts, these amounts are unassigned pre-assistance arrearages. The Title IV-D Agency shall first unassign the interest on arrearages and second unassign the corresponding principal on arrearages.
- C.** On and after October 1, 2000, if the Title IV-D Agency unassigns arrearages from permanently assigned amounts, these amounts are unassigned during-assistance arrearages. The Title IV-D Agency shall first unassign the interest on arrearages and second unassign the corresponding principal on arrearages.
- D.** For arrearages assigned before the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the federal government did not require states to track periods of assignment. If the Title IV-D Agency cannot determine whether the unassigned arrearages were from a pre-assistance period or a during-assistance period, the Title IV-D Agency shall treat those unassigned arrearages as unassigned pre-assistance arrearages.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

#### **R6-7-716. Interstate Collections in UIFSA Cases**

If Arizona is the responding state, the Title IV-D Agency shall send payments received to the initiating or issuing state pursuant to A.R.S. § 25-1259.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 5201, effective November 15, 2005 (Supp. 05-4).

## ARTICLE 8. ADMINISTRATIVE REVIEW

*Article 8, consisting of R6-7-801, made by final rulemaking at 10 A.A.C. 1973, effective April 23, 2004 (Supp. 04-2).*

### **R6-7-801. Obligor Request for Administrative Review of Distribution or Disbursement of Support or Related Payments**

- A.** An obligor requesting an administrative review under A.R.S. § 46-408 shall submit a written request with the information listed in subsections (A)(1) and (2) to the address specified in the notice of collections:
1. The residential and mailing address of the obligor, and
  2. The reasons why the obligor disputes the distribution or disbursement.
- B.** An obligor shall include with the request for administrative review any information available to support the request. This may include such documents as:
1. Any support orders issued,
  2. Any notices sent by the Title IV-D Agency,
  3. Any proof of payments made,
  4. A copy of the obligor's notice of collections sent by the Title IV-D agency, and
  5. Any other information the obligor believes to be relevant.
- C.** An obligor may submit a written request by first-class mail, facsimile, or in person.
- D.** The Title IV-D Agency shall send a written request for additional information within 10 business days after receipt of the request for administrative review to the obligor if the agency requires the information to make its determination. The obligor shall provide the information requested within 30 business days of the date of the request.
- E.** An obligor may appeal a determination of the Title IV-D Agency regarding the distribution or disbursement of support or related payments under A.R.S. § 25-522. To make an appeal, an obligor shall file a written request with the Department's Office of Appeals under A.R.S. Title 41, Chapter 14, Article 3 within 30 business days from the date of the written determination. An appeal from the Office of Appeals' written determination may be made to the Appeals Board under A.R.S. § 41-1992. An appeal from the Appeals Board may be made to the Court of Appeals under A.R.S. § 41-1993.

#### Historical Note

New Section made by final rulemaking at 10 A.A.R. 1973, effective April 23, 2004 (Supp. 04-2).

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**Supplement to the**

**Arizona Administrative Code**

The official compilation of Arizona Rules

**Arizona Secretary of State's Office**

Public Services Division

1700 W. Washington Street, Fl 7.

Phoenix, AZ 85007

***Replacement Check List***

For rules filed within the

Third

July 1, 2014 - September 30, 2014

**Code Release Number: Supp. 14-3**

Within the stated calendar quarter, this Title contains all rules made, amended, repealed, renumbered, and recodified; or rules that have expired or were terminated due to an agency being eliminated under sunset law. These rules were either certified by the Governor's Regulatory Review Council or the Attorney General's Office; or exempt from the rulemaking process, and filed with the Office of the Secretary of State. Refer to the historical notes for more information. Please note that some rules you are about to remove may still be in effect after the publication date of this Supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

**Follow the instructions to replace the updated Chapters.**

**TITLE 08. Emergency and Military Affairs**

**Chapter 04. Department of Emergency and Military Affairs - Arizona Emergency Response Commission**

Sections, Parts, Exhibits, Tables or Appendices modified

R8-4-107

REMOVE Supp. 08-3

Pages: 1 - 3

REPLACE with Supp. 14-3

Pages: 1 - 3

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**TITLE 8. EMERGENCY AND MILITARY AFFAIRS****CHAPTER 4. ARIZONA EMERGENCY RESPONSE COMMISSION****ARTICLE 1. EMERGENCY PLANNING AND  
COMMUNITY RIGHT TO KNOW**

*Article 1, consisting of Sections R8-4-101 through R8-4-110, made by final rulemaking at 14 A.A.R. 2931, effective August 30, 2008 (Supp. 08-3).*

**Section**

R8-4-101.	Definitions
R8-4-102.	General Provisions
R8-4-103.	Responsibilities of an LEPC
R8-4-104.	Emergency Planning and Preparedness
R8-4-105.	Local Emergency Response Plan
R8-4-106.	Reportable Release Notification
R8-4-107.	Extremely Hazardous Substance (EHS) or Hazardous Chemical Reporting
R8-4-108.	Compliance Procedures
R8-4-109.	Community Right-to-know Procedures
R8-4-110.	Grants

**ARTICLE 1. EMERGENCY PLANNING AND  
COMMUNITY RIGHT TO KNOW****R8-4-101. Definitions**

- A.** The definitions in A.R.S. § 26-341 apply to this Chapter.
- B.** In this Article, unless specified otherwise:
1. "Emergency planning district" means an area that the Commission designates to facilitate preparing and implementing an emergency response plan.
  2. "EPA" means the United States Environmental Protection Agency.
  3. "EPCRA" means the Emergency Planning and Community Right-to-Know Act of 1986, commonly known as SARA Title III.
  4. "FD" means local fire department or the fire district with jurisdiction for a particular facility.
  5. "Hazardous substance" means a substance on the list that appears at 40 CFR 302.4.
  6. "LEPC" means "Committee," as prescribed at A.R.S. § 26-341(2).
  7. "MSDS" means material safety data sheet and has the same meaning as prescribed at 40 CFR 370.02.
  8. "NIMS" means National Incident Management System.
  9. "Reportable release" means a release that is not excluded under 40 CFR 355.40.
  10. "TPQ" means threshold planning quantity and has the same meaning as prescribed at 40 CFR 355.20.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 2931, effective August 30, 2008 (Supp. 08-3).

**R8-4-102. General Provisions**

- A.** The Commission shall make all forms referenced in this Chapter available on its internet site.
- B.** The owner or operator of a facility that is required to submit information under this Article may submit the information electronically to the Commission and LEPC and to the FD if, as indicated on the Commission's web site, the FD has entered into an agreement with the Commission regarding electronic submission.
- C.** When the chair of an LEPC forwards to the Commission an item requiring action by the Commission before its next meeting, the Executive Director of the Commission shall respond to the LEPC on behalf of the Commission until the Commission takes action at its next meeting.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 2931, effective August 30, 2008 (Supp. 08-3).

**R8-4-103. Responsibilities of an LEPC**

- A.** Members of an LEPC shall fulfill the responsibilities listed at 42 U.S.C. 11001(c), October 17, 1986, which is incorporated by reference, contains no future editions or amendments, and is available from the Commission and the U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250.
- B.** In addition to the responsibilities under subsection (A), members of an LEPC shall:
1. Establish procedures for access to the Local Emergency Response Plan;
  2. Evaluate the resources needed to develop and implement the Local Emergency Response Plan and make recommendations to the County Board of Supervisors and the Commission regarding mechanisms to provide the resources needed;
  3. Ensure that newly appointed LEPC members participate in training provided by the Commission regarding the responsibilities of LEPC members; and
  4. Ensure that LEPC members are aware of and have the opportunity to attend Commission-sponsored meetings regarding matters related to emergency planning and preparedness.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 2931, effective August 30, 2008 (Supp. 08-3).

**R8-4-104. Emergency Planning and Preparedness**

- A.** If a facility is required to comply with 40 CFR 355.30, the owner or operator of the facility shall also comply with the emergency planning and preparedness requirements in this Section.
- B.** If a facility is designated by the Commission under A.R.S. § 26-347(B), the owner or operator of the facility shall comply with the emergency planning and preparedness requirements in this Section and the reporting requirements of R8-4-107.
- C.** No later than 60 days after a facility first becomes subject to the emergency planning and preparedness requirements of this Section, the owner or operator of the facility shall submit a facility emergency response plan according to A.R.S. § 26-347(D). The owner or operator of the facility may submit the facility emergency response plan by completing and submitting an Emergency Response Plan Questionnaire, which is available from the Commission.
- D.** The owner or operator of a facility that submits an Emergency Response Plan Questionnaire under subsection (C) may also submit a Hazard Analysis Worksheet for each extremely hazardous substance at the facility that equals or exceeds the TPQ.
- E.** On or before March 1 of each year, the owner or operator of a facility described in subsection (A) or (B) shall:
1. Review and determine whether the facility emergency response plan submitted under subsection (C) is still accurate and, if changes are needed to ensure that the facility emergency response plan is accurate, submit information regarding the relevant changes. If information regarding relevant changes to the facility emergency response plan is submitted, the owner or operator of the facility may revise and submit the Hazard Analysis Worksheet previously submitted under subsection (D); and
  2. Comply with R8-4-107(C).

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 2931, effective August 30, 2008 (Supp. 08-3).

**R8-4-105. Local Emergency Response Plan**

- A.** Within 12 months after the Commission designates a new emergency planning district and appoints members of an LEPC for the newly designated emergency planning district, the LEPC shall prepare an emergency response plan that complies with the requirements at A.R.S. § 26-345(E) and complies with NIMS.
- B.** On or before December 31 of each year and when there are changed circumstances in the community or at a facility, an LEPC shall review and update the emergency response plan for its emergency planning district.
- C.** An LEPC shall submit a copy of the emergency response plan prepared under subsection (A) or (B) to the Commission.
- D.** Within 60 days after the Commission receives a copy of an emergency response plan under subsection (C), the Commission staff shall:
  - 1. Review the emergency response plan and make recommendations for revisions necessary to ensure that the emergency response plan complies with law and coordinates with the emergency response plans of adjoining emergency planning districts; and
  - 2. Return the emergency response plan and recommendations to the LEPC.
- E.** An LEPC shall ensure that the emergency response plan prepared under subsection (B) and reviewed and amended under subsection (D) is incorporated into the county's emergency operations plan in accordance with county procedures.
- F.** At least biennially and after providing at least 30 days notice to the Commission, an LEPC shall conduct an exercise of its emergency response plan.
- G.** On or before December 31 of each year, an LEPC shall survey its emergency planning district to determine how many copies of the U.S. Department of Transportation Emergency Response Guidebook are needed and forward the information regarding the number of copies needed to the Commission.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 2931, effective August 30, 2008 (Supp. 08-3).

**R8-4-106. Reportable Release Notification**

The owner or operator of a facility at which a reportable release occurs shall:

- 1. Comply with the notification requirements of A.R.S. § 26-348(A);
- 2. Submit the written follow-up emergency notice required under A.R.S. § 26-348(B); and
- 3. Update the notice provided under subsection (2) as required under A.R.S. § 26-348(C).

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 2931, effective August 30, 2008 (Supp. 08-3).

**R8-4-107. Extremely Hazardous Substance (EHS) or Hazardous Chemical Reporting**

- A.** The owner or operator of a facility shall comply with the extremely hazardous substance and hazardous chemical reporting requirements of 40 CFR 370, Subpart B, July 1, 2007, which is incorporated by this reference, contains no later amendments or editions, and is available from the Commission and the U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250.

- B.** As required by A.R.S. § 26-350, an owner or operator described in subsection (A) shall submit a Tier Two Emergency and Hazardous Chemical Inventory Form, using a form available from the Commission, by March 1 of each year. All facilities subject to this reporting requirement shall be subject to the Tier II Emergency and Hazardous Chemical Inventory Reporting fee schedule:

- 1. Each owner or operator of a facility required to file a hazardous chemical inventory report(s) (Tier II Reports) under the provisions of 42 U.S.C. § 11022 will be assessed a report filing fee of seventy-five dollars (\$75.00) for the first required facility report and an additional fee of twenty dollars (\$20.00) for each additional required facility report up to a maximum limit of five hundred dollars (\$500) per annual reporting period.
- 2. Owners or operators of facilities meeting the following conditions are exempt from the reporting fee(s):
  - a. Any business or other outlet that primarily reports or sells gasoline, diesel and other motor fuel only at retail to the public.
  - b. Any business or other outlet that only files a Tier II report to claim lead acid batteries.
  - c. Any business or other outlet that only files a Tier II report to claim diesel or gasoline.
  - d. Any business or other outlet that resides on tribal lands or a tribal Nation and must report to a Tribal Emergency Response Commission (TERC) or Chemical-Tribal Emergency Response Commission (C-TERC).

- C.** If a facility ceases to meet the minimum reporting thresholds of 40 CFR 370, Subpart B, for EHS and hazardous chemical reporting with regard to a specific EHS or hazardous chemical, the owner or operator of the facility may submit a notice to the Commission, LEPC, and FD indicating that the specific EHS or hazardous chemical is no longer present in a quantity that meets the minimum reporting threshold.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 2931, effective August 30, 2008 (Supp. 08-3). Amended by final rulemaking at 20 A.A.R. 2524, effective October 17, 2014 (Supp. 14-3).

**R8-4-108. Compliance Procedures**

- A.** The Commission shall make information regarding the EPCRA available to the owner or operator of a facility.
- B.** The owner or operator of a facility may obtain guidance, but not legal advice, regarding complying with the EPCRA by contacting the Commission.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 2931, effective August 30, 2008 (Supp. 08-3).

**R8-4-109. Community Right-to-know Procedures**

- A.** To obtain information regarding a specific hazardous chemical or extremely hazardous substance at a specific facility, local emergency response plan, or notice regarding a reportable release, a person shall submit a written request to the Commission or LEPC. If a request is submitted to an LEPC, the LEPC may forward a copy of the request to the Commission so Commission staff can coordinate a response to the request. To obtain a copy of a Form R relating to toxic chemical releases, a person shall submit a written request to the Commission.
- B.** As required by 42 U.S.C. 11022, the Commission or LEPC shall respond to a written request for information. The response shall advise the person making the request of one of the following:

Arizona Emergency Response Commission

1. The time and location at which the person may inspect and copy the requested information,
  2. That additional information is needed to process the request,
  3. That the requested information is not available but the Commission or LEPC will ask the owner or operator of the facility to provide the information, or
  4. That the request is denied because:
    - a. The requested information does not exist,
    - b. The owner or operator of the facility is not required to provide the information,
    - c. The Commission or LEPC determined that disclosing the information will impair its ability to protect public health or safety and the public interest in non-disclosure outweighs the public interest in disclosure, or
    - d. The information is exempt by law from disclosure.
- C.** Before releasing information, the Commission or LEPC shall advise the owner or operator of a facility of the request for information regarding the facility.
- D.** Under A.R.S. § 39-121, the Commission or LEPC shall charge the person making a request under this Section the cost of reproducing the information requested. The Commission shall deposit the funds received under this subsection in accordance with A.R.S. § 26-343(G).
- Historical Note**  
New Section made by final rulemaking at 14 A.A.R. 2931, effective August 30, 2008 (Supp. 08-3).
- R8-4-110. Grants**
- A.** On or before September 1 of each year, the Commission shall provide notice that is consistent with A.R.S. § 41-2702 to all LEPCs regarding grants that are available from the Commission.
- B.** To receive funds that are awarded on a non-competitive basis, an LEPC shall submit a "Certification and Request for Funding" form in which the LEPC certifies that it:
1. Is in compliance with all applicable law, including NIMS;
  2. Will use the funds in the manner intended;
  3. Will keep separate funds from the Emergency Response Fund and funds from other sources; and
  4. Will submit all required reports.
- C.** To receive grant funds that are awarded on a competitive basis, an LEPC shall submit to the Commission a proposal that specifies:
1. The goal that the LEPC intends to accomplish with any grant funds received,
  2. Where the grant funds will be spent,
  3. The amount of grant funds needed to accomplish the goal,
  4. The time needed to accomplish the goal, and
  5. Other information that the Commission requests to assist the Commission to evaluate the grant proposal.
- D.** On behalf of the Commission, Commission staff shall meet at least annually with members of the LEPCs to establish the criteria used to evaluate a grant proposal. Commission staff, on behalf of the Commission, shall evaluate each proposal that is timely received using the criteria established. The Commission shall ensure that the criteria used include consideration of both the qualification of and need for an LEPC to receive a grant.
1. The criteria regarding qualification of an LEPC to receive a grant may include:
    - a. The extent to which the LEPC fulfilled the responsibilities listed in R8-4-103;
    - b. Whether the LEPC complied with all provisions of R4-8-104;
    - c. Whether the LEPC submitted all reports required for grant funds previously received;
    - d. Whether previously received grant funds were used in a manner that achieved the goal established;
    - e. Attendance by LEPC members at Commission-sponsored meetings; and
    - f. The number of training sessions provided by LEPC members to emergency responders in the emergency planning district; and
  2. The criteria regarding need for an LEPC to receive a grant may include:
    - a. The number of facilities required to report to the LEPC under this Chapter;
    - b. The population represented by the LEPC; and
    - c. The number of reportable releases during the past year in the area represented by the LEPC.
- E.** Within 60 days after the grant-proposal deadline specified in the notice of grant availability, the Commission shall provide written notice to each LEPC that applies for grant funds regarding whether grant funds will be awarded and if so, the amount awarded.
- F.** An LEPC that receives grant funds shall submit progress reports to the Commission on dates prescribed by the Commission. The LEPC shall include in each progress report a summary of the work done to accomplish the goal stated in the grant proposal and a detailed accounting of the expended and remaining grant funds.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 2931, effective August 30, 2008 (Supp. 08-3).

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***Replacement Check List***

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Third

July 1, 2014 - September 30, 2014

**Code Release Number: Supp. 14-3**

Within the stated calendar quarter, this Title contains all rules made, amended, repealed, renumbered, and recodified; or rules that have expired or were terminated due to an agency being eliminated under sunset law. These rules were either certified by the Governor's Regulatory Review Council or the Attorney General's Office; or exempt from the rulemaking process, and filed with the Office of the Secretary of State. Refer to the historical notes for more information. Please note that some rules you are about to remove may still be in effect after the publication date of this Supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

**Follow the instructions to replace the updated Chapters.**

**TITLE 09. Health Services**

**Chapter 09. Department of Health Services - Health Care Institutions: Establishment; Modification**

Sections, Parts, Exhibits, Tables or Appendices modified

REMOVE Supp. 99-3

Pages: 1 - 6

REPLACE with Supp. 14-3

Pages: 1 - 6

**Chapter 10. Department of Health Services - Health Care Institutions: Licensing**

Sections, Parts, Exhibits, Tables or Appendices modified

R9-10-1503 and R9-10-1511

REMOVE Supp. 14-2

Pages: 1 - 240

REPLACE with Supp. 14-3

Pages: 1 - 239

**Chapter 22. Arizona Health Care Cost Containment System - Administration**

Sections, Parts, Exhibits, Tables or Appendices modified

Articles 2 and 7, R9-22-701 and R9-22-711, R9-22-202, R9-22-205, R9-22-209, R9-22-210, R9-22-213, and R9-22-215

REMOVE Supp. 14-2

Pages: 1 - 111

REPLACE with Supp. 14-3

Pages: 1 - 116

**Chapter 28. Arizona Health Care Cost Containment System - Arizona Long-term Care System**

Sections, Parts, Exhibits, Tables or Appendices modified

R9-28-702 and R9-28-703

REMOVE Supp. 14-1

Pages: 1 - 43

REPLACE with Supp. 14-3

Pages: 1 - 43

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Expired

**TITLE 9. HEALTH SERVICES****CHAPTER 9. EXPIRED**

*Editor's Note: The department's name was removed from the heading. Sections in Article 2 and 3 expired in 1999. (Supp. 14-3).*

**ARTICLE 1. REPEALED**

*Article 1 consisting of Sections R9-9-01 through R9-9-18, R9-9-20 and R9-9-21 repealed as an emergency effective November 24, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days, now repealed effective March 24, 1981 (Supp. 81-2).*

**ARTICLE 2. EXPIRED**

*Article 2, consisting of Sections R9-9-201 through R9-9-243, expired on June 30, 1999 under A.R.S. § 41-1056(E) upon receipt of notice from the Governor's Regulatory Review Council (Supp. 99-3).*

*Article 2, consisting of Sections R9-9-225 through R9-9-243, repealed by summary action, permanent effective date April 21, 1995 (Supp. 95-3).*

*Article 2, consisting of Sections R9-9-225 through R9-9-243, repealed by summary action interim effective date April 21, 1995 (Supp. 95-2).*

*Article 2 consisting of Sections R9-90-25 through R9-9-43 renumbered as Sections R9-9-225 through R9-9-243 (Supp. 81-2).*

Section	
R9-9-201.	Expired
R9-9-202.	Expired
R9-9-203.	Expired
R9-9-204.	Expired
R9-9-205.	Expired
R9-9-206.	Expired
R9-9-207.	Expired
R9-9-208.	Expired
R9-9-209.	Expired
R9-9-210.	Expired
R9-9-211.	Expired
R9-9-212.	Expired
R9-9-213.	Expired
R9-9-214.	Expired
R9-9-215.	Expired
R9-9-216.	Expired
R9-9-217.	Expired
R9-9-218.	Expired
R9-9-219.	Expired
R9-9-220.	Expired
R9-9-221.	Expired
R9-9-222.	Expired
R9-9-223.	Expired
R9-9-224.	Expired
R9-9-225.	Expired
R9-9-226.	Expired
R9-9-227.	Expired
R9-9-228.	Expired
R9-9-229.	Expired
R9-9-230.	Expired
R9-9-231.	Expired
R9-9-232.	Expired
R9-9-233.	Expired
R9-9-234.	Expired
R9-9-235.	Expired
R9-9-236.	Expired
R9-9-237.	Expired
R9-9-238.	Expired
R9-9-239.	Expired

R9-9-240.	Expired
R9-9-241.	Expired
R9-9-242.	Expired
R9-9-243.	Expired

**ARTICLE 3. EXPIRED**

*Article 3, consisting of Sections R9-9-301 through R9-9-317, expired on June 30, 1999 under A.R.S. § 41-1056(E) upon receipt of notice from the Governor's Regulatory Review Council (Supp. 99-3).*

Section	
R9-9-301.	Expired
R9-9-302.	Expired
R9-9-303.	Expired
R9-9-304.	Expired
R9-9-305.	Expired
R9-9-306.	Expired
R9-9-307.	Expired
R9-9-308.	Expired
R9-9-309.	Expired
R9-9-310.	Expired
R9-9-311.	Expired
R9-9-312.	Expired
R9-9-313.	Expired
R9-9-314.	Expired
R9-9-315.	Expired
R9-9-316.	Expired
R9-9-317.	Expired

**ARTICLE 1. REPEALED****ARTICLE 2. EXPIRED****R9-9-201. Expired****Historical Note**

Reserved Section expired on June 30, 1999 under A.R.S. § 41-1056(E) upon receipt of notice from the Governor's Regulatory Review Council (Supp. 99-3).

**R9-9-202. Expired****Historical Note**

Reserved Section expired on June 30, 1999 under A.R.S. § 41-1056(E) upon receipt of notice from the Governor's Regulatory Review Council (Supp. 99-3).

**R9-9-203. Expired****Historical Note**

Reserved Section expired on June 30, 1999 under A.R.S. § 41-1056(E) upon receipt of notice from the Governor's Regulatory Review Council (Supp. 99-3).

**R9-9-204. Expired****Historical Note**

Reserved Section expired on June 30, 1999 under A.R.S. § 41-1056(E) upon receipt of notice from the Governor's Regulatory Review Council (Supp. 99-3).

**R9-9-205. Expired**



## Expired

effective March 24, 1981. Renumbered as Section R9-9-225 (Supp. 81-2). Repealed by summary action interim effective date April 21, 1995 (Supp. 95-2). Summary rules repealed, permanent effective date April 21, 1995 (Supp. 95-3). Section expired on June 30, 1999 under A.R.S. § 41-1056(E) upon receipt of notice from the Governor's Regulatory Review Council (Supp. 99-3).

**R9-9-226. Expired****Historical Note**

Adopted effective July 29, 1975 (Supp. 75-1). Amended effective November 9, 1976 (Supp. 76-5). Former Section R9-9-26 repealed, new Section R9-9-26 adopted as an emergency effective August 14, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-4). Former Section R9-9-26 repealed, new Section R9-9-26 adopted as an emergency effective November 24, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-6). Former Section R9-9-26 as amended effective November 9, 1976, repealed, former Section R9-9-26 adopted as an emergency effective November 24, 1980, now adopted and amended effective March 24, 1981. Renumbered as Section R9-9-226 (Supp. 81-2). Repealed by summary action interim effective date April 21, 1995 (Supp. 95-2). Summary rules repealed, permanent effective date April 21, 1995 (Supp. 95-3). Section expired on June 30, 1999 under A.R.S. § 41-1056(E) upon receipt of notice from the Governor's Regulatory Review Council (Supp. 99-3).

**R9-9-227. Expired****Historical Note**

Adopted effective July 29, 1975 (Supp. 75-1). Former Section R9-9-27 repealed, new Section R9-9-27 adopted effective November 9, 1976 (Supp. 76-5). Former Section R9-9-27 repealed, new Section R9-9-27 adopted as an emergency effective August 14, 1980, pursuant to A.R.S. § 41-103, valid for only 90 days (Supp. 80-4). Repealed as an emergency effective November 24, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-6). Former Section R9-9-27 adopted effective November 9, 1976, repealed, new Section R9-9-27 adopted effective March 24, 1981. Renumbered as Section R9-9-227 (Supp. 81-2). Repealed by summary action interim effective date April 21, 1995 (Supp. 95-2). Summary rules repealed, permanent effective date April 21, 1995 (Supp. 95-3). Section expired on June 30, 1999 under A.R.S. § 41-1056(E) upon receipt of notice from the Governor's Regulatory Review Council (Supp. 99-3).

**R9-9-228. Expired****Historical Note**

Adopted effective July 29, 1975 (Supp. 75-1). Repealed as an emergency effective November 24, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days. Correction, Section *not* repealed (per notification by Attorney General dated December 29, 1980) error in certification effective November 24, 1980 (Supp. 80-6). Former Section R9-9-28 repealed, new Section R9-9-28 adopted effective March 24, 1981; renumbered as Section R9-9-228 (Supp. 81-2). Repealed by summary action interim effective date April 21, 1995 (Supp. 95-2). Summary rules repealed, permanent effective date April 21, 1995 (Supp. 95-3). Section expired on June 30, 1999 under A.R.S. § 41-1056(E) upon receipt of notice from the Governor's Regulatory Review Council (Supp. 99-3).

**R9-9-229. Expired****Historical Note**

Adopted effective July 29, 1975 (Supp. 75-1). Former Section R9-9-29 repealed, new Section R9-9-29 adopted effective November 9, 1976 (Supp. 76-5). Former Section R9-9-29 repealed, new Section R9-9-29 adopted as an emergency effective August 14, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-4). Former Section R9-9-29 repealed, new Section R9-9-29 adopted as an emergency effective November 24, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-6). Former Section R9-9-29 adopted effective November 9, 1976 repealed, former Section R9-9-29 adopted as an emergency effective November 24, 1980 now adopted and amended effective March 24, 1981. Renumbered as Section R9-9-230 (Supp. 81-2). Repealed by summary action interim effective date April 21, 1995 (Supp. 95-2). Summary rules repealed, permanent effective date April 21, 1995 (Supp. 95-3). Section expired on June 30, 1999 under A.R.S. § 41-1056(E) upon receipt of notice from the Governor's Regulatory Review Council (Supp. 99-3).

**R9-9-230. Expired****Historical Note**

Adopted effective July 29, 1975 (Supp. 75-1). Former Section R9-9-30 repealed, new Section R9-9-30 adopted effective November 9, 1976 (Supp. 76-5). Former Section R9-9-30 repealed, new Section R9-9-30 adopted as an emergency effective August 14, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-4). Former Section R9-9-30 repealed, new Section R9-9-30 adopted as an emergency effective November 24, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-6). Former Section R9-9-30 adopted effective November 9, 1976 repealed, former Section R9-9-30 adopted as an emergency effective November 24, 1980 now adopted and amended effective March 24, 1981. Renumbered as Section R9-9-230 (Supp. 81-2). Repealed by summary action interim effective date April 21, 1995 (Supp. 95-2). Summary rules repealed, permanent effective date April 21, 1995 (Supp. 95-3). Section expired on June 30, 1999 under A.R.S. § 41-1056(E) upon receipt of notice from the Governor's Regulatory Review Council (Supp. 99-3).

**R9-9-231. Expired****Historical Note**

Adopted effective July 29, 1975 (Supp. 75-1). Former Section R9-9-31 repealed, new Section R9-9-31 adopted effective November 9, 1976 (Supp. 76-5). Former Section R9-9-31 repealed, new Section R9-9-31 adopted as an emergency effective August 14, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-4). Former Section R9-9-31 repealed, new Section R9-9-31 adopted as an emergency effective November 24, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-6). Former Section R9-9-31 adopted effective November 9, 1976 repealed, former Section R9-9-31 adopted as an emergency effective November 24, 1980 now adopted and amended effective March 24, 1981. Renumbered as Section R9-9-231 (Supp. 81-2). Repealed by summary action interim effective date April 21, 1995 (Supp. 95-2). Summary rules repealed, permanent effective date April 21, 1995 (Supp. 95-3). Section expired on June 30, 1999 under A.R.S. § 41-1056(E) upon receipt of notice from the Governor's Regulatory Review Council (Supp. 99-3).

**R9-9-232. Expired****Historical Note**

Adopted effective July 29, 1975 (Supp. 75-1). Former Section R9-9-32 repealed, new Section R9-9-32 adopted effective November 9, 1976 (Supp. 76-5). Former Section R9-9-32 repealed, new Section R9-9-32 adopted as an emergency effective August 14, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-4). Former Section R9-9-32 repealed, new Section R9-9-32 adopted as an emergency effective November 24, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-6). Former Section R9-9-32 adopted effective November 9, 1976, repealed, former Section R9-9-32 adopted as an emergency effective November 24, 1980, now adopted and amended effective March 24, 1981. Renumbered as Section R9-9-232 (Supp. 81-2). Repealed by summary action interim effective date April 21, 1995 (Supp. 95-2). Summary rules repealed, permanent effective date April 21, 1995 (Supp. 95-3). Section expired on June 30, 1999 under A.R.S. § 41-1056(E) upon receipt of notice from the Governor's Regulatory Review Council (Supp. 99-3).

**R9-9-233. Expired****Historical Note**

Adopted effective July 29, 1975 (Supp. 75-1). Former Section R9-9-33 repealed, new Section R9-9-33 adopted effective November 9, 1976 (Supp. 76-5). Former Section R9-9-33 repealed, new Section R9-9-33 adopted as an emergency effective August 14, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-4). Former Section R9-9-33 repealed, new Section R9-9-33 adopted as an emergency effective November 24, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-6). Former Section R9-9-33 adopted effective November 9, 1976, repealed, former Section R9-9-33 adopted as an emergency now adopted and amended effective March 24, 1981. Renumbered as Section R9-9-233 (Supp. 81-2). Summary rules repealed, permanent effective date April 21, 1995 (Supp. 95-3). Section expired on June 30, 1999 under A.R.S. § 41-1056(E) upon receipt of notice from the Governor's Regulatory Review Council (Supp. 99-3).

**R9-9-234. Expired****Historical Note**

Adopted effective July 29, 1975 (Supp. 75-1). Former Section R9-9-34 repealed, new Section R9-9-34 adopted effective November 9, 1976 (Supp. 76-5). Former Section R9-9-34 repealed, new Section R9-9-34 adopted effective March 24, 1981. Renumbered as Section R9-9-234 (Supp. 81-2). Repealed by summary action interim effective date April 21, 1995 (Supp. 95-2). Summary rules repealed, permanent effective date April 21, 1995 (Supp. 95-3). Section expired on June 30, 1999 under A.R.S. § 41-1056(E) upon receipt of notice from the Governor's Regulatory Review Council (Supp. 99-3).

**R9-9-235. Expired****Historical Note**

Adopted effective November 9, 1976 (Supp. 76-5). Former Section R9-9-35 repealed, former Section R9-9-36 adopted as an emergency effective November 24, 1980, renumbered and adopted as Section R9-9-35 effective March 24, 1981. Renumbered as Section R9-9-235 (Supp. 81-2). Repealed by summary action interim effective date April 21, 1995 (Supp. 95-2). Summary rules repealed, permanent effective date April 21, 1995 (Supp. 95-3).

95-3). Section expired on June 30, 1999 under A.R.S. § 41-1056(E) upon receipt of notice from the Governor's Regulatory Review Council (Supp. 99-3).

**R9-9-236. Expired****Historical Note**

Former Section R9-9-36 repealed, new Section R9-9-36 adopted as an emergency effective August 14, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-4). Correction, Historical Note for Supp. 80-4 should read "Adopted as an emergency effective August 14, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-4)". New Section R9-9-36 adopted as an emergency effective November 24, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-6). Former Section R9-9-36 adopted as an emergency effective November 24, 1980, renumbered as Section R9-9-35, former Section R9-9-37 adopted as an emergency effective November 24, 1980, renumbered and amended as Section R9-9-36 effective March 24, 1981. Renumbered as Section R9-9-236 (Supp. 81-2). Repealed by summary action interim effective date April 21, 1995 (Supp. 95-2). Summary rules repealed, permanent effective date April 21, 1995 (Supp. 95-3). Section expired on June 30, 1999 under A.R.S. § 41-1056(E) upon receipt of notice from the Governor's Regulatory Review Council (Supp. 99-3).

**R9-9-237. Expired****Historical Note**

Former Section R9-9-37 repealed, new Section R9-9-37 adopted as an emergency effective August 14, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-4). Correction, Historical Note for Supp. 80-4 should read "Adopted as an emergency effective August 14, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-4)". New Section R9-9-37 adopted as an emergency effective November 24, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-6). Former Section R9-9-37 adopted as an emergency effective November 24, 1980, renumbered and adopted as Section R9-9-36, new Section R9-9-37 adopted effective March 24, 1981. Renumbered as Section R9-9-237 (Supp. 81-2). Repealed by summary action interim effective date April 21, 1995 (Supp. 95-2). Summary rules repealed, permanent effective date April 21, 1995 (Supp. 95-3). Section expired on June 30, 1999 under A.R.S. § 41-1056(E) upon receipt of notice from the Governor's Regulatory Review Council (Supp. 99-3).

**R9-9-238. Expired****Historical Note**

Former Section R9-9-38 repealed, new Section R9-9-38 adopted as an emergency effective August 14, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-4). Correction, Historical Note for Supp. 80-4 should read "Adopted as an emergency effective August 14, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-4)". New Section R9-9-38 adopted as an emergency effective November 24, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-6). Former Section R9-9-38 adopted as an emergency effective November 24, 1980, renumbered and adopted as Section R9-9-39, new Section R9-9-38 adopted effective March 24, 1981. Renumbered as Section R9-9-238 (Supp. 81-2). Repealed by summary action interim effective date April 21, 1995 (Supp. 95-2). Summary rules

## Expired

repealed, permanent effective date April 21, 1995 (Supp. 95-3). Section expired on June 30, 1999 under A.R.S. § 41-1056(E) upon receipt of notice from the Governor's Regulatory Review Council (Supp. 99-3).

**R9-9-239. Expired****Historical Note**

Former Section R9-9-39 repealed, new Section R9-9-39 adopted as an emergency effective August 14, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-4). Correction, Historical Note for Supp. 80-4 should read "Adopted as an emergency effective August 14, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-4)." New Section R9-9-39 adopted as an emergency effective November 24, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-6). Former Section R9-9-38 renumbered and adopted as Section R9-9-39 effective March 24, 1981. Renumbered as Section R9-9-239 (Supp. 81-2). Repealed by summary action interim effective date April 21, 1995 (Supp. 95-2). Summary rules repealed, permanent effective date April 21, 1995 (Supp. 95-3). Section expired on June 30, 1999 under A.R.S. § 41-1056(E) upon receipt of notice from the Governor's Regulatory Review Council (Supp. 99-3).

**R9-9-240. Expired****Historical Note**

Former Section R9-9-40 repealed, new Section R9-9-40 adopted as an emergency effective August 14, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-4). Correction, Historical Note for Supp. 80-4 should read "Adopted as an emergency effective August 14, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-4)." New Section R9-9-40 adopted as an emergency effective November 24, 1990, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-6). New Section R9-9-40 adopted effective March 24, 1981. Renumbered as Section R9-9-240 (Supp. 81-2). Repealed by summary action interim effective date April 21, 1995 (Supp. 95-2). Summary rules repealed, permanent effective date April 21, 1995 (Supp. 95-3). Section expired on June 30, 1999 under A.R.S. § 41-1056(E) upon receipt of notice from the Governor's Regulatory Review Council (Supp. 99-3).

**R9-9-241. Expired****Historical Note**

Amended effective August 21, 1975 (Supp. 75-1). Former Section R9-9-41 repealed, new Section R9-9-41 adopted as an emergency effective August 14, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-4). New Section R9-9-41 adopted as an emergency effective November 24, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-6). Former Section R9-9-41 adopted as an emergency effective November 24, 1980 renumbered and adopted as Section R9-9-43, new Section R9-9-41 adopted effective March 24, 1981. Renumbered as Section R9-9-241 (Supp. 81-2). Repealed by summary action interim effective date April 21, 1995 (Supp. 95-2). Summary rules repealed, permanent effective date April 21, 1995 (Supp. 95-3). Section expired on June 30, 1999 under A.R.S. § 41-1056(E) upon receipt of notice from the Governor's Regulatory Review Council (Supp. 99-3).

**R9-9-242. Expired****Historical Note**

Adopted effective March 24, 1981. Renumbered as Section R9-9-242 (Supp. 81-2). Repealed by summary action interim effective date April 21, 1995 (Supp. 95-2). Summary rules repealed, permanent effective date April 21, 1995 (Supp. 95-3). Section expired on June 30, 1999 under A.R.S. § 41-1056(E) upon receipt of notice from the Governor's Regulatory Review Council (Supp. 99-3).

**R9-9-243. Expired****Historical Note**

Former Section R9-9-41 adopted as an emergency effective November 24, 1980, renumbered and adopted as Section R9-9-43 effective March 24, 1981. Renumbered as Section R9-9-243 (Supp. 81-2). Repealed by summary action interim effective date April 21, 1995 (Supp. 95-2). Summary rules repealed, permanent effective date April 21, 1995 (Supp. 95-3). Section expired on June 30, 1999 under A.R.S. § 41-1056(E) upon receipt of notice from the Governor's Regulatory Review Council (Supp. 99-3).

**ARTICLE 3. EXPIRED****R9-9-301. Expired****Historical Note**

Reserved Section expired on June 30, 1999 under A.R.S. § 41-1056(E) upon receipt of notice from the Governor's Regulatory Review Council (Supp. 99-3).

**R9-9-302. Expired****Historical Note**

Reserved Section expired on June 30, 1999 under A.R.S. § 41-1056(E) upon receipt of notice from the Governor's Regulatory Review Council (Supp. 99-3).

**R9-9-303. Expired****Historical Note**

Reserved Section expired on June 30, 1999 under A.R.S. § 41-1056(E) upon receipt of notice from the Governor's Regulatory Review Council (Supp. 99-3).

**R9-9-304. Expired****Historical Note**

Reserved Section expired on June 30, 1999 under A.R.S. § 41-1056(E) upon receipt of notice from the Governor's Regulatory Review Council (Supp. 99-3).

**R9-9-305. Expired****Historical Note**

Reserved Section expired on June 30, 1999 under A.R.S. § 41-1056(E) upon receipt of notice from the Governor's Regulatory Review Council (Supp. 99-3).

**R9-9-306. Expired****Historical Note**

Reserved Section expired on June 30, 1999 under A.R.S. § 41-1056(E) upon receipt of notice from the Governor's Regulatory Review Council (Supp. 99-3).

**R9-9-307. Expired****Historical Note**

Reserved Section expired on June 30, 1999 under A.R.S. § 41-1056(E) upon receipt of notice from the Governor's Regulatory Review Council (Supp. 99-3).

**R9-9-308. Expired**

Expired

**Historical Note**

Reserved Section expired on June 30, 1999 under A.R.S. § 41-1056(E) upon receipt of notice from the Governor's Regulatory Review Council (Supp. 99-3).

**R9-9-309. Expired****Historical Note**

Reserved Section expired on June 30, 1999 under A.R.S. § 41-1056(E) upon receipt of notice from the Governor's Regulatory Review Council (Supp. 99-3).

**R9-9-310. Expired****Historical Note**

Reserved Section expired on June 30, 1999 under A.R.S. § 41-1056(E) upon receipt of notice from the Governor's Regulatory Review Council (Supp. 99-3).

**R9-9-311. Expired****Historical Note**

Adopted effective February 15, 1978 (Supp. 78-1). Amended effective March 24, 1981 (Supp. 81-2). Section expired on June 30, 1999 under A.R.S. § 41-1056(E) upon receipt of notice from the Governor's Regulatory Review Council (Supp. 99-3).

**R9-9-312. Expired****Historical Note**

Adopted effective February 15, 1978 (Supp. 78-1). Amended effective March 24, 1981 (Supp. 81-2). Section expired on June 30, 1999 under A.R.S. § 41-1056(E) upon receipt of notice from the Governor's Regulatory Review Council (Supp. 99-3).

**R9-9-313. Expired****Historical Note**

Adopted effective February 15, 1978 (Supp. 78-1). Section expired on June 30, 1999 under A.R.S. § 41-1056(E) upon receipt of notice from the Governor's Regulatory Review Council (Supp. 99-3).

**R9-9-314. Expired****Historical Note**

Adopted effective February 15, 1978 (Supp. 78-1). Amended effective March 24, 1981 (Supp. 81-2). Section expired on June 30, 1999 under A.R.S. § 41-1056(E) upon receipt of notice from the Governor's Regulatory Review Council (Supp. 99-3).

**R9-9-315. Expired****Historical Note**

Adopted effective February 15, 1978 (Supp. 78-1). Section expired on June 30, 1999 under A.R.S. § 41-1056(E) upon receipt of notice from the Governor's Regulatory Review Council (Supp. 99-3).

**R9-9-316. Expired****Historical Note**

Adopted effective February 15, 1978 (Supp. 78-1). Amended subsection (C) effective March 24, 1981 (Supp. 81-2). Section expired on June 30, 1999 under A.R.S. § 41-1056(E) upon receipt of notice from the Governor's Regulatory Review Council (Supp. 99-3).

**R9-9-317. Expired****Historical Note**

Adopted effective February 15, 1978 (Supp. 78-1). Section expired on June 30, 1999 under A.R.S. § 41-1056(E) upon receipt of notice from the Governor's Regulatory Review Council (Supp. 99-3).



# Chapter Divider Page

# Chapter Divider Page

**TITLE 9. HEALTH SERVICES**  
**CHAPTER 10. DEPARTMENT OF HEALTH SERVICES**  
**HEALTH CARE INSTITUTIONS: LICENSING**

*Editor's Note: The heading for 9 A.A.C. 10 changed from "Licensure" to "Licensing" per a request from the Department of Health Services (Supp. 03-4).*

*Editor's Note: The Office of the Secretary of State publishes all Chapters on white paper (Supp. 01-2).*

*Editor's Note: This Chapter contains rules which were adopted, amended, and repealed under exemptions from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1993, Ch. 163, § 3(B); Laws 1996, Ch. 329, § 5; Laws 1998, Ch. 178 § 17, and Laws 1999, Ch. 311. Exemption from A.R.S. Title 41, Chapter 6 means that the Department of Health Services did not submit these rules to the Governor's Regulatory Review Council for review; the Department may not have submitted notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department was not required to hold public hearings on these rules; and the Attorney General did not certify these rules. Because this Chapter contains rules which are exempt from the regular rulemaking process, the Chapter is printed on blue paper.*

**ARTICLE 1. GENERAL**

Section

R9-10-101.	Definitions
R9-10-102.	Health Care Institution Classes and Subclasses; Requirements
R9-10-103.	Licensing Exceptions
R9-10-104.	Approval of Architectural Plans and Specifications
R9-10-105.	Initial License Application
R9-10-106.	Fees
R9-10-107.	Renewal License Application
R9-10-108.	Time-frames
Table 1.1.	
R9-10-109.	Changes Affecting a License
R9-10-110.	Modification of a Health Care Institution
R9-10-111.	Enforcement Actions
R9-10-112.	Denial, Revocation, or Suspension of License
R9-10-113.	Tuberculosis Screening
R9-10-114.	Clinical Practice Restrictions for Hemodialysis Technician Trainees
R9-10-115.	Behavioral Health Paraprofessionals; Behavioral Health Technicians
R9-10-116.	Nutrition and Feeding Assistant Training Programs
R9-10-117.	Counseling Facilities
R9-10-118.	Collaborating Health Care Institutions
R9-10-119.	Reserved
R9-10-120.	Reserved
R9-10-121.	Repealed
R9-10-122.	Renumbered
R9-10-123.	Repealed
R9-10-124.	Repealed

**ARTICLE 2. HOSPITALS**

*Article 2, consisting of Sections R9-10-201 through R9-10-233, adopted effective February 23, 1979.*

*Former Article 2, consisting of Sections R9-10-201 through R9-10-250, renumbered as Sections R9-10-301 through R9-10-335 as an emergency effective February 22, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days.*

Section

R9-10-201.	Definitions
R9-10-202.	Supplemental Application Requirements
R9-10-203.	Administration
R9-10-204.	Quality Management
R9-10-205.	Contracted Services
R9-10-206.	Personnel
R9-10-207.	Medical Staff
R9-10-208.	Admission
R9-10-209.	Discharge Planning; Discharge
R9-10-210.	Transport
R9-10-211.	Transfer

R9-10-212.	Patient Rights
R9-10-213.	Medical Records
R9-10-214.	Nursing Services
R9-10-215.	Surgical Services
R9-10-216.	Anesthesia Services
R9-10-217.	Emergency Services
R9-10-218.	Pharmaceutical Services
R9-10-219.	Clinical Laboratory Services and Pathology Services
R9-10-220.	Radiology Services and Diagnostic Imaging Services
R9-10-221.	Intensive Care Services
R9-10-222.	Respiratory Care Services
R9-10-223.	Perinatal Services
R9-10-224.	Pediatric Services
R9-10-225.	Psychiatric Services
R9-10-226.	Behavioral Health Observation/Stabilization Services
R9-10-227.	Rehabilitation Services
R9-10-228.	Multi-organized Service Unit
R9-10-229.	Social Services
R9-10-230.	Infection Control
R9-10-231.	Dietary Services
R9-10-232.	Disaster Management
R9-10-233.	Environmental Standards
R9-10-234.	Physical Plant Standards
R9-10-235.	Administrative Separation

**ARTICLE 3. BEHAVIORAL HEALTH INPATIENT FACILITIES**

*Article 3, consisting of Sections R9-10-311 through R9-10-333, repealed at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2).*

*Article 3, consisting of Sections R9-10-301 through R9-10-333, adopted effective February 4, 1981.*

*Former Article 3, consisting of Sections R9-10-301 through R9-10-335, repealed effective February 4, 1981.*

Section

R9-10-301.	Definitions
R9-10-302.	Supplemental Application Requirements
R9-10-303.	Administration
R9-10-304.	Quality Management
R9-10-305.	Contracted Services
R9-10-306.	Personnel
R9-10-307.	Admission; Assessment
R9-10-308.	Treatment Plan
R9-10-309.	Discharge
R9-10-310.	Transport; Transfer
R9-10-311.	Patient Rights
R9-10-312.	Medical Records
R9-10-313.	Transportation; Patient Outings

- R9-10-314. Physical Health Services
- R9-10-315. Behavioral Health Services
- R9-10-316. Seclusion; Restraint
- R9-10-317. Behavioral Health Observation/Stabilization Services
- R9-10-318. Child and Adolescent Residential Treatment Services
- R9-10-319. Detoxification Services
- R9-10-320. Medication Services
- R9-10-321. Food Services
- R9-10-322. Emergency and Safety Standards
- R9-10-323. Environmental Standards
- R9-10-324. Physical Plant Standards

#### ARTICLE 4. NURSING CARE INSTITUTIONS

*Article 4, consisting of Sections R9-10-411 through R9-10-438, repealed at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2).*

##### Section

- R9-10-401. Definitions
- R9-10-402. Supplemental Application Requirements
- R9-10-403. Administration
- R9-10-404. Quality Management
- R9-10-405. Contracted Services
- R9-10-406. Personnel
- R9-10-407. Admission
- R9-10-408. Discharge
- R9-10-409. Transport; Transfer
- R9-10-410. Resident Rights
- R9-10-411. Medical Records
- R9-10-412. Nursing Services
- R9-10-413. Medical Services
- R9-10-414. Comprehensive Assessment; Care Plan
- R9-10-415. Behavioral Health Services
- R9-10-416. Clinical Laboratory Services
- R9-10-417. Dialysis Services
- R9-10-418. Radiology Services and Diagnostic Imaging Services
- R9-10-419. Respiratory Care Services
- R9-10-420. Rehabilitation Services
- R9-10-421. Medication Services
- R9-10-422. Infection Control
- R9-10-423. Food Services
- R9-10-424. Emergency and Safety Standards
- R9-10-425. Environmental Standards
- R9-10-426. Physical Plant Standards
- R9-10-427. Quality Rating
- R9-10-428. Repealed
- R9-10-429. Repealed
- R9-10-430. Repealed
- R9-10-431. Repealed
- R9-10-432. Repealed
- R9-10-433. Repealed
- R9-10-434. Repealed
- R9-10-435. Repealed
- R9-10-436. Repealed
- R9-10-437. Repealed
- R9-10-438. Repealed
- R9-10-439. Repealed

#### ARTICLE 5. RECOVERY CARE CENTERS

*Article 5, consisting of Sections R9-10-501 through R9-10-514, adopted effective April 4, 1994 (Supp. 94-2).*

*Article 5, consisting of Sections R9-10-501 through R9-10-518, repealed effective April 4, 1994 (Supp. 94-2).*

*Article 5, consisting of Sections R9-10-501 through R9-10-518, adopted as permanent rules effective October 30, 1989.*

*Article 5, consisting of Sections R9-10-501 through R9-10-518, readopted as an emergency effective July 31, 1989 pursuant to A.R.S. § 41-1026, valid for only 90 days.*

*Article 5, consisting of Sections R9-10-501 through R9-10-518, readopted as an emergency effective April 27, 1989 pursuant to A.R.S. § 41-1026, valid for only 90 days.*

*Article 5, consisting of Sections R9-10-501 through R9-10-518, readopted as an emergency effective January 27, 1989 pursuant to A.R.S. § 41-1026, valid for only 90 days.*

*New Article 5, consisting of Sections R9-10-501 through R9-10-518, adopted as an emergency effective October 26, 1988 pursuant to A.R.S. § 41-1026, valid for only 90 days. Emergency expired.*

*Former Article 5, consisting of Sections R9-10-501 through R9-10-574, repealed effective October 20, 1982.*

##### Section

- R9-10-501. Definitions
- R9-10-502. Administration
- R9-10-503. Quality Management
- R9-10-504. Contracted Services
- R9-10-505. Personnel
- R9-10-506. Medical Staff
- R9-10-507. Admission
- R9-10-508. Discharge
- R9-10-509. Transfer
- R9-10-510. Patient Rights
- R9-10-511. Medical Records
- R9-10-512. Nursing Services
- R9-10-513. Medication Services
- R9-10-514. Ancillary Services
- R9-10-515. Food Services
- R9-10-516. Emergency and Safety Standards
- R9-10-517. Environmental Standards
- R9-10-518. Physical Plant Standards

#### ARTICLE 6. HOSPICES

*Article 6, consisting of Sections R9-10-601 through R9-10-618, made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2).*

*Article 6, consisting of Sections R9-10-611 through R9-10-624, repealed effective November 1, 1998, under an exemption from the Administrative Procedure Act; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4).*

##### Section

- R9-10-601. Definitions
- R9-10-602. Supplemental Application Requirements
- R9-10-603. Administration
- R9-10-604. Quality Management
- R9-10-605. Contracted Services
- R9-10-606. Personnel
- R9-10-607. Admission
- R9-10-608. Care Plan
- R9-10-609. Transfer
- R9-10-610. Patient Rights
- R9-10-611. Medical Records
- R9-10-612. Hospice Services
- R9-10-613. Medication Services
- R9-10-614. Infection Control
- R9-10-615. Food Services for a Hospice Inpatient Facility
- R9-10-616. Emergency and Safety Standards for a Hospice Inpatient Facility

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- R9-10-617. Environmental Standards for a Hospice Inpatient Facility  
 R9-10-618. Physical Plant Standards for a Hospice Inpatient Facility

**ARTICLE 7. BEHAVIORAL HEALTH RESIDENTIAL FACILITIES**

*Article 7, consisting of Sections R9-10-701 through R9-7-710, repealed; New Article 7, consisting of Sections R9-10-701 through R9-7-724 adopted; both actions effective November 1, 1998 under an exemption from the Administrative Procedure Act; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4).*

*Article 7, consisting of Sections R9-10-701 through R9-10-710, adopted as permanent rules effective October 30, 1989.*

*Article 7, consisting of Sections R9-10-701 through R9-10-710, readopted as an emergency effective July 31, 1989 pursuant to A.R.S. § 41-1026, valid for only 90 days.*

*Article 7, consisting of Sections R9-10-701 through R9-10-710, readopted as an emergency effective April 27, 1989 pursuant to A.R.S. § 41-1026, valid for only 90 days.*

*Article 7, consisting of Sections R9-10-701 through R9-10-710, readopted as an emergency effective January 27, 1989 pursuant to A.R.S. § 41-1026, valid for only 90 days.*

*New Article 7, consisting of Sections R9-10-701 through R9-10-710, adopted as an emergency effective October 26, 1988 pursuant to A.R.S. § 41-1026, valid for only 90 days. Emergency expired.*

*Former Article 7, consisting of Sections R9-10-701 through R9-10-737, repealed effective October 20, 1982.*

## Section

- R9-10-701. Definitions
- R9-10-702. Supplemental Application Requirements
- R9-10-703. Administration
- R9-10-704. Quality Management
- R9-10-705. Contracted Services
- R9-10-706. Personnel
- R9-10-707. Admission; Assessment
- R9-10-708. Treatment Plan
- R9-10-709. Discharge
- R9-10-710. Transport; Transfers
- R9-10-711. Resident Rights
- R9-10-712. Medical Records
- R9-10-713. Transportation; Resident Outings
- R9-10-714. Resident Time Out
- R9-10-715. Physical Health Services
- R9-10-716. Behavioral Health Services
- R9-10-717. Outdoor Behavioral Health Care Programs
- R9-10-718. Medication Services
- R9-10-719. Food Services
- R9-10-720. Emergency and Safety Standards
- R9-10-721. Environmental Standards
- R9-10-722. Physical Plant Standards
- R9-10-723. Repealed
- R9-10-724. Repealed

**ARTICLE 8. ASSISTED LIVING FACILITIES**

*Article 8 (Sections R9-10-801 through R9-10-812) adopted as permanent rules effective October 30, 1989.*

*Article 8, consisting of Sections R9-10-801 through R9-10-812, readopted as an emergency effective July 31, 1989 pursuant to A.R.S. § 41-1026, valid for only 90 days.*

*Article 8, consisting of Sections R9-10-801 through R9-10-812, readopted as an emergency effective April 27, 1989 pursuant*

*to A.R.S. § 41-1026, valid for only 90 days.*

*Article 8, consisting of Sections R9-10-801 through R9-10-812, readopted as an emergency effective January 27, 1989 pursuant to A.R.S. § 41-1026, valid for only 90 days.*

*New Article 8, consisting of Sections R9-10-801 through R9-10-812, adopted as an emergency effective October 26, 1988 pursuant to A.R.S. § 41-1026, valid for only 90 days. Emergency expired.*

*Former Article 8, consisting of Sections R9-10-801 through R9-10-867, repealed effective October 20, 1982.*

## Section

- R9-10-801. Definitions
- R9-10-802. Supplemental Application Requirements
- R9-10-803. Administration
- R9-10-804. Quality Management
- R9-10-805. Contracted Services
- R9-10-806. Personnel
- R9-10-807. Residency and Residency Agreements
- R9-10-808. Service Plans
- R9-10-809. Transport; Transfer
- R9-10-810. Resident Rights
- R9-10-811. Medical Records
- R9-10-812. Behavioral Care
- R9-10-813. Behavioral Health Services
- R9-10-814. Personal Care Services
- R9-10-815. Directed Care Services
- R9-10-816. Medication Services
- R9-10-817. Food Services
- R9-10-818. Emergency and Safety Standards
- R9-10-819. Environmental Standards
- R9-10-820. Physical Plant Standards

**ARTICLE 9. OUTPATIENT SURGICAL CENTERS**

*Article 9, consisting of Sections R9-10-901 through R9-10-917 adopted effective February 17, 1995 (Supp. 95-1).*

*Article 9, consisting of Sections R9-10-911 through R9-10-925, repealed effective February 17, 1995 (Supp. 95-1).*

*Article 9, consisting of Sections R9-10-911 through R9-10-925, adopted effective October 20, 1982 (Supp. 82-5).*

## Section

- R9-10-901. Definitions
- R9-10-902. Administration
- R9-10-903. Quality Management
- R9-10-904. Contracted Services
- R9-10-905. Personnel
- R9-10-906. Medical Staff
- R9-10-907. Admission
- R9-10-908. Transfer
- R9-10-909. Patient Rights
- R9-10-910. Medical Records
- R9-10-911. Surgical Services
- R9-10-912. Nursing Services
- R9-10-913. Behavioral Health Services
- R9-10-914. Medication Services
- R9-10-915. Infection Control
- R9-10-916. Emergency and Safety Standards
- R9-10-917. Environmental Standards
- R9-10-918. Physical Plant Standards
- R9-10-919. Repealed
- R9-10-920. Repealed
- R9-10-921. Repealed
- R9-10-922. Repealed
- R9-10-923. Repealed
- R9-10-924. Repealed

R9-10-925. Repealed  
Attachment 1. Repealed  
Attachment 2. Repealed

#### **ARTICLE 10. OUTPATIENT TREATMENT CENTERS**

*Article 10, consisting of Sections R9-10-1001 through R9-10-1017, made new by final rulemaking at 14 A.A.R. 294, effective March 8, 2008 (Supp. 08-1).*

*Article 10, consisting of Sections R9-10-1011 through R9-10-1030, repealed by final rulemaking at 5 A.A.R. 1222, effective April 5, 1999 (Supp. 99-2).*

*The proposed summary action repealing R9-10-1011 through R9-10-1030 was remanded by the Governor's Regulatory Review Council which revoked the interim effectiveness of the summary rules. Sections in effect before the proposed summary action have been restored (Supp. 97-1).*

*Article 10, consisting of R9-10-1011 through R9-10-1030, repealed by summary action, interim effective date of July 21, 1995.*

##### **Section**

R9-10-1001. Definitions  
R9-10-1002. Supplemental Application Requirements  
R9-10-1003. Administration  
R9-10-1004. Quality Management  
R9-10-1005. Contracted Services  
R9-10-1006. Personnel  
R9-10-1007. Transport; Transfer  
R9-10-1008. Patient Rights  
R9-10-1009. Medical Records  
R9-10-1010. Medication Services  
R9-10-1011. Behavioral Health Services  
R9-10-1012. Behavioral Health Observation/Stabilization Services  
R9-10-1013. Court-ordered Evaluation  
R9-10-1014. Court-ordered Treatment  
R9-10-1015. Clinical Laboratory Services  
R9-10-1016. Crisis Services  
R9-10-1017. Diagnostic Imaging Services  
R9-10-1018. Dialysis Services  
R9-10-1019. Emergency Room Services  
R9-10-1020. Opioid Treatment Services  
R9-10-1021. Pain Management Services  
R9-10-1022. Physical Health Services  
R9-10-1023. Pre-petition Screening  
R9-10-1024. Rehabilitation Services  
R9-10-1025. Respite Services  
R9-10-1026. Sleep Disorder Services  
R9-10-1027. Urgent Care Services Provided in a Freestanding Urgent Care Setting  
R9-10-1028. Infection Control  
R9-10-1029. Emergency and Safety Standards  
R9-10-1030. Physical Plant, Environmental Services, and Equipment Standards

#### **ARTICLE 11. ADULT DAY HEALTH CARE FACILITIES**

*Article 11, consisting of Sections R9-10-1101 through R9-10-1109 adopted effective July 22, 1994 (Supp. 94-3).*

*Article 11, consisting of Sections R9-10-1111 through R9-10-1127 repealed effective July 22, 1994 (Supp. 94-3).*

##### **Section**

R9-10-1101. Definitions  
R9-10-1102. Supplemental Application Requirements  
R9-10-1103. Administration  
R9-10-1104. Quality Management

R9-10-1105. Contracted Services  
R9-10-1106. Personnel  
R9-10-1107. Enrollment  
R9-10-1108. Care Plan  
R9-10-1109. Discharge  
R9-10-1110. Participant Rights  
R9-10-1111. Medical Records  
R9-10-1112. Participant's Council  
R9-10-1113. Adult Day Health Services  
R9-10-1114. Food Services  
R9-10-1115. Emergency and Safety Standards  
R9-10-1116. Environmental Standards  
R9-10-1117. Physical Plant Standards

#### **ARTICLE 12. HOME HEALTH AGENCIES**

*Article 12, consisting of Sections R9-10-1201 through R9-10-1230, repealed by final rulemaking at 8 A.A.R. 3721, effective August 9, 2002 (Supp. 02-3).*

*Article 12, consisting of Sections R9-10-1201 through R9-10-1230, adopted effective February 4, 1981.*

##### **Section**

R9-10-1201. Definitions  
R9-10-1202. Supplemental Application Requirements  
R9-10-1203. Administration  
R9-10-1204. Quality Management  
R9-10-1205. Contracted Services  
R9-10-1206. Personnel  
R9-10-1207. Care Plan  
R9-10-1208. Patient Rights  
R9-10-1209. Medical Records  
R9-10-1210. Home Health Services  
R9-10-1211. Supportive Services  
R9-10-1212. Repealed  
R9-10-1213. Repealed  
R9-10-1214. Repealed  
R9-10-1215. Repealed  
R9-10-1216. Repealed  
R9-10-1217. Repealed  
R9-10-1218. Repealed  
R9-10-1219. Repealed  
R9-10-1220. Repealed  
R9-10-1221. Repealed  
R9-10-1222. Repealed  
R9-10-1223. Repealed  
R9-10-1224. Repealed  
R9-10-1225. Reserved  
R9-10-1226. Repealed  
R9-10-1227. Repealed  
R9-10-1228. Repealed  
R9-10-1229. Reserved  
R9-10-1230. Repealed

#### **ARTICLE 13. BEHAVIORAL HEALTH SPECIALIZED TRANSITIONAL FACILITY**

*New Article 13, consisting of Sections R9-10-1301 through R9-10-1317, made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2).*

*Article 13, consisting of Sections R9-10-1301 through R9-10-1314, repealed effective November 1, 1998, under an exemption from the Administrative Procedure Act; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4).*

*Article 13, consisting of Sections R9-10-1301 through R9-10-1314, adopted as permanent rules effective November 25, 1992 (Supp. 92-4).*

*Article 13, consisting of Sections R9-10-1301 through R9-10-1314, adopted again as an emergency effective August 27, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3).*

*Article 13, consisting of Sections R9-10-1301 through R9-10-1314, adopted again as an emergency effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2).*

*Article 13, consisting of Sections R9-10-1301 through R9-10-1314, adopted again as an emergency effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1).*

*Article 13, consisting of Sections R9-10-1301 through R9-10-1314, adopted as an emergency effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4).*

*Article 13, consisting of Sections R9-10-1301 through R9-10-1306, adopted as an emergency effective March 29, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-1). Emergency expired.*

#### Section

- R9-10-1301. Definitions
- R9-10-1302. Administration
- R9-10-1303. Quality Management
- R9-10-1304. Contracted Services
- R9-10-1305. Personnel Requirements and Records
- R9-10-1306. Admission Requirements
- R9-10-1307. Discharge or Conditional Release to a Less Restrictive Alternative
- R9-10-1308. Transportation
- R9-10-1309. Patient Rights
- R9-10-1310. Behavioral Health Services
- R9-10-1311. Ancillary Services
- R9-10-1312. Medical Records
- R9-10-1313. Medication Services
- R9-10-1314. Food Services
- R9-10-1315. Emergency and Safety Standards
- R9-10-1316. Environmental Standards
- R9-10-1317. Physical Plant Standards

### ARTICLE 14. SUBSTANCE ABUSE TRANSITIONAL FACILITIES

*Article 14, consisting of Sections R9-10-1401 through R9-10-1412, adopted effective February 1, 1994 (Supp. 94-1).*

#### Section

- R9-10-1401. Definitions
- R9-10-1402. Administration
- R9-10-1403. Quality Management
- R9-10-1404. Contracted Services
- R9-10-1405. Personnel
- R9-10-1406. Admission; Assessment
- R9-10-1407. Discharge
- R9-10-1408. Transfer
- R9-10-1409. Participant Rights
- R9-10-1410. Medical Records
- R9-10-1411. Behavioral Health Services
- R9-10-1412. Medication Services
- R9-10-1413. Food Services
- R9-10-1414. Emergency and Safety Standards
- R9-10-1415. Environmental Standards
- R9-10-1416. Physical Plant Standards
- R9-10-1417. Renumbered

### ARTICLE 15. ABORTION CLINICS

*Article 15, consisting of Sections R9-10-1501 through R9-10-1514, adopted under an exemption from the Arizona Administrative Procedure Act pursuant to Laws 1999, Chapter 311, filed in the*

*Office of the Secretary of State December 23, 1999 (Supp. 99-4).*

*Article 15, consisting of Sections R9-10-1501 through R9-10-1514, repealed effective November 1, 1998, under an exemption from the Administrative Procedure Act; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4).*

#### Section

- R9-10-1501. Definitions
- R9-10-1502. Application Requirements
- Exhibit A. Repealed
- R9-10-1503. Administration
- R9-10-1504. Incident Reporting
- R9-10-1505. Personnel Qualifications and Records
- R9-10-1506. Staffing Requirements
- R9-10-1507. Patient Rights
- R9-10-1508. Abortion Procedures
- R9-10-1509. Patient Transfer and Discharge
- R9-10-1510. Medications and Controlled Substances
- R9-10-1511. Medical Records
- R9-10-1512. Environmental and Safety Standards
- R9-10-1513. Equipment Standards
- R9-10-1514. Physical Facilities
- R9-10-1515. Enforcement

### ARTICLE 16. BEHAVIORAL HEALTH RESPITE HOMES

*Article 16, consisting of Sections R9-10-1601 through R9-10-1611, made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2).*

#### Section

- R9-10-1601. Definitions
- R9-10-1602. Supplemental Application Requirements
- R9-10-1603. Administration
- R9-10-1604. Recipient Rights
- R9-10-1605. Providing Services
- R9-10-1606. Assistance in the Self-Administration of Medication
- R9-10-1607. Medical Records
- R9-10-1608. Food Services
- R9-10-1609. Emergency and Safety Standards
- R9-10-1610. Environmental Standards
- R9-10-1611. Adult Behavioral Health Respite Services
- R9-10-1612. Children's Behavioral Health Respite Services

### ARTICLE 17. UNCLASSIFIED HEALTH CARE INSTITUTIONS

*Article 17, consisting of Sections R9-10-1701 through R9-10-1713, adopted effective July 6, 1994 (Supp. 94-3).*

*Article 17, consisting of Sections R9-10-1711 through R9-10-1713, R9-10-1715 through R9-10-1723, and R9-10-1731 through R9-10-1734, repealed effective July 6, 1994 (Supp. 94-3).*

#### Section

- R9-10-1702. Administration
- R9-10-1703. Quality Management
- R9-10-1704. Contracted Services
- R9-10-1705. Personnel
- R9-10-1706. Transport; Transfer
- R9-10-1707. Patient Rights
- R9-10-1708. Medical Records
- R9-10-1709. Medication Services
- R9-10-1710. Food Services
- R9-10-1711. Emergency and Safety Standards
- R9-10-1712. Physical Plant, Environmental Services, and Equipment Standards
- R9-10-1713. Repealed
- R9-10-1714. Reserved
- R9-10-1715. Repealed

R9-10-1716. Repealed  
 R9-10-1717. Repealed  
 R9-10-1718. Repealed  
 R9-10-1719. Repealed  
 R9-10-1720. Repealed  
 R9-10-1721. Repealed  
 R9-10-1722. Repealed  
 R9-10-1723. Repealed  
 R9-10-1724. Reserved  
 R9-10-1725. Reserved  
 R9-10-1726. Reserved  
 R9-10-1727. Reserved  
 R9-10-1728. Reserved  
 R9-10-1729. Reserved  
 R9-10-1730. Reserved  
 R9-10-1731. Repealed  
 R9-10-1732. Repealed  
 R9-10-1733. Repealed  
 R9-10-1734. Repealed

#### **ARTICLE 18. ADULT BEHAVIORAL HEALTH THERAPEUTIC HOMES**

*Article 18, consisting of Sections R9-10-1801 through R9-10-1810, made by exempt rulemaking, pursuant to Laws 2013, Ch. 10, § 13 effective July 1, 2014 (Supp. 14-2).*

##### **Section**

R9-10-1801. Definitions  
 R9-10-1802. Supplemental Application Requirements  
 R9-10-1803. Administration  
 R9-10-1804. Resident Rights  
 R9-10-1805. Providing Services  
 R9-10-1806. Assistance in the Self-Administration of Medication  
 R9-10-1807. Medical Records  
 R9-10-1808. Food Services  
 R9-10-1809. Emergency and Safety Standards  
 R9-10-1810. Physical Plant, Environmental Services, and Equipment Standards

#### **ARTICLE 1. GENERAL**

##### **R9-10-101. Definitions**

In addition to the definitions in A.R.S. § 36-401(A), the following definitions apply in this Chapter unless otherwise specified:

1. "Abortion clinic" has the same meaning as in A.R.S. § 36-449.01.
2. "Abuse" means:
  - a. The same:
    - i. For an individual 18 years of age or older, as in A.R.S. § 46-451; and
    - ii. For an individual less than 18 years of age, as in A.R.S. § 8-201;
  - b. A pattern of ridiculing or demeaning a patient;
  - c. Making derogatory remarks or verbally harassing a patient; or
  - d. Threatening to inflict physical harm on a patient.
3. "Accredited" has the same meaning as in A.R.S. § 36-422.
4. "Activities of daily living" means ambulating, bathing, toileting, grooming, eating, and getting in or out of a bed or a chair.
5. "Adjacent" means not intersected by:
  - a. Property owned, operated, or controlled by a person other than the applicant or licensee; or
  - b. A public thoroughfare.
6. "Administrative completeness review time-frame" has the same meaning as in A.R.S. § 41-1072.
7. "Administrative office" means a location used by personnel for recordkeeping and record retention but not for providing medical services, nursing services, or health-related services.
8. "Admission" means, after completion of an individual's screening or registration by a health care institution, the individual begins receiving physical health services or behavioral health services and is accepted as a patient of the health care institution.
9. "Adult" has the same meaning as in A.R.S. § 1-215.
10. "Adult behavioral health therapeutic home" means a residence that provides room and board, assists in acquiring daily living skills, coordinates transportation to scheduled appointments, monitors behaviors, assists in the self-administration of medication, and provides feedback to a case manager related to behavior for an individual 18 years of age or older based on the individual's behavioral health issue and need for behavioral health services and may provide behavioral health services under the clinical oversight of a behavioral health professional.
11. "Adverse reaction" means an unexpected outcome that threatens the health or safety of a patient as a result of a medical service, nursing service, or health-related service provided to the patient.
12. "Ancillary services" means services other than medical services, nursing services, or health-related services provided to a patient.
13. "Anesthesiologist" means a physician granted clinical privileges to administer anesthesia.
14. "Applicant" means a governing authority requesting:
  - a. Approval of a health care institution's architectural plans and specifications, or
  - b. A health care institution license.
15. "Application packet" means the information, documents, and fees required by the Department for the:
  - a. Approval of a health care institution's modification or construction, or
  - b. Licensing of a health care institution.
16. "Assessment" means an analysis of a patient's need for physical health services or behavioral health services to determine which services a health care institution will provide to the patient.
17. "Assistance in the self-administration of medication" means restricting a patient's access to the patient's medication and providing support to the patient while the patient takes the medication to ensure that the medication is taken as ordered.
18. "Attending physician" means a physician designated by a patient to participate in or coordinate the medical services provided to the patient.
19. "Authenticate" means to establish authorship of a document or an entry in a medical record by:
  - a. A written signature;
  - b. An individual's initials, if the individual's written signature appears on the document or in the medical record;
  - c. A rubber-stamp signature; or
  - d. An electronic signature code.
20. "Authorized service" means specific medical services, nursing services, or health-related services provided by a specific health care institution class or subclass for which the health care institution is required to obtain approval from the Department before providing the medical services, nursing services, or health-related services.
21. "Available" means:



- a. For an individual, the ability to be contacted and to provide an immediate response by any means possible;
  - b. For equipment and supplies, physically retrievable at a health care institution; and
  - c. For a document, retrievable by a health care institution or accessible according to the applicable time-frames in this Chapter.
22. “Behavioral care”:
- a. Means limited behavioral health services, provided to a patient whose primary admitting diagnosis is related to the patient’s need for physical health services, that include:
    - i. Assistance with the patient’s psychosocial interactions to manage the patient’s behavior that can be performed by an individual without a professional license or certificate including:
      - (1) Direction provided by a behavioral health professional, and
      - (2) Medication ordered by a medical practitioner or behavioral health professional; or
    - ii. Behavioral health services provided by a behavioral health professional on an intermittent basis to address the patient’s significant psychological or behavioral response to an identifiable stressor or stressors; and
  - b. Does not include court-ordered behavioral health services.
23. “Behavioral health facility” means a behavioral health inpatient facility, a behavioral health residential facility, a substance abuse transitional facility, a behavioral health specialized transitional facility, an outpatient treatment center that provides only behavioral health services, an adult behavioral health therapeutic home, or a behavioral health respite home.
24. “Behavioral health inpatient facility” means a health care institution that provides continuous treatment to an individual experiencing a behavioral health issue that causes the individual to:
- a. Have a limited or reduced ability to meet the individual’s basic physical needs;
  - b. Suffer harm that significantly impairs the individual’s judgment, reason, behavior, or capacity to recognize reality;
  - c. Be a danger to self;
  - d. Be a danger to others;
  - e. Be persistently or acutely disabled as defined in A.R.S. § 36-501; or
  - f. Be gravely disabled.
25. “Behavioral health issue” means an individual’s condition related to a mental disorder, a personality disorder, substance abuse, or a significant psychological or behavioral response to an identifiable stressor or stressors.
26. “Behavioral health observation/stabilization services” means crisis services provided, in an outpatient setting, to an individual whose behavior or condition indicates that the individual:
- a. Requires nursing services,
  - b. May require medical services, and
  - c. May be a danger to others or a danger to self.
27. “Behavioral health paraprofessional” means an individual who is not a behavioral health professional who provides behavioral health services at or for a health care institution according to the health care institution’s policies and procedures and, if the individual would be required to be licensed as a behavioral professional under A.R.S. Title 32, Chapter 33, if the behavioral health services were provided in a setting other than a licensed health care institution, are provided under supervision by a behavioral health professional.
28. “Behavioral health professional” means:
- a. An individual licensed under A.R.S. Title 32, Chapter 33, whose scope of practice allows the individual to:
    - i. Independently engage in the practice of behavioral health as defined in A.R.S. § 32-3251; or
    - ii. Except for a licensed substance abuse technician, engage in the practice of behavioral health as defined in A.R.S. § 32-3251 under direct supervision as defined in A.A.C. R4-6-101;
  - b. A psychiatrist as defined in A.R.S. § 36-501;
  - c. A psychologist as defined in A.R.S. § 32-2061;
  - d. A physician;
  - e. A behavior analyst as defined in A.R.S. § 32-2091;
  - f. A registered nurse practitioner licensed as an adult psychiatric and mental health nurse; or
  - g. A registered nurse.
29. “Behavioral health residential facility” means a health care institution that provides treatment to an individual experiencing a behavioral health issue that:
- a. Limits the individual’s ability to be independent, or
  - b. Causes the individual to require treatment to maintain or enhance independence.
30. “Behavioral health respite home” means a residence where respite care services, which may include assistance in the self-administration of medication, are provided to an individual based on the individual’s behavioral health issue and need for behavioral health services.
31. “Behavioral health services” means medical services, nursing services, health-related services, or ancillary services provided to an individual to address the individual’s behavioral health issue.
32. “Behavioral health specialized transitional facility” means a health care institution that provides inpatient behavioral health services and physical health services to an individual determined to be a sexually violent person according to A.R.S. Title 36, Chapter 37.
33. “Behavioral health technician” means an individual who is not a behavioral health professional who provides behavioral health services at or for a health care institution according to the health care institution’s policies and procedures with clinical oversight by a behavioral health professional.
34. “Biohazardous medical waste” has the same meaning as in A.A.C. R18-13-1401.
35. “Calendar day” means each day, not including the day of the act, event, or default from which a designated period of time begins to run, but including the last day of the period unless it is a Saturday, Sunday, statewide furlough day, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, statewide furlough day, or legal holiday.
36. “Case manager” means an individual assigned by an entity other than a health care institution to coordinate the physical health services or behavioral health services provided to a patient at the health care institution.
37. “Certification” means, in this Article, a written statement that an item or a system complies with the applicable requirements incorporated by reference in A.A.C. R9-1-412.
38. “Certified health physicist” means an individual recognized by the American Board of Health Physics as com-

- plying with the health physics criteria and examination requirements established by the American Board of Health Physics.
39. "Change in ownership" means conveyance of the ability to appoint, elect, or otherwise designate a health care institution's governing authority from an owner of the health care institution to another person.
  40. "Chief administrative officer" or "administrator" means an individual designated by a governing authority to implement the governing authority's direction in a health care institution.
  41. "Clinical laboratory services" means the biological, microbiological, serological, chemical, immunohematological, hematological, biophysical, cytological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease or impairment of a human being, or for the assessment of the health of a human being, including procedures to determine, measure, or otherwise describe the presence or absence of various substances or organisms in the body.
  42. "Clinical oversight" means:
    - a. Monitoring the behavioral health services provided by a behavioral health technician to ensure that the behavioral health technician is providing the behavioral health services according to the health care institution's policies and procedures,
    - b. Providing on-going review of a behavioral health technician's skills and knowledge related to the provision of behavioral health services,
    - c. Providing guidance to improve a behavioral health technician's skills and knowledge related to the provision of behavioral health services, and
    - d. Recommending training for a behavioral health technician to improve the behavioral health technician's skills and knowledge related to the provision of behavioral health services.
  43. "Clinical privileges" means authorization to a medical staff member to provide medical services granted by a governing authority or according to medical staff bylaws.
  44. "Collaborating health care institution" means a health care institution licensed to provide outpatient behavioral health services that has a written agreement with an adult behavioral health therapeutic home or a behavioral health respite home to:
    - a. Coordinate behavioral health services provided to a resident at the adult behavioral health therapeutic home or a recipient at a behavioral health respite home, and
    - b. Work with the provider to ensure a resident at the adult behavioral health therapeutic home or a recipient at a behavioral health respite home receives behavioral health services according to the resident's treatment plan.
  45. "Communicable disease" has the same meaning as in A.R.S. § 36-661.
  46. "Conspicuously posted" means placed:
    - a. At a location that is visible and accessible; and
    - b. Unless otherwise specified in the rules, within the area where the public enters the premises of a health care institution.
  47. "Consultation" means an evaluation of a patient requested by a medical staff member or personnel member.
  48. "Contracted services" means medical services, nursing services, health-related services, ancillary services, or environmental services provided according to a documented agreement between a health care institution and the person providing the medical services, nursing services, health-related services, ancillary services, or environmental services.
  49. "Contractor" has the same meaning as in A.R.S. § 32-1101.
  50. "Controlled substance" has the same meaning as in A.R.S. § 36-2501.
  51. "Counseling" has the same meaning as "practice of professional counseling" in A.R.S. § 32-3251.
  52. "Counseling facility" means a facility that only provides, and was licensed as a behavioral health outpatient clinic before October 1, 2013 to provide, one or more of the following services:
    - a. Counseling;
    - b. DUI screening, education, or treatment according to the requirements in 9 A.A.C. 20, Article 1; or
    - c. Misdemeanor domestic violence offender treatment according to the requirements in 9 A.A.C. 20, Article 2.
  53. "Court-ordered evaluation" has the same meaning as "evaluation" in A.R.S. § 36-501.
  54. "Court-ordered pre-petition screening" has the same meaning as in A.R.S. § 36-501.
  55. "Court-ordered treatment" means treatment provided according to A.R.S. Title 36, Chapter 5.
  56. "Crisis services" means immediate and unscheduled behavioral health services provided to a patient to address an acute behavioral health issue affecting the patient.
  57. "Current" means up-to-date, extending to the present time.
  58. "Daily living skills" means activities necessary for an individual to live independently and include meal preparation, laundry, housecleaning, home maintenance, money management, and appropriate social interactions.
  59. "Danger to others" has the same meaning as in A.R.S. § 36-501.
  60. "Danger to self" has the same meaning as in A.R.S. § 36-501.
  61. "Detoxification services" means behavioral health services and medical services provided to an individual to:
    - a. Reduce or eliminate the individual's dependence on alcohol or other drugs, or
    - b. Provide treatment for the individual's signs or symptoms of withdrawal from alcohol or other drugs.
  62. "Diagnostic procedure" means a method or process performed to determine whether an individual has a medical condition or behavioral health issue.
  63. "Dialysis" means the process of removing dissolved substances from a patient's body by diffusion from one fluid compartment to another across a semi-permeable membrane.
  64. "Dialysis services" means medical services, nursing services, and health-related services provided to a patient receiving dialysis.
  65. "Dialysis station" means a designated treatment area approved by the Department for use by a patient receiving dialysis or dialysis services.
  66. "Dialyzer" means an apparatus containing semi-permeable membranes used as a filter to remove wastes and excess fluid from a patient's blood.
  67. "Disaster" means an unexpected occurrence that adversely affects a health care institution's ability to provide services.

68. “Discharge” means a documented termination of services to a patient by a health care institution.
69. “Discharge instructions” means documented information relevant to a patient’s medical condition or behavioral health issue provided by a health care institution to the patient or the patient’s representative at the time of the patient’s discharge.
70. “Discharge planning” means a process of establishing goals and objectives for a patient in preparation for the patient’s discharge.
71. “Discharge summary” means a documented brief review of services provided to a patient, current patient status, and reasons for the patient’s discharge.
72. “Disinfect” means to clean in order to prevent the growth of or to destroy disease-causing microorganisms.
73. “Documentation” or “documented” means information in written, photographic, electronic, or other permanent form.
74. “Drill” means a response to a planned, simulated event.
75. “Drug” has the same meaning as in A.R.S. § 32-1901.
76. “Electronic” has the same meaning as in A.R.S. § 44-7002.
77. “Electronic signature” has the same meaning as in A.R.S. § 44-7002.
78. “Emergency” means an immediate threat to the life or health of a patient.
79. “Emergency medical services provider” has the same meaning as in A.R.S. § 36-2201.
80. “Environmental services” means activities such as house-keeping, laundry, facility maintenance, or equipment maintenance.
81. “Equipment” means, in this Article, an apparatus, a device, a machine, or a unit that is required to comply with the specifications incorporated by reference in A.A.C. R9-1-412.
82. “Exploitation” has the same meaning as in A.R.S. § 46-451.
83. “Factory-built building” has the same meaning as in A.R.S. § 41-2142.
84. “Family” or “family member” means an individual’s spouse, sibling, child, parent, grandparent, or another individual designated by the individual.
85. “Food services” means the storage, preparation, serving, and cleaning up of food intended for consumption in a health care institution.
86. “Garbage” has the same meaning as in A.A.C. R18-13-302.
87. “General consent” means documentation of an agreement from an individual or the individual’s representative to receive physical health services to address the individual’s medical condition or behavioral health services to address the individual’s behavioral health issues.
88. “General hospital” means a subclass of hospital that provides surgical services and emergency services.
89. “Gravely disabled” has the same meaning as in A.R.S. § 36-501.
90. “Hazard” or “hazardous” means a condition or situation where a patient or other individual may suffer physical injury.
91. “Health care directive” has the same meaning as in A.R.S. § 36-3201.
92. “Hemodialysis” means the process for removing wastes and excess fluids from a patient’s blood by passing the blood through a dialyzer.
93. “Home health agency” has the same meaning as in A.R.S. § 36-151.
94. “Home health aide” means an individual employed by a home health agency to provide home health services under the direction of a registered nurse or therapist.
95. “Home health aide services” means those tasks that are provided to a patient by a home health aide under the direction of a registered nurse or therapist.
96. “Home health services” has the same meaning as in A.R.S. § 36-151.
97. “Hospice inpatient facility” means a subclass of hospice that provides hospice services to a patient on a continuous basis with the expectation that the patient will remain on the hospice’s premises for 24 hours or more.
98. “Hospital” means a class of health care institution that provides, through an organized medical staff, inpatient beds, medical services, continuous nursing services, and diagnosis or treatment to a patient.
99. “Immediate” means without delay.
100. “Incident” means an unexpected occurrence that harms or has the potential to harm a patient, while the patient is:
  - a. On the premises of a health care institution, or
  - b. Not on the premises of a health care institution but directly receiving physical health services or behavioral health services from a personnel member who is providing the physical health services or behavioral health services on behalf of the health care institution.
101. “Infection control” means to identify, prevent, monitor, and minimize infections.
102. “Informed consent” means:
  - a. Advising a patient of a proposed treatment, surgical procedure, psychotropic drug, or diagnostic procedure; alternatives to the treatment, surgical procedure, psychotropic drug, or diagnostic procedure; and associated risks and possible complications; and
  - b. Obtaining documented authorization for the proposed treatment, surgical procedure, psychotropic drug, or diagnostic procedure from the patient or the patient’s representative.
103. “In-service education” means organized instruction or information that is related to physical health services or behavioral health services and that is provided to a medical staff member, personnel member, employee, or volunteer.
104. “Interval note” means documentation updating a patient’s:
  - a. Medical condition after a medical history and physical examination is performed, or
  - b. Behavioral health issue after an assessment is performed.
105. “Isolation” means the separation, during the communicable period, of infected individuals from others, to limit the transmission of infectious agents.
106. “Leased facility” means a facility occupied or used during a set time period in exchange for compensation.
107. “License” means:
  - a. Written approval issued by the Department to a person to operate a class or subclass of health care institution at a specific location; or
  - b. Written approval issued to an individual to practice a profession in this state.
108. “Licensed occupancy” means the total number of individuals for whom a health care institution is authorized by the Department to provide crisis services in a unit providing behavioral health observation/stabilization services.
109. “Licensee” means an owner approved by the Department to operate a health care institution.

110. “Manage” means to implement policies and procedures established by a governing authority, an administrator, or an individual providing direction to a personnel member.
111. “Medical condition” means the state of a patient’s physical or mental health, including the patient’s illness, injury, or disease.
112. “Medical director” means a physician who is responsible for the coordination of medical services provided to patients in a health care institution.
113. “Medical history” means an account of a patient’s health, including past and present illnesses, diseases, or medical conditions.
114. “Medical practitioner” means a physician, physician assistant, or registered nurse practitioner.
115. “Medical record” has the same meaning as “medical records” in A.R.S. § 12-2291.
116. “Medical staff” means physicians and other individuals licensed pursuant to A.R.S. Title 32 who have clinical privileges at a health care institution.
117. “Medical staff by-laws” means standards, approved by the medical staff and the governing authority, that provide the framework for the organization, responsibilities, and self-governance of the medical staff.
118. “Medical staff member” means an individual who is part of the medical staff of a health care institution.
119. “Medication” means one of the following used to maintain health or to prevent or treat a medical condition or behavioral health issue:
  - a. Biologicals as defined in A.A.C. R18-13-1401,
  - b. Prescription medication as defined in A.R.S. § 32-1901, or
  - c. Nonprescription medication as defined in A.R.S. § 32-1901.
120. “Medication administration” means restricting a patient’s access to the patient’s medication and providing the medication to the patient or applying the medication to the patient’s body, as ordered by a medical practitioner.
121. “Medication error” means:
  - a. The failure to administer an ordered medication;
  - b. The administration of a medication not ordered; or
  - c. The administration of a medication:
    - i. In an incorrect dosage,
    - ii. More than 60 minutes before or after the ordered time of administration unless ordered to do so, or
    - iii. By an incorrect route of administration.
122. “Mental disorder” means the same as in A.R.S. § 36-501.
123. “Mobile clinic” means a movable structure that:
  - a. Is not physically attached to a health care institution’s facility;
  - b. Provides medical services, nursing services, or health related service to an outpatient under the direction of the health care institution’s personnel; and
  - c. Is not intended to remain in one location indefinitely.
124. “Monitor” or “monitoring” means to check systematically on a specific condition or situation.
125. “Neglect” has the same meaning:
  - a. For an individual less than 18 years of age, as in A.R.S. § 8-201; and
  - b. For an individual 18 years of age or older, as in A.R.S. § 46-451.
126. “Nephrologist” means a physician who is board eligible or board certified in nephrology by a professional credentialing board.
127. “Nurse” has the same meaning as “registered nurse” or “practical nurse” as defined in A.R.S. § 32-1601.
128. “Nursing personnel” means individuals authorized according to A.R.S. § Title 32, Chapter 15 to provide nursing services.
129. “Observation chair” means a physical piece of equipment that:
  - a. Is located in a designated area where behavioral health observation/stabilization services are provided,
  - b. Allows an individual to fully recline, and
  - c. Is used by the individual while receiving crisis services.
130. “Occupational therapist” has the same meaning as in A.R.S. § 32-3401.
131. “Occupational therapist assistant” has the same meaning as in A.R.S. § 32-3401.
132. “Ombudsman” means a resident advocate who performs the duties described in A.R.S. § 46-452.02.
133. “On-call” means a time during which an individual is available and required to come to a health care institution when requested by the health care institution.
134. “Opioid treatment” means providing medical services, nursing services, health-related services, and ancillary services to a patient receiving an opioid agonist treatment medication for opiate addiction.
135. “Opioid agonist treatment medication” means a prescription medication that is approved by the U.S. Food and Drug Administration under 21 U.S.C. § 355 for use in the treatment of opiate addiction.
136. “Order” means instructions to provide
  - a. Physical health services to a patient from a medical practitioner or as otherwise provided by law; or
  - b. Behavioral health services to a patient from a behavioral health professional.
137. “Orientation” means the initial instruction and information provided to an individual before the individual starts work or volunteer services in a health care institution.
138. “Outing” means a social or recreational activity that:
  - a. Occurs away from the premises,
  - b. Is not part of a behavioral health inpatient facility’s or behavioral health residential facility’s daily routine, and
  - c. Lasts longer than four hours.
139. “Outpatient surgical center” means a class of health care institution that has the facility, staffing, and equipment to provide surgery and anesthesia services to a patient whose recovery, in the opinions of the patient’s surgeon and, if an anesthesiologist would be providing anesthesia services to the patient, the anesthesiologist, does not require inpatient care in a hospital.
140. “Outpatient treatment center” means a class of health care institution without inpatient beds that provides physical health services or behavioral health services for the diagnosis and treatment of patients.
141. “Overall time-frame” means the same as in A.R.S. § 41-1072.
142. “Owner” means a person who appoints, elects, or designates a health care institution’s governing authority.
143. “Participant” means a patient receiving physical health services or behavioral health services from an adult day health care facility or a substance abuse transitional facility.
144. “Participant’s representative” means the same as “patient’s representative” for a participant.

145. "Patient," means an individual receiving physical health services or behavioral health services from a health care institution.
146. "Patient follow-up instructions" means information relevant to a patient's medical condition or behavioral health issue that is provided to the patient, the patient's representative, or a health care institution.
147. "Patient's representative," means:
- a. A patient's legal guardian;
  - b. If a patient is less than 18 years of age and not an emancipated minor, the patient's parent;
  - c. If a patient is 18 years of age or older or an emancipated minor, an individual acting on behalf of the patient with the written consent of the patient or patient's legal guardian; or
  - d. A surrogate as defined in A.R.S. § 36-3201.
148. "Person" means the same as in A.R.S. § 1-215 and includes a governmental agency.
149. "Personnel member" means, except as defined in specific Articles in this Chapter and excluding a medical staff member, a student, or an intern, an individual providing physical health services or behavioral health services to a patient.
150. "Pest control program" means activities that minimize the presence of insects and vermin in a health care institution to ensure that a patient's health and safety is not at risk.
151. "Pharmacist" has the same meaning as in A.R.S. § 32-1901.
152. "Physical examination" means to observe, test, or inspect an individual's body to evaluate health or determine cause of illness, injury, or disease.
153. "Physical health services" means medical services, nursing services, health-related services, or ancillary services provided to an individual to address the individual's medical condition.
154. "Physical therapist" has the same meaning as in A.R.S. § 32-2001.
155. "Physical therapist assistant" has the same meaning as in A.R.S. § 32-2001.
156. "Physician assistant" has the same meaning as in A.R.S. § 32-2501.
157. "Premises" means property that is designated by an applicant or licensee and licensed by the Department as part of a health care institution where physical health services or behavioral health services are provided to a patient.
158. "Professional credentialing board" means a non-governmental organization that designates individuals who have met or exceeded established standards for experience and competency in a specific field.
159. "Progress note" means documentation by a medical staff member, nurse, or personnel member of:
- a. An observed patient response to a physical health service or behavioral health service provided to the patient,
  - b. A patient's significant change in condition, or
  - c. Observed behavior of a patient related to the patient's medical condition or behavioral health issue.
160. "PRN" means *pro re nata* or given as needed.
161. "Project" means specific construction or modification of a facility stated on an architectural plans and specifications approval application.
162. "Provider" means an individual to whom the Department issues a license to operate an adult behavioral health therapeutic home or a behavioral health respite home in the individual's place of residence.
163. "Provisional license" means the Department's written approval to operate a health care institution issued to an applicant or licensee that is not in substantial compliance with the applicable laws and rules for the health care institution.
164. "Psychotropic medication" means a chemical substance that:
- a. Crosses the blood-brain barrier and acts primarily on the central nervous system where it affects brain function, resulting in alterations in perception, mood, consciousness, cognition, and behavior; and
  - b. Is provided to a patient to address the patient's behavioral health issue.
165. "Quality management program" means ongoing activities designed and implemented by a health care institution to improve the delivery of medical services, nursing services, health-related services, and ancillary services provided by the health care institution.
166. "Recovery care center" has the same meaning as in A.R.S. § 36-448.51.
167. "Referral" means providing an individual with a list of the class or subclass of health care institution or type of health care professional that may be able to provide the behavioral health services or physical health services that the individual may need and may include the name or names of specific health care institutions or health care professionals.
168. "Registered dietitian" means an individual approved to work as a dietitian by the American Dietetic Association's Commission on Dietetic Registration.
169. "Registered nurse" has the same meaning as in A.R.S. § 32-1601.
170. "Registered nurse practitioner" has the same meaning as A.R.S. § 32-1601.
171. "Regular basis" means at recurring, fixed, or uniform intervals.
172. "Research" means the use of a human subject in the systematic study, observation, or evaluation of factors related to the prevention, assessment, treatment, or understanding of a medical condition or behavioral health issue.
173. "Resident" means an individual living in and receiving physical health services or behavioral health services from a nursing care institution, a behavioral health residential facility, an assisted living facility, or an adult behavioral health therapeutic home.
174. "Resident's representative" means the same as "patient's representative" for a resident.
175. "Respiratory care services" has the same meaning as "practice of respiratory care" as defined in A.R.S. § 32-3501.
176. "Respiratory therapist" has the same meaning as in A.R.S. § 32-3501.
177. "Restraint" means any physical or chemical method of restricting a patient's freedom of movement, physical activity, or access to the patient's own body.
178. "Risk" means potential for an adverse outcome.
179. "Room" means space contained by a floor, a ceiling, and walls extending from the floor to the ceiling that has at least one door.
180. "Rural general hospital" means a subclass of hospital having 50 or fewer inpatient beds and located more than 20 surface miles from a general hospital or another rural general hospital that requests to be and is licensed as a rural general hospital rather than a general hospital.

181. "Satellite facility" has the same meaning as in A.R.S. § 36-422.
182. "Scope of services" means a list of the behavioral health services or physical health services the governing authority of a health care institution has designated as being available to a patient at the health care institution.
183. "Seclusion" means the involuntary solitary confinement of a patient in a room or an area where the patient is prevented from leaving.
184. "Self-administration of medication" means a patient having access to and control of the patient's medication and may include the patient receiving limited support while taking the medication.
185. "Sexual abuse" means the same as in A.R.S. § 13-1404(A).
186. "Sexual assault" means the same as in A.R.S. § 13-1406(A).
187. "Shift" means the beginning and ending time of a continuous work period established by a health care institution's policies and procedures.
188. "Signature" means:
  - a. A handwritten or stamped representation of an individual's name or a symbol intended to represent an individual's name, or
  - b. An electronic signature.
189. "Significant change" means an observable deterioration or improvement in a patient's physical, cognitive, behavioral, or functional condition that may require an alteration to the physical health services or behavioral health services provided to the patient.
190. "Speech-language pathologist" means an individual licensed according A.R.S. Title 35, Chapter 17, Article 4 to engage in the practice of speech-language pathology, as defined in A.R.S. § 36-1901.
191. "Special hospital" means a subclass of hospital that:
  - a. Is licensed to provide hospital services within a specific branch of medicine; or
  - b. Limits admission according to age, gender, type of disease, or medical condition.
192. "Student" means an individual attending an educational institution and working under supervision in a health care institution through an arrangement between the health care institution and the educational institution.
193. "Substantial" when used in connection with a modification means:
  - a. A change in a health care institution's licensed capacity, licensed occupancy, or the number of dialysis stations;
  - b. An addition or deletion of an authorized service;
  - c. A change in the physical plant, including facilities or equipment, that costs more than \$300,000; or
  - d. A change in the building where a health care institution is located that affects compliance with applicable physical plant codes and standards incorporated by reference in A.A.C. R9-1-412.
194. "Substance abuse" means an individual's misuse of alcohol or other drug or chemical that:
  - a. Alters the individual's behavior or mental functioning;
  - b. Has the potential to cause the individual to be psychologically or physiologically dependent on alcohol or other drug or chemical; and
  - c. Impairs, reduces, or destroys the individual's social or economic functioning.
195. "Substance abuse transitional facility" means a class of health care institution that provides behavioral health services to an individual over 18 years of age who is intoxicated or may have a substance abuse problem.
196. "Supportive services" has the same meaning as in A.R.S. § 36-151.
197. "Substantive review time-frame" means the same as in A.R.S. § 41-1072.
198. "Surgical procedure" means the excision or incision of a patient's body for the:
  - a. Correction of a deformity or defect,
  - b. Repair of an injury, or
  - c. Diagnosis, amelioration, or cure of disease.
199. "Swimming pool" has the same meaning as "semipublic swimming pool" in A.A.C. R18-5-201.
200. "System" means interrelated, interacting, or interdependent elements that form a whole.
201. "Tax ID number" means a numeric identifier that a person uses to report financial information to the United States Internal Revenue Service.
202. "Telemedicine" has the same meaning as in A.R.S. § 36-3601.
203. "Therapeutic diet" means foods or the manner in which food is to be prepared that are ordered for a patient.
204. "Therapist" means an occupational therapist, a physical therapist, a respiratory therapist, or a speech-language pathologist.
205. "Time out" means providing a patient a voluntary opportunity to regain self-control in a designated area from which the patient is not physically prevented from leaving.
206. "Transfer" means a health care institution discharging a patient and sending the patient to another licensed health care institution as an inpatient or resident without intending that the patient be returned to the sending health care institution.
207. "Transport" means a licensed health care institution:
  - a. Sending a patient to a receiving licensed health care institution for outpatient services with the intent of the patient returning to the sending licensed health care institution, or
  - b. Discharging a patient to return to a sending licensed health care institution after the patient received outpatient services from the receiving licensed health care institution.
208. "Treatment" means a procedure or method to cure, improve, or palliate an individual's medical condition or behavioral health issue.
209. "Treatment plan" means a description of the specific physical health services or behavioral health services that a health care institution anticipates providing to a patient.
210. "Unclassified health care institution" means a health care institution not classified or subclassified in statute or in rule.
211. "Vascular access" means the point on a patient's body where blood lines are connected for hemodialysis.
212. "Volunteer" means an individual authorized by a health care institution to work for the health care institution on a regular basis without compensation from the health care institution and does not include a medical staff member who has clinical privileges at the health care institution.
213. "Working day" means a Monday, Tuesday, Wednesday, Thursday, or Friday that is not a state and federal holiday or a statewide furlough day.

#### Historical Note

New Section made by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October

1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### **R9-10-102. Health Care Institution Classes and Subclasses; Requirements**

- A.** A person may apply for a license as a health care institution class or subclass in A.R.S. Title 36, Chapter 4 or this Chapter, or one of the following classes or subclasses:
1. General hospital,
  2. Rural general hospital,
  3. Special hospital,
  4. Behavioral health inpatient facility,
  5. Nursing care institution,
  6. Recovery care center,
  7. Hospice inpatient facility,
  8. Hospice service agency,
  9. Behavioral health residential facility,
  10. Assisted living center,
  11. Assisted living home,
  12. Adult foster care home,
  13. Outpatient surgical center,
  14. Outpatient treatment center,
  15. Abortion clinic,
  16. Adult day health care facility,
  17. Home health agency,
  18. Substance abuse transitional facility,
  19. Behavioral health specialized transitional facility,
  20. Counseling facility,
  21. Adult behavioral health therapeutic home,
  22. Behavioral health respite home, or
  23. Unclassified health care institution.
- B.** A person shall apply for a license for the class or subclass that authorizes the provision of the highest level of physical care services or behavioral health services the proposed health care institution plans to provide. The Department shall review the proposed health care institution's scope of services to determine whether the requested health care institution class or subclass is appropriate.
- C.** A health care institution shall comply with the requirements in Article 17 of this Chapter if:
1. There are no specific rules in another Article of this Chapter for the health care institution's class or subclass, or
  2. The Department determines that the health care institution is an unclassified health care institution.

#### **Historical Note**

New Section made by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### **R9-10-103. Licensing Exceptions**

- A.** A health care institution license is required for each health care institution facility except:
1. A facility exempt from licensing under A.R.S. § 36-402, or
  2. A health care institution's administrative office.
- B.** The Department does not require a separate health care institution license for:
1. A satellite facility of a hospital under A.R.S. § 36-422(F);
  2. An accredited facility of an accredited hospital under A.R.S. § 36-422(G);
  3. A facility operated by a licensed health care institution that is:

- a. Adjacent to and contiguous with the licensed health care institution premises; or
  - b. Not adjacent to or contiguous with the licensed health care institution but connected to the licensed health care institution facility by an all-weather enclosure and:
    - i. Owned by the health care institution, or
    - ii. Leased by the health care institution with exclusive rights of possession;
4. A mobile clinic operated by a licensed health care institution; or
5. A facility located on grounds that are not adjacent to or contiguous with the health care institution premises where only ancillary services are provided to a patient of the health care institution.

#### **Historical Note**

New Section made by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### **R9-10-104. Approval of Architectural Plans and Specifications**

- A.** For approval of architectural plans and specifications for the construction or modification of a health care institution that is required by this Chapter to comply with any of the physical plant codes and standards incorporated by reference in A.A.C. R9-1-412, an applicant shall submit to the Department an application packet including:
1. An application in a format provided by the Department that contains:
    - a. For construction of a new health care institution:
      - i. The health care institution's name, street address, city, state, zip code, telephone number, and e-mail address;
      - ii. The name and address of the health care institution's governing authority;
      - iii. The requested health care institution class or subclass; and
      - iv. If applicable, the requested licensed capacity, licensed occupancy, and dialysis stations for the health care institution;
    - b. For modification of a licensed health care institution:
      - i. The health care institution's license number,
      - ii. The name and address of the licensee,
      - iii. The health care institution's class or subclass, and
      - iv. The health care institution's existing licensed capacity, licensed occupancy, or dialysis stations; and the requested licensed capacity, licensed occupancy, or dialysis stations for the health care institution;
  - c. The health care institution's contact person's name, street address, city, state, zip code, telephone number, and e-mail address;
  - d. The name, street address, city, state, zip code, telephone number, and e-mail address of:
    - i. The project architect; or
    - ii. If the construction or modification of the health care institution does not require a project architect, the project engineer or other individual responsible for the completion of the construction or modification;

- e. A narrative description of the project;
  - f. If providing or planning to provide medical services, nursing services, or health-related services that require compliance with specific physical plant codes and standards incorporated by reference in A.A.C. R9-1-412, the number of rooms or inpatient beds designated for providing the medical services, nursing services, or health-related services;
  - g. If providing or planning to provide behavioral health observation/stabilization services, the number of behavioral health observation/stabilization chairs designated for providing the behavioral health observation/stabilization services;
  - h. For construction of a new health care institution and if modification of a health care institution requires a project architect, a statement signed and sealed by the project architect, according to the requirements in 4 A.A.C. 30, Article 3, that the:
    - i. Project architect has complied with A.A.C. R4-30-301; and
    - ii. Architectural plans and specifications comply with applicable licensing requirements in A.R.S. Title 36, Chapter 4 and this Chapter;
  - i. If construction or modification of a health care institution requires a project engineer, a statement signed and sealed by the project engineer, according to the requirements in 4 A.A.C. 30, Article 3, that the project engineer has complied with A.A.C. R4-30-301; and
  - j. A statement signed by the governing authority or the licensee that the architectural plans and specifications comply with applicable licensing requirements in A.R.S. Title 36, Chapter 4 and this Chapter;
2. If the health care institution is located on land under the jurisdiction of a local governmental agency, one of the following:
- a. A building permit for the construction or modification issued by the local governmental agency; or
  - b. If a building permit issued by the local governmental agency is not required, zoning clearance issued by the local governmental agency that includes:
    - i. The health care institution's name, street address, city, state, zip code, and county;
    - ii. The health care institution's class or subclass and each type of medical services, nursing services, or health-related services to be provided; and
    - iii. A statement signed by a representative of the local governmental agency stating that the address listed is zoned for the health care institution's class or subclass;
3. The following information that is necessary to demonstrate that the project described on the application complies with applicable codes and standards incorporated by reference in A.A.C. R9-1-412:
- a. A table of contents containing:
    - i. The architectural plans and specifications submitted;
    - ii. The physical plant codes and standards incorporated by reference in A.A.C. R9-1-412 that apply to the project;
    - iii. The physical plant codes and standards that are required by a local governmental agency, if applicable;
  - iv. An index of the abbreviations and symbols used in the architectural plans and specifications; and
  - v. The facility's specific International Building Code construction type and International Building Code occupancy type;
- b. If the facility is larger than 3,000 square feet and is or will be occupied by more than 20 individuals, the seal of an architect on the architectural plans and specifications according to the requirements in A.R.S. Title 32, Chapter 1 and 4 A.A.C. 30, Article 3;
- c. A site plan, drawn to scale, of the entire premises showing streets, property lines, facilities, parking areas, outdoor areas, fences, swimming pools, fire access roads, fire hydrants, and access to water mains;
- d. For each facility, on architectural plans and specifications:
- i. A floor plan, drawn to scale, for each level of the facility, showing the layout and dimensions of each room, the name and function of each room, means of egress, and natural and artificial lighting sources;
  - ii. A diagram of a section of the facility, drawn to scale, showing the vertical cross-section view from foundation to roof and specifying construction materials;
  - iii. Building elevations, drawn to scale, showing the outside appearance of each facility;
  - iv. The materials used for ceilings, walls, and floors;
  - v. The location, size, and fire rating of each door and each window and the materials and hardware used, including safety features such as fire exit door hardware and fireproofing materials;
  - vi. A ceiling plan, drawn to scale, showing the layout of each light fixture, each fire protection device, and each element of the mechanical ventilation system;
  - vii. An electrical floor plan, drawn to scale, showing the wiring diagram and the layout of each lighting fixture, each outlet, each switch, each electrical panel, and electrical equipment;
  - viii. A mechanical floor plan, drawn to scale, showing the layout of heating, ventilation, and air conditioning systems;
  - ix. A plumbing floor plan, drawn to scale, showing the layout and materials used for water, sewer, and medical gas systems, including the water supply and plumbing fixtures;
  - x. A floor plan, drawn to scale, showing the communication system within the health care institution including the nurse call system, if applicable;
  - xi. A floor plan, drawn to scale, showing the automatic fire extinguishing, fire detection, and fire alarm systems; and
  - xii. Technical specifications or drawings describing installation of equipment or medical gas and the materials used for installation in the health care institution;
4. The estimated total project cost including the costs of:
- a. Site acquisition,
  - b. General construction,
  - c. Architect fees,



- d. Fixed equipment, and
  - e. Movable equipment;
5. The following, as applicable:
- a. If the health care institution is located on land under the jurisdiction of a local governmental agency, one of the following provided by the local governmental agency:
    - i. A copy of the certificate of occupancy for the facility,
    - ii. Documentation that the facility was approved for occupancy, or
    - iii. Documentation that a certificate of occupancy for the facility is not available;
  - b. A certification and a statement that the construction or modification of the facility is in substantial compliance with applicable licensing requirements in A.R.S. Title 36, Article 4 and this Chapter signed by the project architect, the contractor, and the owner;
  - c. A written description of any work necessary to complete the construction or modification submitted by the project architect;
  - d. If the construction or modification affects the health care institution's fire alarm system, a contractor certification and description of the fire alarm system in a format provided by the Department;
  - e. If the construction or modification affects the health care institution's automatic fire extinguishing system, a contractor certification of the automatic fire extinguishing system in a format provided by the Department;
  - f. If the construction or modification affects the health care institution's heating, ventilation, or air conditioning system, a copy of the heating, ventilation, air conditioning, and air balance tests and a contractor certification of the heating, ventilation, or air conditioning system;
  - g. If draperies, cubicle curtains, or floor coverings are installed or replaced, a copy of the manufacturer's certification of flame spread for the draperies, cubicle curtains, or floor coverings;
  - h. For a health care institution using inhalation anesthetics or nonflammable medical gas, a copy of the Compliance Certification for Inhalation Anesthetics or Nonflammable Medical Gas System required in the National Fire Codes incorporated by reference in A.A.C. R9-1-412;
  - i. If a generator is installed, a copy of the installation acceptance required in the National Fire Codes incorporated by reference in A.A.C. R9-1-412;
  - j. If equipment is installed, a certification from an engineer or from a technical representative of the equipment's manufacturer that the equipment has been installed according to the manufacturer's recommendations and, if applicable, calibrated;
  - k. For a health care institution providing radiology, a written report from a certified health physicist of the location, type, and amount of radiation protection; and
  - l. If a factory-built building is used by a health care institution:
    - i. A copy of the installation permit and the copy of a certificate of occupancy for the factory-built building from the Office of Manufactured Housing; or
    - ii. A written report from an individual registered as an architect or a professional structural engineer under 4 A.A.C. 30, Article 2, stating that the factory-built building complies with applicable design standards;
6. For construction of a new health care institution and for a modification of a health care institution that requires a project architect, a statement signed by the project architect that final architectural plans and specifications have been submitted to the person applying for a health care institution license or the licensee of the health care institution;
7. For modification of a health care institution that does not require a project architect, a statement signed by the project engineer or other individual responsible for the completion of the modification that final architectural plans and specifications have been submitted to the person applying for a health care institution license or the licensee of the health care institution; and
8. The applicable fee required by R9-10-106.
- B.** Before an applicant submits an application for approval of architectural plans and specifications for the construction or modification of a health care institution, an applicant may request an architectural evaluation by submitting the documents in subsection (A)(3) to the Department.
- C.** The Department may conduct on-site facility reviews during the construction or modification of a health care institution.
- D.** The Department shall approve or deny an application for approval of architectural plans and specifications of a health care institution in this Section according to R9-10-108.
- E.** In addition to obtaining an approval of a health care institution's architectural plans and specifications, a person shall obtain a health care institution license before operating the health care institution.

#### Historical Note

New Section made by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-105. Initial License Application

- A.** A person applying for an initial health care institution license shall submit to the Department an application packet that contains:
- 1. An application in a format provided by the Department including:
    - a. The health care institution's:
      - i. Name, street address, mailing address, telephone number, and e-mail address;
      - ii. Tax ID number; and
      - iii. Class or subclass listed in R9-10-102 for which licensing is requested;
    - b. Except for a home health agency, hospice service agency, or behavioral health facility, whether the health care institution is located within 1/4 mile of agricultural land;
    - c. Whether the health care institution is located in a leased facility;
    - d. Whether the health care institution is ready for a licensing inspection by the Department;
    - e. If the health care institution is not ready for a licensing inspection by the Department, the date the health care institution will be ready for a licensing inspection;

- f. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-10-108;
  - g. Owner information including:
    - i. The owner's name, address, telephone number, and e-mail address;
    - ii. Whether the owner is a sole proprietorship, a corporation, a partnership, a limited liability partnership, a limited liability company, or a governmental agency;
    - iii. If the owner is a partnership or a limited liability partnership, the name of each partner;
    - iv. If the owner is a limited liability company, the name of the designated manager or, if no manager is designated, the names of any two members of the limited liability company;
    - v. If the owner is a corporation, the name and title of each corporate officer;
    - vi. If the owner is a governmental agency, the name and title of the individual in charge of the governmental agency or the name of an individual in charge of the health care institution designated in writing by the individual in charge of the governmental agency;
    - vii. Whether the owner or any person with 10% or more business interest in the health care institution has had a license to operate a health care institution denied, revoked, or suspended; the reason for the denial, suspension, or revocation; the date of the denial, suspension, or revocation; and the name and address of the licensing agency that denied, suspended, or revoked the license;
    - viii. Whether the owner or any person with 10% or more business interest in the health care institution has had a health care professional license or certificate denied, revoked, or suspended; the reason for the denial, suspension, or revocation; the date of the denial, suspension, or revocation; and the name and address of the licensing agency that denied, suspended, or revoked the license or certificate; and
    - ix. The name, title, address, and telephone number of the owner's statutory agent or the individual designated by the owner to accept service of process and subpoenas;
  - h. The name and address of the governing authority;
  - i. The chief administrative officer's:
    - i. Name,
    - ii. Title,
    - iii. Highest educational degree, and
    - iv. Work experience related to the health care institution class or subclass for which licensing is requested; and
  - j. Signature required in A.R.S. § 36-422(B);
2. If the health care institution is located in a leased facility, a copy of the lease showing the rights and responsibilities of the parties and exclusive rights of possession of the leased facility;
  3. If applicable, a copy of the owner's articles of incorporation, partnership or joint venture documents, or limited liability documents;
  4. If applicable, the name and address of each owner or lessee of any agricultural land regulated under A.R.S. § 3-365 and a copy of the written agreement between the applicant and the owner or lessee of agricultural land as prescribed in A.R.S. § 36-421(D);
5. Except for a home health agency or a hospice service agency, one of the following:
    - a. If the health care institution or a part of the health care institution is required by this Chapter to comply with any of the physical plant codes and standards incorporated by reference in A.A.C. R9-1-412, documentation of the health care institution's architectural plans and specifications approval in R9-10-104; or
    - b. If a health care institution or a part of the health care institution is not required by this Chapter to comply with any of the physical plant codes and standards incorporated by reference in A.A.C. R9-1-412:
      - i. One of the following:
        - (1) Documentation from the local jurisdiction of compliance with applicable local building codes and zoning ordinances; or
        - (2) If documentation from the local jurisdiction is not available, documentation of the unavailability of the local jurisdiction compliance and documentation of a general contractor's inspection of the facility that states the facility is safe for occupancy as the applicable health care institution class or subclass;
      - ii. The licensed capacity requested by the applicant for the health care institution;
      - iii. If applicable, the licensed occupancy requested by the applicant for the health care institution;
      - iv. A site plan showing each facility, the property lines of the health care institution, each street and walkway adjacent to the health care institution, parking for the health care institution, fencing and each gate on the health care institution premises, and, if applicable, each swimming pool on the health care institution premises; and
      - v. A floor plan showing, for each story of a facility, the room layout, room usage, each door and each window, plumbing fixtures, each exit, and the location of each fire protection device;
  6. The health care institution's proposed scope of services; and
  7. The applicable application fee required by R9-10-106.
- B.** In addition to the initial application requirements in this Section, an applicant shall comply with the supplemental application requirements in specific rules in this Chapter for the health care institution class or subclass for which licensing is requested.
  - C.** The Department shall approve or deny an application in this Section according to R9-10-108.

#### Historical Note

New Section made by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-106. Fees

- A.** An applicant who submits to the Department architectural plans and specifications for the construction or modification of a health care institution shall also submit an architectural drawing review fee as follows:

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1. Fifty dollars for a project with a cost of \$100,000 or less;
  2. One hundred dollars for a project with a cost of more than \$100,000 but less than \$500,000; or
  3. One hundred fifty dollars for a project with a cost of \$500,000 or more.
- B.** An applicant submitting an initial application or a renewal application for a health care institution license shall submit to the Department an application fee of \$50.
- C.** Except as provided in subsection (D) or (E), an applicant submitting an initial application or a renewal application for a health care institution license shall submit to the Department a licensing fee as follows:
1. For an adult day health care facility, assisted living home, or assisted living center:
    - a. For a facility with no licensed capacity, \$280;
    - b. For a facility with a licensed capacity of one to 59 beds, \$280, plus the licensed capacity times \$70;
    - c. For a facility with a licensed capacity of 60 to 99 beds, \$560, plus the licensed capacity times \$70;
    - d. For a facility with a licensed capacity of 100 to 149 beds, \$840, plus the licensed capacity times \$70; or
    - e. For a facility with a licensed capacity of 150 beds or more, \$1,400, plus the licensed capacity times \$70;
  2. For a behavioral health facility:
    - a. For a facility with no licensed capacity, \$375;
    - b. For a facility with a licensed capacity of one to 59 beds, \$375, plus the licensed capacity times \$94;
    - c. For a facility with a licensed capacity of 60 to 99 beds, \$750, plus the licensed capacity times \$94;
    - d. For a facility with a licensed capacity of 100 to 149 beds, \$1,125, plus the licensed capacity times \$94; or
    - e. For a facility with a licensed capacity of 150 beds or more, \$1,875, plus the licensed capacity times \$94;
  3. For a behavioral health facility providing behavioral health observation/stabilization services, in addition to the applicable fee in subsection (C)(2), the licensed occupancy times \$94;
  4. For a nursing care institution:
    - a. For a facility with a licensed capacity of one to 59 beds, \$290, plus the licensed capacity times \$73;
    - b. For a facility with a licensed capacity of 60 to 99 beds, \$580, plus the licensed capacity times \$73;
    - c. For a facility with a licensed capacity of 100 to 149 beds, \$870, plus the licensed capacity times \$73; or
    - d. For a facility with a licensed capacity of 150 beds or more, \$1,450, plus the licensed capacity times \$73;
  5. For a hospital, a home health agency, a hospice service agency, a hospice inpatient facility, an abortion clinic, a recovery care center, an outpatient surgical center, an outpatient treatment center that is not a behavioral health facility, or an unclassified health care institution:
    - a. For a facility with no licensed capacity, \$365;
    - b. For a facility with a licensed capacity of one to 59 beds, \$365, plus the licensed capacity times \$91;
    - c. For a facility with a licensed capacity of 60 to 99 beds, \$730, plus the licensed capacity times \$91;
    - d. For a facility with a licensed capacity of 100 to 149 beds, \$1,095, plus the licensed capacity times \$91; or
    - e. For a facility with a licensed capacity of 150 beds or more, \$1,825, plus the licensed capacity times \$91;
  6. For a hospital providing behavioral health observation/stabilization services, in addition to the applicable fee in subsection (C)(5), the licensed occupancy times \$91; and
  7. For an outpatient treatment center that is not a behavioral health facility and provides:
    - a. Dialysis services, in addition to the applicable fee in subsection (C)(5), the number of dialysis stations times \$91; and
    - b. Behavioral health observation/stabilization services, in addition to the applicable fee in subsection (C)(5), the licensed occupancy times \$91.
- D.** In addition to the applicable fees in subsections (C)(5) and (C)(6), an applicant submitting an initial application or a renewal application for a single group hospital license shall submit to the Department an additional fee of \$365 for each of the hospital's satellite facilities and, if applicable, the fees required in subsection (C)(7).
- E.** Subsections (C) and (D) do not apply to a health care institution operated by a state agency according to state or federal law or to an adult foster care home.
- F.** All fees are nonrefundable except as provided in A.R.S. § 41-1077.

**Historical Note**

New Section R9-10-106 renumbered from R9-10-122 and amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-107. Renewal License Application**

- A.** A licensee applying to renew a health care institution license shall submit an application packet to the Department at least 60 calendar days but not more than 120 calendar days before the expiration date of the current license that contains:
1. A renewal application in a format provided by the Department including:
    - a. The health care institution's:
      - i. Name, license number, mailing address, telephone number, and e-mail address; and
      - ii. Class or subclass;
    - b. Whether the applicant agrees to allow the Department to submit supplemental requests for information under R9-10-108;
    - c. Owner information including:
      - i. The owner's name, address, telephone number, and e-mail address;
      - ii. Whether the owner is a sole proprietorship, a corporation, a partnership, a limited liability partnership, a limited liability company, or a governmental agency;
      - iii. If the owner is a partnership or a limited liability partnership, the name of each partner;
      - iv. If the owner is a limited liability company, the name of the designated manager or, if no manager is designated, the names of any two members of the limited liability company;
      - v. If the owner is a corporation, the name and title of each corporate officer;
      - vi. If the owner is a governmental agency, the name and title of the individual in charge of the governmental agency or the individual designated in writing by the individual in charge of the governmental agency;
      - vii. Whether the owner or any person with 10% or more business interest in the health care institution has had a license to operate a health care institution denied, revoked, or suspended since the previous license application was submitted; the reason for the denial, suspension, or revocation;

- tion; the date of the denial, suspension, or revocation; and the name and address of the licensing agency that denied, suspended, or revoked the license;
- viii. Whether the owner or any person with 10% or more business interest in the health care institution has had a health care professional license or certificate denied, revoked, or suspended since the previous license application was submitted; the reason for the denial, suspension, or revocation; the date of the denial, suspension, or revocation; and the name and address of the licensing agency that denied, suspended, or revoked the license or certificate; and
  - ix. The name, title, address, and telephone number of the owner's statutory agent or the individual designated by the owner to accept service of process and subpoenas;
  - d. The name and address of the governing authority;
  - e. The chief administrative officer's:
    - i. Name,
    - ii. Title,
    - iii. Highest educational degree, and
    - iv. Work experience related to the health care institution class or subclass for which licensing is requested; and
  - f. Signature required in A.R.S. § 36-422(B);
2. The health care institution's scope of services;
  3. If the health care institution is located in a leased facility, a copy of the lease showing the rights and responsibilities of the parties and exclusive rights of possession of the leased facility; and
  4. The applicable application and licensing fees required by R9-10-106.
- B.** A licensee may submit a health care institution's current accreditation report from a nationally recognized accrediting organization as part of the application packet in subsection (A).
- C.** If a licensee submits a health care institution's current accreditation report from a nationally recognized accrediting organization, the Department shall not conduct an onsite compliance inspection of the health care institution during the time the accreditation report is valid.
- D.** The Department shall approve or deny a renewal license according to R9-10-108.
- E.** The Department shall issue a renewal license for:
1. One year; or
  2. Three years, if:
    - a. A licensee's health care institution is a hospital accredited by a nationally recognized accreditation organization, and
    - b. The licensee submits a copy of the hospital's current accreditation report.
- Historical Note**
- New Section made by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).
- R9-10-108. Time-frames**
- A.** The overall time-frame for each type of approval granted by the Department is listed in Table 1.1. The applicant and the Department may agree in writing to extend the substantive review time-frame and the overall time-frame. The substantive review time-frame and the overall time-frame may not be extended by more than 25% of the overall time-frame.
- B.** The administrative completeness review time-frame for each type of approval granted by the Department as prescribed in this Article is listed in Table 1.1. The administrative completeness review time-frame begins on the date the Department receives an application packet or a written request for a change in a health care institution license according to R9-10-109(F):
1. The application packet for an initial health care institution license is not complete until the applicant provides the Department with written notice that the health care institution is ready for a licensing inspection by the Department.
  2. If the application packet or written request is incomplete, the Department shall provide a written notice to the applicant specifying the missing document or incomplete information. The administrative completeness review time-frame and the overall time-frame are suspended from the date of the notice until the date the Department receives the missing document or information from the applicant.
  3. When an application packet or written request is complete, the Department shall provide a written notice of administrative completeness to the applicant.
  4. For an initial health care institution application, the Department shall consider the application withdrawn if the applicant fails to supply the missing documents or information included in the notice described in subsection (B)(2) within 180 calendar days after the date of the notice described in subsection (B)(2).
  5. If the Department issues a license or grants an approval during the time provided to assess administrative completeness, the Department shall not issue a separate written notice of administrative completeness.
- C.** The substantive review time-frame is listed in Table 1.1 and begins on the date of the notice of administrative completeness.
1. The Department may conduct an onsite inspection of the facility:
    - a. As part of the substantive review for approval of architectural plans and specifications;
    - b. As part of the substantive review for issuing a health care institution initial or renewal license; or
    - c. As part of the substantive review for approving a modification in a health care institution's license.
  2. During the substantive review time-frame, the Department may make one comprehensive written request for additional information or documentation. If the Department and the applicant agree in writing, the Department may make supplemental requests for additional information or documentation. The time-frame for the Department to complete the substantive review is suspended from the date of a written request for additional information or documentation until the Department receives the additional information or documentation.
  3. The Department shall send a written notice of approval or a license to an applicant who is in substantial compliance with applicable requirements in A.R.S. Title 36, Chapter 4 and this Chapter.
  4. After an applicant for an initial health care institution license receives the written notice of approval in subsection (C)(3), the applicant shall submit the applicable license fee in R9-10-106 to the Department within 60 calendar days after the date of the written notice of approval.

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5. The Department shall provide a written notice of denial that complies with A.R.S. § 41-1076 to an applicant who does not:
  - a. For an initial health care institution application, submit the information or documentation in subsection (C)(2) within 120 calendar days after the Department's written request to the applicant;
  - b. Comply with the applicable requirements in A.R.S. Title 36, Chapter 4 and this Chapter; or
  - c. Submit the fee required in R9-10-106.
6. An applicant may file a written notice of appeal with the Department within 30 calendar days after receiving the notice described in subsection (C)(5). The appeal shall be conducted according to A.R.S. Title 41, Chapter 6, Article 10.
7. If a time-frame's last day falls on a Saturday, a Sunday, or an official state holiday, the Department shall consider the next working day to be the time-frame's last day.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3). Amended by final rulemaking at 11 A.A.R. 859, effective April 2, 2005 (Supp. 05-1). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**Table 1.1.**

Type of Approval	Statutory Authority	Overall Time-frame	Administrative Completeness Time-frame	Substantive Review Time-frame
Approval of architectural plans and specifications R9-10-104	A.R.S. §§ 36-405, 36-406(1)(b), and 36-421	105 calendar days	45 calendar days	60 calendar days
Health care institution initial license R9-10-105	A.R.S. §§ 36-405, 36-407, 36-421, 36-422, 36-424, and 36-425	120 calendar days	30 calendar days	90 calendar days
Health care institution renewal license R9-10-107	A.R.S. §§ 36-405, 36-407, 36-422, 36-424, and 36-425	90 calendar days	30 calendar days	60 calendar days
Approval of a modification of a health care institution R9-10-110	A.R.S. §§ 36-405, 36-407, and 36-422	75 calendar days	15 calendar days	60 calendar days

**Historical Note**

New Table 1 made by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3). Amended by final rulemaking at 11 A.A.R. 859, effective April 2, 2005 (Supp. 05-1). Table 1 title and contents amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Table 1.1 amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-109. Changes Affecting a License**

- A. A licensee shall ensure that the Department is notified in writing at least 30 calendar days before the effective date of:
  1. A change in the name of:
    - a. A health care institution, or
    - b. The licensee; or
  2. A change in the address of a health care institution that does not provide medical services, nursing services, or health-related services on the premises.
- B. If a licensee intends to terminate the operation of a health care institution either during or at the expiration of the health care institution's license, the licensee shall ensure that the Department is notified in writing of:
  1. The termination of the health care institution's operations, as required in A.R.S. § 36-422(D), at least 30 calendar days before the termination, and
  2. The address and contact information for the location where the health care institution's medical records will be retained as required in A.R.S. § 12-2297.
- C. If a licensee is an adult behavioral health therapeutic home or a behavioral health respite home, the licensee shall ensure that:
  1. The Department is notified in writing if the licensee does not have a written agreement with a collaborating health care institution, as required in R9-10-1603(A)(4) or R9-10-1803(A)(5) as applicable; and
2. The adult behavioral health therapeutic home or behavioral health respite home does not accept an individual as a resident or recipient, as applicable, or provide services to a resident or recipient, as applicable, until:
  - a. The adult behavioral health therapeutic home or behavioral health respite home has a written agreement with a collaborating health care institution;
  - b. The collaborating health care institution has approved the adult behavioral health therapeutic home's or behavioral health respite home's:
    - i. Scope of services, and
    - ii. Policies and procedures; and
  - c. The collaborating health care institution has verified the provider's skills and knowledge.
- D. A governing authority shall submit an initial license application required in R9-10-105 for:
  1. A change in ownership of a health care institution;
  2. A change in the address or location of a health care institution that provides medical services, nursing services, health-related services, or behavioral health services on the premises; or

3. A change in a health care institution's class or subclass.
- E.** A governing authority is not required to submit documentation of a health care institution's architectural plans and specifications required in R9-10-105(A)(5) for an initial license application if:
  1. The health care institution has not ceased operations for more than 30 calendar days,
  2. A modification has not been made to the health care institution,
  3. The services the health care institution is authorized by the Department to provide are not changed, and
  4. The location of the health care institution's premises is not changed.
- F.** The Department shall approve or deny a request for a change in services or another modification described in this Section according to R9-10-108.
- G.** A licensee shall not implement a change in services or another modification described in this Section until an approval or amended license is issued by the Department.

#### Historical Note

New Section made by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-110. Modification of a Health Care Institution

- A.** A licensee of a health care institution that is required by this Chapter to comply with any of the physical plant codes and standards incorporated by reference in A.A.C. R9-1-412 shall submit an application for approval of architectural plans and specifications for a modification of the health care institution.
- B.** A licensee of a health care institution shall submit a written request for a modification of the health care in a Department-provided format that contains:
  1. The health care institution's name, address, and license number;
  2. A narrative description of the modification;
  3. The name of the health care institution's administrator's or individual representing the health care institution as designated in A.R.S. § 36-422 and the dated signature of the administrator or individual; and
  4. One of the following:
    - a. For a health care institution that is required to comply with the physical plant codes and standards incorporated by reference in A.A.C. R9-10-412 for the building, documentation of the health care institution's architectural plans and specifications approval in R9-10-104; or
    - b. For a health care institution that is not required to comply with the physical plant codes and standards, documentation that demonstrates that the requested modification complies with applicable requirements in this Chapter.
- C.** The Department shall approve or deny a request for a modification described in subsection (B) according to R9-10-108.
- D.** A licensee shall not implement a modification described in subsection (B) until an approval or amended license is issued by the Department.

#### Historical Note

New Section made by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-110 renumbered to Section R9-10-111; new Section R9-10-110 made by

exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-111. Enforcement Actions

- A.** If the Department determines that an applicant or licensee is violating applicable statutes and rules and the violation poses a direct risk to the life, health, or safety of a patient, the Department may:
  1. Issue a provisional license to the applicant or licensee under A.R.S. § 36-425,
  2. Assess a civil penalty under A.R.S. § 36-431.01,
  3. Impose an intermediate sanction under A.R.S. § 36-427,
  4. Remove a licensee and appoint another person to continue operation of the health care institution pending further action under A.R.S. § 36-429,
  5. Suspend or revoke a license under A.R.S. § 36-427 and R9-10-111,
  6. Deny a license under A.R.S. § 36-425 and R9-10-111, or
  7. Issue an injunction under A.R.S. § 36-430.
- B.** In determining which action in subsection (A) is appropriate, the Department shall consider the direct risk to the life, health, or safety of a patient in the health care institution based on:
  1. Repeated violations of statutes or rules,
  2. Pattern of violations,
  3. Types of violation,
  4. Severity of violation, and
  5. Number of violations.

#### Historical Note

Amended effective February 4, 1981 (Supp. 81-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 97, effective January 1, 2014 (Supp. 13-4). Section R9-10-111 renumbered to Section R9-10-112; new Section R9-10-111 renumbered from R9-10-110 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-112. Denial, Revocation, or Suspension of License

- A.** The Department may deny, revoke, or suspend a license to operate a health care institution if an applicant, a licensee, or a controlling person of the health care institution:
  1. Provides false or misleading information to the Department;
  2. Has had in any state or jurisdiction any of the following:
    - a. An application or license to operate a health care institution denied, suspended, or revoked, unless the denial was based on failure to complete the licensing process within a required time-frame; or
    - b. A health care professional license or certificate denied, revoked, or suspended; or
  3. Has operated a health care institution, within the ten years preceding the date of the most recent license application, in violation of A.R.S. Title 36, Chapter 4 or this Chapter, that posed a direct risk to the life, health, or safety of a patient.
- B.** The Department shall suspend or revoke a hospital's license if the Department receives, pursuant to A.R.S. § 36-2901.08(H), notice from the Arizona Health Care Cost Containment System that the hospital's provider agreement registration with the Arizona Health Care Cost Containment System has been suspended or revoked.

#### Historical Note

Amended effective February 4, 1981 (Supp. 81-1). Sec-

tion repealed by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3). New Section made by exempt rulemaking at 9 A.A.R. 526, effective April 1, 2003 (Supp. 03-1). Section R9-10-112 renumbered to R9-10-113; new Section R9-10-112 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-112 renumbered to Section R9-10-113; new Section R9-10-112 renumbered from R9-10-111 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

### **R9-10-113. Tuberculosis Screening**

A health care institution's chief administrative officer shall ensure that the health care institution complies with the following if tuberculosis screening is required at the health care institution:

1. For each individual required to be screened for infectious tuberculosis, the health care institution obtains from the individual:
  - a. On or before the date specified in the applicable Section of this Chapter, one of the following as evidence of freedom from infectious tuberculosis:
    - i. Documentation of a negative Mantoux skin test or other tuberculosis screening test recommended by the U.S. Centers for Disease Control and Prevention (CDC) administered within 12 months before the date the individual begins providing services at or on behalf of the health care institution or is admitted to the health care institution that includes the date and the type of tuberculosis screening test; or
    - ii. If the individual had a positive Mantoux skin test or other tuberculosis screening test, a written statement that the individual is free from infectious tuberculosis signed by a medical practitioner dated within 12 months before the date the individual begins providing services at or on behalf of the health care institution or is admitted to the health care institution; and
  - b. Every 12 months after the date of the individual's most recent tuberculosis screening test or written statement, one of the following as evidence of freedom from infectious tuberculosis:
    - i. Documentation of a negative Mantoux skin test or other tuberculosis screening test recommended by the CDC administered to the individual within 30 calendar days before or after the anniversary date of the most recent tuberculosis screening test or written statement that includes the date and the type of tuberculosis screening test; or
    - ii. If the individual has had a positive Mantoux skin test or other tuberculosis screening test, a written statement that the individual is free from infectious tuberculosis signed by a medical practitioner dated within 30 calendar days before or after the anniversary date of the most recent tuberculosis screening test or written statement; or
2. Establish, document, and implement a tuberculosis infection control program that complies with the Guidelines for Preventing the Transmission of *Mycobacterium tuberculosis* in Health-care Settings, 2005, published by the U.S. Department of Health and Human Services, Atlanta, GA 30333 and available at <http://www.cdc.gov/mmwr/PDF/RR/rr5417.pdf>, incorporated by reference, on file

with the Department, and including no future editions or amendments and includes:

- a. Conducting tuberculosis risk assessments, conducting tuberculosis screening testing, screening for signs or symptoms of tuberculosis, and providing training and education related to recognizing the signs and symptoms of tuberculosis; and
- b. Maintaining documentation of any:
  - i. Tuberculosis risk assessment;
  - ii. Tuberculosis screening test of an individual who is employed by the health care institution, provides volunteer services for the health care institution, or is admitted to the health care institution; and
  - iii. Screening for signs or symptoms of tuberculosis of an individual who is employed by the health care institution, provides volunteer services for the health care institution, or is admitted to the health care institution

### **Historical Note**

Former Section R9-10-113 repealed, new Section R9-10-113 adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3). New Section R9-10-113 renumbered from R9-10-112 and amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-113 renumbered to Section R9-10-114; new Section R9-10-113 renumbered from R9-10-112 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

### **R9-10-114. Clinical Practice Restrictions for Hemodialysis Technician Trainees**

- A. The following definitions apply in this Section:
  1. "Assess" means collecting data about a patient by:
    - a. Obtaining a history of the patient,
    - b. Listening to the patient's heart and lungs, and
    - c. Checking the patient for edema.
  2. "Blood-flow rate" means the quantity of blood pumped into a dialyzer per minute of hemodialysis.
  3. "Blood lines" means the tubing used during hemodialysis to carry blood between a vascular access and a dialyzer.
  4. "Central line catheter" means a type of vascular access created by surgically implanting a tube into a large vein.
  5. "Clinical practice restriction" means a limitation on the hemodialysis tasks that may be performed by a hemodialysis technician trainee.
  6. "Conductivity test" means a determination of the electrolytes in a dialysate.
  7. "Dialysate" means a mixture of water and chemicals used in hemodialysis to remove wastes and excess fluid from a patient's body.
  8. "Dialysate-flow rate" means the quantity of dialysate pumped per minute of hemodialysis.
  9. "Directly observing" or "direct observation" means a medical person stands next to an inexperienced hemodialysis technician trainee and watches the inexperienced hemodialysis technician trainee perform a hemodialysis task.
  10. "Direct supervision" has the same meaning as "supervision" in A.R.S. § 36-401.
  11. "Electrolytes" means chemical compounds that break apart into electrically charged particles, such as sodium, potassium, or calcium, when dissolved in water.

12. “Experienced hemodialysis technician trainee” means an individual who has passed all didactic, skills, and competency examinations provided by a health care institution that measure the individual’s knowledge and ability to perform hemodialysis.
  13. “Fistula” means a type of vascular access created by a surgical connection between an artery and vein.
  14. “Fluid-removal rate” means the quantity of wastes and excess fluid eliminated from a patient’s blood per minute of hemodialysis to achieve the patient’s prescribed weight, determined by:
    - a. Dialyzer size,
    - b. Blood-flow rate,
    - c. Dialysate-flow rate, and
    - d. Hemodialysis duration.
  15. “Germicide-negative test” means a determination that a chemical used to kill microorganisms is not present.
  16. “Germicide-positive test” means a determination that a chemical used to kill microorganisms is present.
  17. “Graft” means a vascular access created by a surgical connection between an artery and vein using a synthetic tube.
  18. “Hemodialysis machine” means a mechanical pump that controls:
    - a. The blood-flow rate,
    - b. The mixing and temperature of dialysate,
    - c. The dialysate-flow rate,
    - d. The addition of anticoagulant, and
    - e. The fluid-removal rate.
  19. “Hemodialysis technician” has the same meaning as in A.R.S. § 36-423(A).
  20. “Hemodialysis technician trainee” means an individual who is working in a health care institution to assist in providing hemodialysis and who is not certified as a hemodialysis technician according to A.R.S. § 36-423(A).
  21. “Inexperienced hemodialysis technician trainee” means an individual who has not passed all didactic, skills, and competency examinations provided by a health care institution that measure the individual’s knowledge and ability to perform hemodialysis.
  22. “Medical person” means:
    - a. A physician who is experienced in dialysis;
    - b. A registered nurse practitioner who is experienced in dialysis;
    - c. A nurse who is experienced in dialysis;
    - d. A hemodialysis technician who meets the requirements in A.R.S. § 36-423(A) approved by the governing authority; and
    - e. An experienced hemodialysis technician trainee approved by the governing authority.
  23. “Not established” means not approved by a patient’s nephrologist for use in hemodialysis.
  24. “Patient” means an individual who receives hemodialysis.
  25. “pH test” means a determination of the acidity of a dialysate.
  26. “Preceptor course” means a health care institution’s instruction and evaluation provided to a nurse, hemodialysis technician, or hemodialysis technician trainee that enables the nurse, hemodialysis technician, or hemodialysis technician trainee to provide direct observation and education to hemodialysis technician trainees.
  27. “Respond” means to mute, shut off, reset, or troubleshoot an alarm.
  28. “Safety check” means successful completion of tests recommended by the manufacturer of a hemodialysis machine, a dialyzer, or a water system used for hemodialysis before initiating a patient’s hemodialysis.
  29. “Water-contaminant test” means a determination of the presence of chlorine or chloramine in a water system used for hemodialysis.
- B.** An experienced hemodialysis technician trainee may:
    1. Perform hemodialysis under direct supervision, and
    2. Provide direct observation to another hemodialysis technician trainee only after completing the health care institution’s preceptor course approved by the governing authority.
  - C.** An experienced hemodialysis technician trainee shall not access a patient’s:
    1. Fistula that is not established, or
    2. Graft that is not established.
  - D.** An inexperienced hemodialysis technician trainee may perform the following hemodialysis tasks only under direct observation:
    1. Access a patient’s central line catheter;
    2. Respond to a hemodialysis-machine alarm;
    3. Draw blood for laboratory tests;
    4. Perform a water-contaminant test on a water system used for hemodialysis;
    5. Inspect a dialyzer and perform a germicide-positive test before priming a dialyzer;
    6. Set up a hemodialysis machine and blood lines before priming a dialyzer;
    7. Prime a dialyzer;
    8. Test a hemodialysis machine for germicide presence;
    9. Perform a hemodialysis machine safety check;
    10. Prepare a dialysate;
    11. Perform a conductivity test and a pH test on a dialysate;
    12. Assess a patient;
    13. Check and record a patient’s vital signs, weight, and temperature;
    14. Determine the amount and rate of fluid removal from a patient;
    15. Administer local anesthetic at an established fistula or graft, administer anticoagulant, or administer replacement saline solution;
    16. Perform a germicide-negative test on a dialyzer before initiating hemodialysis;
    17. Initiate or discontinue a patient’s hemodialysis;
    18. Adjust blood-flow rate, dialysate-flow rate, or fluid-removal rate during hemodialysis; or
    19. Prepare a blood, water, or dialysate culture to determine microorganism presence.
  - E.** An inexperienced hemodialysis technician trainee shall not:
    1. Access a patient’s:
      - a. Fistula that is not established, or
      - b. Graft that is not established; or
    2. Provide direct observation.
  - F.** When a hemodialysis technician trainee performs hemodialysis tasks for a patient, the patient’s medical record shall include:
    1. The name of the hemodialysis technician trainee;
    2. The date, time, and hemodialysis task performed;
    3. The name of the medical person directly observing or the nurse or physician directly supervising the hemodialysis technician trainee; and
    4. The initials or signature of the medical person directly observing or the nurse or physician directly supervising the hemodialysis technician trainee.
  - G.** If the Department determines that a health care institution is not in substantial compliance with this Section, the Department may take enforcement action according to R9-10-110.



**Historical Note**

Former Section R9-10-114 repealed, new Section R9-10-114 adopted effective February 4, 1981 (Supp. 81-1).

Amended by adding paragraph (7) as an emergency effective November 17, 1983 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Amended by adding paragraph (7) as a permanent amendment effective August 2, 1984 (Supp. 84-4). Section repealed by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3). New Section R9-10-114 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-114 renumbered to Section R9-10-115; new Section R9-10-114 renumbered from R9-10-113 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-115. Behavioral Health Paraprofessionals; Behavioral Health Technicians**

If a health care institution is a behavioral health facility or is authorized by the Department to provide behavioral health services, an administrator shall ensure that:

1. Policies and procedures are established, documented, and implemented that:
  - a. Delineate the services a behavioral health paraprofessional is allowed to provide at or for the health care institution;
  - b. Cover supervision of a behavioral health paraprofessional including documentation of supervision;
  - c. Establish the qualifications for a behavioral health professional providing supervision to a behavioral health paraprofessional;
  - d. Delineate the services a behavioral health technician is allowed to provide at or for the health care institution;
  - e. Cover clinical oversight for a behavioral health technician, including documentation of clinical oversight;
  - f. Establish the qualifications for a behavioral health professional providing clinical oversight to a behavioral health technician;
  - g. Delineate the methods used to provide clinical oversight including when clinical oversight is provided on an individual basis or in a group setting;
  - h. Establish the process by which information pertaining to services provided by a behavioral health technician is provided to the behavioral health professional who is responsible for the clinical oversight of the behavioral health technician;
2. A behavioral health paraprofessional receives supervision according to policies and procedures;
3. Clinical oversight is provided to a behavioral health technician to ensure that patient needs are met based on, for each behavioral health technician:
  - a. The scope and extent of the services provided,
  - b. The acuity of the patients receiving services, and
  - c. The number of patients receiving services;
4. A behavioral health technician receives clinical oversight at least once during each two week period, if the behavioral health technician provides services related to patient care at the health care institution during the two week period;
5. When clinical oversight is provided electronically:
  - a. The clinical oversight is provided verbally with direct and immediate interaction between the behavioral health professional providing and the behav-

ioral health technician receiving the clinical oversight,

- b. A secure connection is used, and
  - c. The identities of the behavioral health professional providing and the behavioral health technician receiving the clinical oversight are verified before clinical oversight is provided; and
6. A behavioral health professional provides supervision to a behavioral health paraprofessional or clinical oversight to behavioral health technician within the behavioral health professional's scope of practice established in the applicable licensing requirements under A.R.S. Title 32.

**Historical Note**

Adopted effective February 4, 1981 (Supp. 81-1).

Amended by final rulemaking 16 A.A.R. 688, effective November 1, 2010 (Supp. 10-2). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-115 renumbered to Section R9-10-116; new Section R9-10-115 renumbered from R9-10-114 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-116. Nutrition and Feeding Assistant Training Programs**

- A. For the purposes of this Section, "agency" means an entity other than a nursing care institution that provides the nutrition and feeding assistant training required in A.R.S. § 36-413.
- B. An agency shall apply for approval to operate a nutrition and feeding assistant training program by submitting:
  1. An application in a format provided by the Department that contains:
    - a. The name of the agency;
    - b. The name, telephone number, and e-mail address of the individual in charge of the proposed nutrition and feeding assistant training program;
    - c. The address where the nutrition and feeding assistant training program records are maintained;
    - d. A description of the training course being offered by the nutrition and feeding assistant training program including for each topic in subsection (I):
      - i. The information presented for each topic,
      - ii. The amount of time allotted to each topic,
      - iii. The skills an individual is expected to acquire for each topic, and
      - iv. The testing method used to verify an individual has acquired the stated skills for each topic;
    - e. Whether the agency agrees to allow the Department to submit supplemental requests for information as specified in subsection (F)(2); and
    - f. The signature of the individual in charge of the proposed nutrition and feeding assistant training program and the date signed; and
  2. A copy of the materials used for providing the nutrition and feeding assistant training program.
- C. For an application for an approval of a nutrition and feeding assistant training program, the administrative review time-frame is 30 calendar days, the substantive review time-frame is 30 calendar days, and the overall time-frame is 60 calendar days.
- D. Within 30 calendar days after the receipt of an application in subsection (B), the Department shall:
  1. Issue an approval of the agency's nutrition and feeding assistant training program;
  2. Provide a notice of administrative completeness to the agency that submitted the application; or

3. Provide a notice of deficiencies to the agency that submitted the application, including a list of the information or documents needed to complete the application.
- E.** If the Department provides a notice of deficiencies to an agency:
  1. The administrative completeness review time-frame and the overall time-frame are suspended from the date of the notice of deficiencies until the date the Department receives the missing information or documents from the agency;
  2. If the agency does not submit the missing information or documents to the Department within 30 calendar days, the Department shall consider the application withdrawn; and
  3. If the agency submits the missing information or documents to the Department within 30 calendar days, the substantive review time-frame begins on the date the Department receives the missing information or documents.
- F.** Within the substantive review time-frame, the Department:
  1. Shall issue or deny an approval of a nutrition and feeding assistant training program; and
  2. May make one written comprehensive request for more information, unless the Department and the agency agree in writing to allow the Department to submit supplemental requests for information.
- G.** If the Department issues a written comprehensive request or a supplemental request for information:
  1. The substantive review time-frame and the overall time-frame are suspended from the date of the written comprehensive request or the supplemental request for information until the date the Department receives the information requested, and
  2. The agency shall submit to the Department the information and documents listed in the written comprehensive request or supplemental request for information within 10 working days after the date of the comprehensive written request or supplemental request for information.
- H.** The Department shall issue:
  1. An approval for an agency to operate a nutrition and feeding assistant training program if the Department determines that the agency and the application complies with A.R.S. § 36-413 and this Section; or
  2. A denial for an agency that includes the reason for the denial and the process for appeal of the Department's decision if:
    - a. The Department determines that the agency does not comply with A.R.S. § 36-413 and this Section; or
    - b. The agency does not submit information and documents listed in the written comprehensive request or supplemental request for information within 10 working days after the date of the comprehensive written request or supplemental request for information.
- I.** An individual in charge of a nutrition and feeding assistant training program shall ensure that:
  1. The materials and coursework for the nutrition and feeding assistant training program demonstrate the following topics:
    - a. Feeding techniques;
    - b. Assistance with feeding and hydration;
    - c. Communication and interpersonal skills;
    - d. Appropriate responses to resident behavior;
    - e. Safety and emergency procedures, including the Heimlich maneuver;
    - f. Infection control;
    - g. Resident rights;
    - h. Recognizing a change in a resident that is inconsistent with the resident's normal behavior; and
    - i. Reporting a change in subsection (I)(1)(h) to a nurse at a nursing care institution;
  2. An individual providing the training course is:
    - a. A physician,
    - b. A physician assistant,
    - c. A registered nurse practitioner,
    - d. A registered nurse,
    - e. A registered dietitian,
    - f. A licensed practical nurse,
    - g. A speech-language pathologist, or
    - h. An occupational therapist; and
  3. An individual taking the training course completes:
    - a. At least eight hours of classroom time, and
    - b. Demonstrates that the individual has acquired the skills the individual was expected to acquire.
- J.** An individual in charge of a nutrition and feeding assistant training program shall issue a certificate of completion to an individual who completes the training course and demonstrates the skills the individual was expected to acquire as a result of completing the training course that contains:
  1. The name of the agency approved to operate the nutrition and feeding assistant training program;
  2. The name of the individual completing the training course;
  3. The date of completion;
  4. The name, signature, and professional license of the individual providing the training course; and
  5. The name and signature of the individual in charge of the nutrition and feeding assistant training program.
- K.** The Department may deny, revoke, or suspend an approval to operate a nutrition and feeding assistant training program if an agency operating or applying to operate a nutrition and feeding assistance training program:
  1. Provides false or misleading information to the Department;
  2. Does not comply with the applicable statutes and rules;
  3. Issues a training completion certificate to an individual who did not:
    - a. Complete the nutrition and feeding assistant training program, or
    - b. Demonstrate the skills the individual was expected to acquire; or
  4. Does not implement the nutrition and feeding assistant training program as described in or use the materials submitted with the agency's application.
- L.** In determining which action in subsection (K) is appropriate, the Department shall consider the following:
  1. Repeated violations of statutes or rules,
  2. Pattern of non-compliance,
  3. Types of violations,
  4. Severity of violations, and
  5. Number of violations.

#### Historical Note

Adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-116 renumbered to Section R9-10-117; new Section R9-10-116 renumbered from R9-10-115 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-117. Counseling Facilities**

An administrator of a counseling facility shall ensure that the counseling facility complies with the requirements in this Article and Article 10 of this Chapter.

**Historical Note**

Adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 3559, effective

August 1, 2002 (Supp. 02-3). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-117 renumbered to Section R9-10-118; new Section R9-10-117 renumbered from R9-10-116 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-118. Collaborating Health Care Institution**

**A.** An administrator of a collaborating health care institution shall ensure that:

1. A list is maintained of adult behavioral health therapeutic homes and behavioral health respite homes for which the collaborating health care institution serves as a collaborating health care institution;
2. For each adult behavioral health therapeutic home or behavioral health respite home in subsection (A)(1), the collaborating health care institution maintains the following information:
  - a. A copy of the documented agreement that establishes the responsibilities of the adult behavioral health therapeutic home or behavioral health respite home and the collaborating health care institution consistent with the requirements in this Chapter;
  - b. For the adult behavioral health therapeutic home or behavioral health respite home, the following information:
    - i. Provider's name;
    - ii. Street address;
    - iii. License number;
    - iv. Whether the residence is an adult behavioral health therapeutic home or a behavioral health respite home;
    - v. If the residence is a behavioral health respite home, whether the behavioral health respite home provides respite care services to:
      - (1) Individuals 18 years of age or older, or
      - (2) Individuals less than 18 years of age;
    - vi. The beginning and ending dates of the documented agreement in subsection (A)(2)(a); and
    - vii. The name and contact information for the individual assigned by the collaborating health care institution to monitor the adult behavioral health therapeutic home or behavioral health respite home;
  - c. For the adult behavioral health therapeutic home or behavioral health respite home, a copy of the following that have been approved by the collaborating health care institution:
    - i. Scope of services,
    - ii. Policies and procedures, and
    - iii. Documentation of the review and update of policies and procedures;
  - d. A description of the required skills and knowledge for a provider, based on the scope of services of the adult behavioral health therapeutic home or behavioral health respite home, as established by the collaborating health care institution; and

- e. For a provider in the adult behavioral health therapeutic home or behavioral health respite home, documentation of:
  - i. The provider's skills and knowledge;
  - ii. If applicable, the provider's completion of training in assistance in the self-administration of medication;
  - iii. Verification of the provider's skills and knowledge; and
  - iv. If the provider is required to have clinical oversight according to R9-10-1805(C), the provider's receiving clinical oversight;
3. A provider's skills and knowledge are verified by a personnel member according to policies and procedures;
4. A provider who provides behavioral health services receives clinical oversight, required in R9-10-1805(C), from a behavioral health professional; and
5. A provider, other than a provider who is a medical practitioner or nurse, receives training in assistance in the self-administration of medication:
  - a. From a medical practitioner or registered nurse or from a personnel member of the collaborating health care institution trained by a medical practitioner or registered nurse;
  - b. That includes:
    - i. A demonstration of the provider's skills and knowledge necessary to provide assistance in the self-administration of medication,
    - ii. Identification of medication errors and medical emergencies related to medication that require emergency medical intervention, and
    - iii. The process for notifying the appropriate entities when an emergency medical intervention is needed; and
  - c. That is documented.

**B.** For a patient referred to an adult behavioral health therapeutic home or a behavioral health respite home, an administrator shall ensure that:

1. A resident or recipient accepted by and receiving services from the adult behavioral health therapeutic home or behavioral health respite home does not present a threat to the referred patient, based on the resident's or recipient's developmental levels, social skills, verbal skills, and personal history;
2. The referred patient does not present a threat to a resident or recipient accepted by and receiving services from the adult behavioral health therapeutic home or behavioral health respite home based on the referred patient's developmental levels, social skills, verbal skills, and personal history;
3. The referred patient requires services within the adult behavioral health therapeutic home's or behavioral health respite home's scope of services;
4. A provider of the adult behavioral health therapeutic home or behavioral health respite home has the verified skills and knowledge to provide behavioral health services to the referred patient;
5. A treatment plan for the referred patient that includes information necessary for a provider to meet the referred patient's needs for behavioral health services is completed and forwarded to the provider before the referred patient is accepted as a resident or recipient;
6. A patient's treatment plan is reviewed and updated at least once every twelve months and a copy of the patient's updated treatment plan is forwarded to the patient's provider;

7. If documentation of a significant change in a patient's behavioral, physical, cognitive, or functional condition and the action taken by a provider to address patient's changing needs is received by the health care institution, a behavioral health professional or behavioral health technician reviews the documentation and:
  - a. Documents the review; and
  - b. If applicable:
    - i. Updates the patient's treatment plan, and
    - ii. Forwards the updated treatment plan to the provider within 10 working days after receipt of the documentation of a significant change;
8. If the review and updated treatment plan required in subsection (7) is performed by a behavioral health technician, a behavioral health professional reviews and signs the review and updated treatment plan to ensure the patient is receiving the appropriate behavioral health services; and
9. In addition to the requirements for a medical record for a patient in this Chapter, a referred patient's medical record contains:
  - a. The provider's name and the street address and license number of the adult behavioral health therapeutic home or behavioral health respite home to which the patient is referred,
  - b. A copy of the treatment plan provided to the adult behavioral health therapeutic home or behavioral health respite home,
  - c. Documentation received according to and required by subsection (7),
  - d. Any information about the patient received from the adult behavioral health therapeutic home or behavioral health respite home, and
  - e. Any follow-up actions taken by the collaborating health care institution related to the patient.
- C. For a patient referred to an adult behavioral health therapeutic home, an administrator shall ensure that the collaborating health care institution has documentation in the patient's medical record of evidence of freedom from infectious tuberculosis that meets the requirements in R9-10-113.

**Historical Note**

New Section R9-10-118 renumbered from R9-10-117 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-119. Reserved****R9-10-120. Reserved****R9-10-121. Repealed****Historical Note**

Amended effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3).

**R9-10-122. Repealed****Historical Note**

New Section made by final rulemaking at 7 A.A.R. 2145, effective May 1, 2001 (Supp. 01-2). Amended by final rulemaking at 8 A.A.R. 3578, effective July 26, 2002 (Supp. 02-3). Amended by exempt rulemaking at 14 A.A.R. 3958, effective September 26, 2008 (Supp. 08-3). Amended by exempt rulemaking at 15 A.A.R. 2100, effective January 1, 2010 (Supp. 09-4). Section repealed by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2).

**R9-10-123. Repealed****Historical Note**

Amended effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3).

**R9-10-124. Repealed****Historical Note**

Former Section R9-10-124 repealed, new Section R9-10-124 adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 3559, effective August 1, 2002 (Supp. 02-3).

**ARTICLE 2. HOSPITALS****R9-10-201. Definitions**

In addition to the definitions in A.R.S. § 36-401 and R9-10-101, the following definitions apply in this Article unless otherwise specified:

1. "Acuity" means a patient's need for hospital services based on the patient's medical condition.
2. "Acuity plan" means a method for establishing nursing personnel requirements by unit based on a patient's acuity.
3. "Adult" means an individual the hospital designates as an adult based on the hospital's criteria.
4. "Care plan" means a documented guide for providing nursing services and rehabilitation services to a patient that includes measurable objectives and the methods for meeting the objectives.
5. "Continuing care nursery" means a nursery where medical services and nursing services are provided to a neonate who does not require intensive care services.
6. "Critically ill inpatient" means an inpatient whose severity of medical condition requires the nursing services of specially trained registered nurses for:
  - a. Continuous monitoring and multi-system assessment,
  - b. Complex and specialized rapid intervention, and
  - c. Education of the inpatient or inpatient's representative.
7. "Device" has the same meaning as in A.R.S. § 32-1901.
8. "Diet" means food and drink provided to a patient.
9. "Diet manual" means a written compilation of diets.
10. "Dietary services" means providing food and drink to a patient according to an order.
11. "Diversion" means notification to an emergency medical services provider, as defined in A.R.S. § 36-2201, that a hospital is unable to receive a patient from an emergency medical services provider.
12. "Drug formulary" means a written list of medications available and authorized for use developed according to R9-10-218.
13. "Emergency services" means unscheduled medical services provided in a designated area to an outpatient in an emergency.
14. "Gynecological services" means medical services for the diagnosis, treatment, and management of conditions or diseases of the female reproductive organs or breasts.
15. "Hospital services" means medical services, nursing services, and health-related services provided in a hospital.
16. "Infection control risk assessment" means determining the probability for transmission of communicable diseases.
17. "Inpatient" means an individual who:
  - a. Is admitted to a hospital as an inpatient according to policies and procedures,

- b. Is admitted to a hospital with the expectation that the individual will remain and receive hospital services for 24 consecutive hours or more, or
  - c. Receives hospital services for 24 consecutive hours or more.
18. "Intensive care services" means hospital services provided to a critically ill inpatient who requires the services of specially trained nursing and other personnel members as specified in policies and procedures.
  19. "Medical staff regulations" means standards, approved by the medical staff, that govern the day-to-day conduct of the medical staff members.
  20. "Multi-organized service unit" means an inpatient unit in a hospital where more than one organized service may be provided to a patient in the inpatient unit.
  21. "Neonate" means an individual:
    - a. From birth until discharge following birth, or
    - b. Who is designated as a neonate by hospital criteria.
  22. "Nurse anesthetist" means a registered nurse who meets the requirements of A.R.S. § 32-1661 and who has clinical privileges to administer anesthesia.
  23. "Nurse executive" means a registered nurse accountable for the direction of nursing services provided in a hospital.
  24. "Nursery" means an area in a hospital designated only for neonates.
  25. "Nurse supervisor" means a registered nurse accountable for managing nursing services provided in an organized service in a hospital.
  26. "Nutrition assessment" means a process for determining a patient's dietary needs using information contained in the patient's medical record.
  27. "On duty" means that an individual is at work and performing assigned responsibilities.
  28. "Organized service" means specific medical services, such as surgical services or emergency services, provided in an area of a hospital designated for the provision of those medical services.
  29. "Outpatient" means an individual who:
    - a. Is admitted to a hospital with the expectation that the individual will receive hospital services for less than 24 consecutive hours; or
    - b. Except as provided in subsection (17) receives, hospital services for less than 24 consecutive hours.
  30. "Pathology" means an examination of human tissue for the purpose of diagnosis or treatment of an illness or disease.
  31. "Patient care" means hospital services provided to a patient by a personnel member or a medical staff member.
  32. "Pediatric" means pertaining to an individual designated by a hospital as a child based on the hospital's criteria.
  33. "Perinatal services" means medical services for the treatment and management of obstetrical patients and neonates.
  34. "Post-anesthesia care unit" means a designated area for monitoring a patient following a medical procedure for which anesthesia was administered to the patient.
  35. "Private duty staff" means an individual, excluding a personnel member, compensated by a patient or the patient's representative.
  36. "Psychiatric services" means the diagnosis, treatment, and management of a mental disorder.
  37. "Rehabilitation services" means medical services provided to a patient to restore or to optimize functional capability.
  38. "Single group license" means a license that includes authorization to operate health care institutions according to A.R.S. § 36-422(F) or (G).
  39. "Social services" means assistance, other than medical services or nursing services, provided by a personnel member to a patient to assist the patient to cope with concerns about the patient's illness or injury while in the hospital or the anticipated needs of the patient after discharge.
  40. "Specialty" means a specific branch of medicine practiced by a licensed individual who has obtained education or qualifications in the specific branch in addition to the education or qualifications required for the individual's license.
  41. "Surgical services" means medical services involving a surgical procedure.
  42. "Transfusion" means the introduction of blood or blood products from one individual into the body of another individual.
  43. "Unit" means a designated area of an organized service.
  44. "Vital record" has the same meaning as in A.R.S. § 36-301.
  45. "Well-baby bassinet" means a receptacle used for holding a neonate who does not require treatment and whose anticipated discharge is within 96 hours after birth.

#### Historical Note

New Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Amended by final rulemaking at 11 A.A.R. 536, effective March 5, 2005 (Supp. 05-1). Amended by final rulemaking at 14 A.A.R. 4646, effective December 2, 2008 (Supp. 08-4). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-202. Supplemental Application Requirements

- A. In addition to the license application requirements in A.R.S. § 36-422 and 9 A.A.C. 10, Article 1, an applicant for an initial license shall include:
  1. On the application the requested licensed capacity for the hospital, including:
    - a. The number of inpatient beds for each organized service, not including well-baby bassinets; and
    - b. If applicable, the number of inpatient beds for each multi-organized service unit;
  2. On the application, if applicable, the requested licensed occupancy for providing behavioral health observation/stabilization services to:
    - a. Individuals who are under 18 years of age, and
    - b. Individuals 18 years of age and older; and
  3. A list, in a format provided by the Department, of medical staff specialties and subspecialties.
- B. For a single group license authorized in A.R.S. § 36-422(F), in addition to the requirements in subsection (A), a governing authority applying for an initial or renewal license shall submit the following to the Department, in a format provided by the Department, for each satellite facility under the single group license:
  1. The name, address, and telephone number of the satellite facility;
  2. The name of the administrator; and
  3. The hours of operation during which the satellite facility provides medical services, nursing services, or health-related services.

- C. For a single group license authorized in A.R.S. § 36-422(G), in addition to the requirements in subsection (A), a governing authority applying for an initial or renewal license shall submit the following to the Department in a format provided by the Department for each accredited satellite facility under the single group license:
1. The name, address, and telephone number of the accredited satellite facility;
  2. The name of the administrator;
  3. The hours of operation during which the accredited satellite facility provides medical services, nursing services, or health-related services; and
  4. A copy of the accredited satellite facility's current accreditation report.
- D. A governing authority shall:
1. Notify the Department at least 30 calendar days before a satellite facility or an accredited satellite facility on a single group license terminates operations; and
  2. Submit an application, according to the requirements in 9 A.A.C. 10, Article 1, at least 60 calendar days but not more than 120 calendar days before a satellite facility or an accredited satellite facility licensed under a single group license anticipates providing medical services, nursing services, or health-related services under a license separate from the single group license.

#### Historical Note

New Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Amended by final rulemaking at 14 A.A.R. 4646, effective December 2, 2008 (Supp. 08-4). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-203. Administration

- A. A governing authority shall:
1. Consist of one or more individuals responsible for the organization, operation, and administration of a hospital;
  2. Establish, in writing:
    - a. A hospital's scope of services,
    - b. Qualifications for an administrator,
    - c. Which organized services are to be provided in the hospital, and
    - d. The organized services that are to be provided in a multi-organized service unit according to R9-10-228(A);
  3. Designate, in writing, an administrator who has the qualifications established in subsection (A)(2)(b);
  4. Grant, deny, suspend, or revoke a clinical privilege of a medical staff member or delegate authority to an individual to grant or suspend a clinical privilege for a limited time, according to medical staff by-laws;
  5. Adopt a quality management program according to R9-10-204;
  6. Review and evaluate the effectiveness of the quality management program at least once every 12 months;
  7. Designate, in writing, an acting administrator who has the qualifications established in subsection (A)(2)(b) if the administrator is:
    - a. Expected not to be present on a hospital's premises for more than 30 calendar days, or
    - b. Not present on a hospital's premises for more than 30 calendar days;
  8. Except as provided in (A)(7), notify the Department according to A.R.S. § 36-425(I) if there is a change of administrator and identify the name and qualifications of the new administrator; and
9. For a health care institution under a single group license, ensure that the health care institution complies with the applicable requirements in this Chapter for the class or subclass of the health care institution.
- B. An administrator:
1. Is directly accountable to the governing authority of a hospital for the daily operation of the hospital and hospital services and environmental services provided by or at the hospital;
  2. Has the authority and responsibility to manage the hospital; and
  3. Except as provided in subsection (A)(7), shall designate, in writing, an individual who is present on a hospital's premises and available and accountable for hospital services and environmental services when the administrator is not present on the hospital's premises.
- C. An administrator shall ensure that:
1. Policies and procedures are established, documented, and implemented to protect the health and safety of a patient that:
    - a. Cover job descriptions, duties, and qualifications including required skills and knowledge for personnel members, employees, volunteers, and students;
    - b. Cover orientation and in-service education for personnel members, employees, volunteers, and students;
    - c. Include how a personnel member may submit a complaint relating to patient care;
    - d. Cover the requirements in Title 36, Chapter 4, Article 11;
    - e. Cover cardiopulmonary resuscitation training required in R9-10-206(5) including:
      - i. The method and content of cardiopulmonary resuscitation training,
      - ii. The qualifications for an individual to provide cardiopulmonary resuscitation training,
      - iii. The time-frame for renewal of cardiopulmonary resuscitation training, and
      - iv. The documentation that verifies an individual has received cardiopulmonary resuscitation training;
    - f. Cover use of private duty staff, if applicable;
    - g. Cover diversion, including:
      - i. The criteria for initiating diversion;
      - ii. The categories or levels of personnel or medical staff that may authorize or terminate diversion;
      - iii. The method for notifying emergency medical services providers of initiation of diversion, the type of diversion, and termination of diversion; and
      - iv. When the need for diversion will be reevaluated;
    - h. Include a method to identify a patient to ensure the patient receives hospital services as ordered;
    - i. Cover patient rights, including assisting a patient who does not speak English or who has a disability to become aware of patient rights;
    - j. Cover health care directives;
    - k. Cover medical records, including electronic medical records;
    - l. Cover quality management, including incident report and supporting documentation;
    - m. Cover contracted services;

- n. Cover tissue and organ procurement and transplant; and
- o. Cover when an individual may visit a patient in a hospital, including visiting a neonate in a nursery, if applicable;
- 2. Policies and procedures for hospital services are established, documented, and implemented to protect the health and safety of a patient that:
  - a. Cover patient screening, admission, transport, transfer, discharge planning, and discharge;
  - b. Cover the provision of hospital services;
  - c. Cover acuity, including a process for obtaining sufficient nursing personnel to meet the needs of patients;
  - d. Include when general consent and informed consent are required;
  - e. Include the age criteria for providing hospital services to pediatric patients;
  - f. Cover dispensing, administering, and disposing of medication;
  - g. Cover prescribing a controlled substance to minimize substance abuse by a patient;
  - h. Cover infection control;
  - i. Cover restraints that:
    - i. Require an order, including the frequency of monitoring and assessing the restraint; or
    - ii. Are necessary to prevent imminent harm to self or others, including how personnel members will respond to a patient's sudden, intense, or out-of-control behavior;
  - j. Cover seclusion of a patient including:
    - i. The requirements for an order, and
    - ii. The frequency of monitoring and assessing a patient in seclusion;
  - k. Cover communicating with a midwife when the midwife's client begins labor and ends labor;
  - l. Cover telemedicine, if applicable; and
  - m. Cover environmental services that affect patient care;
- 3. Policies and procedures are reviewed at least once every three years and updated as needed;
- 4. Policies and procedures are available to personnel members;
- 5. The licensed capacity in an organized service is not exceeded except for an emergency admission of a patient;
- 6. A patient is only admitted to an organized service that has exceeded the organized service's licensed capacity after a medical staff member reviews the medical history of the patient and determines that the patient's admission is an emergency; and
- 7. Unless otherwise stated:
  - a. Documentation required by this Article is provided to the Department within two hours after a Department request; and
  - b. When documentation or information is required by this Chapter to be submitted on behalf of a hospital, the documentation or information is provided to the unit in the Department that is responsible for licensing and monitoring the hospital.
- D. An administrator of a special hospital shall ensure that:
  - 1. Medical services are available to an inpatient in an emergency based on the inpatient's medical conditions and the scope of services provided by the special hospital; and
  - 2. A physician or nurse, qualified in cardiopulmonary resuscitation, is on the hospital premises.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Amended by final rulemaking at 11 A.A.R. 536, effective March 5, 2005 (Supp. 05-1). Amended by final rulemaking at 12 A.A.R. 4004, effective December 5, 2006 (Supp. 06-4). Amended by final rulemaking at 14 A.A.R. 4646, effective December 2, 2008 (Supp. 08-4). Amended by final rulemaking at 16 A.A.R. 688, effective November 1, 2010 (Supp. 10-2). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

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

- A. A governing authority shall ensure that an ongoing quality management program is established that:
  - 1. Complies with the requirements in A.R.S. § 36-445; and
  - 2. Evaluates the quality of hospital services and environmental services related to patient care.
- B. An administrator shall ensure that:
  - 1. A plan is established, documented, and implemented for an ongoing quality management program that, at a minimum, includes:
    - a. A method to identify, document, and evaluate incidents;
    - b. A method to collect data to evaluate hospital services and environmental services related to patient care;
    - c. A method to evaluate the data collected to identify a concern about the delivery of hospital services or environmental services related to patient care;
    - d. A method to make changes or take action as a result of the identification of a concern about the delivery of hospital services or environmental services related to patient care;
    - e. A method to identify and document each occurrence of exceeding licensed capacity, as described in R9-10-203(C)(5), and to evaluate the occurrences of exceeding licensed capacity, including the actions taken for resolving occurrences of exceeding licensed capacity; and
    - f. The frequency of submitting a documented report required in subsection (B)(2) to the governing authority;
  - 2. A documented report is submitted to the governing authority that includes:
    - a. An identification of each concern about the delivery of hospital services or environmental services related to patient care, and
    - b. Any changes made or actions taken as a result of the identification of a concern about the delivery of hospital services or environmental services related to patient care;
  - 3. The acuity plan required in R9-10-214(C)(2) is reviewed and evaluated at least once every 12 months and the results are documented and reported to the governing authority;
  - 4. The reports required in subsections (B)(2) and (3) and the supporting documentation for the reports are maintained for at least 12 months after the date the report is submitted to the governing authority; and
  - 5. Except for information or documentation that is confidential under federal or state law, a report or documentation required in this Section is provided to the Department for review within two hours after the Department's request.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Amended by final rulemaking at 11 A.A.R. 536, effective March 5, 2005 (Supp. 05-1). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-205. Contracted Services**

An administrator shall ensure that:

1. Contracted services are provided according to the requirements in this Article, and
2. A documented list of current contracted services is maintained that includes a description of the contracted services provided.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2).

**R9-10-206. Personnel**

An administrator shall ensure that:

1. The qualifications, skills, and knowledge required for each type of personnel member:
  - a. Are based on:
    - i. The type of physical health services or behavioral health services expected to be provided by the personnel member according to the established job description, and
    - ii. The acuity of the patients receiving physical health services or behavioral health services from the personnel member according to the established job description; and
  - b. Include:
    - i. The specific skills and knowledge necessary for the personnel member to provide the expected physical health services and behavioral health services listed in the established job description,
    - ii. The type and duration of education that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected physical health services or behavioral health services listed in the established job description, and
    - iii. The type and duration of experience that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected physical health services or behavioral health services listed in the established job description;
2. A personnel member's skills and knowledge are verified and documented:
  - a. Before the personnel member provides physical health services or behavioral health services, and
  - b. According to policies and procedures;
3. Sufficient personnel members are present on a hospital's premises with the qualifications, skills, and knowledge necessary to:
  - a. Provide the services in the hospital's scope of services,
  - b. Meet the needs of a patient, and
  - c. Ensure the health and safety of a patient;

4. Orientation occurs within the first 30 calendar days after a personnel member begins providing hospital services and includes:
  - a. Informing a personnel member about Department rules for licensing and regulating hospitals and where the rules may be obtained,
  - b. Reviewing the process by which a personnel member may submit a complaint about patient care to a hospital, and
  - c. Providing the information required by policies and procedures;
5. Policies and procedures designate the categories of personnel providing medical services or nursing services who are:
  - a. Required to be qualified in cardiopulmonary resuscitation within 30 calendar days after the individual's starting date, and
  - b. Required to maintain current qualifications in cardiopulmonary resuscitation;
6. A personnel record for each personnel member is established and maintained and includes:
  - a. The personnel member's name, date of birth, and contact telephone number;
  - b. The personnel member's starting date and, if applicable, ending date;
  - c. Verification of a personnel member's certification, license, or education, if necessary for the position held;
  - d. Documentation of evidence of freedom from infectious tuberculosis required in R9-10-230(A)(5);
  - e. Verification of current cardiopulmonary resuscitation qualifications, if necessary for the position held; and
  - f. Orientation documentation;
7. Personnel receive in-service education according to criteria established in policies and procedures;
8. In-service education documentation for a personnel member includes:
  - a. The subject matter,
  - b. The date of the in-service education, and
  - c. The signature of the personnel member;
9. Personnel records and in-service education documentation are maintained by the hospital for at least 24 months after the last date the personnel member worked; and
10. Personnel records and in-service education documentation, for a personnel member who has not worked in the hospital during the previous 12 months, are provided to the Department within 72 hours after the Department's request.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Amended by final rulemaking at 11 A.A.R. 536, effective March 5, 2005 (Supp. 05-1). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-207. Medical Staff**

A. A governing authority shall ensure that:

1. The organized medical staff is directly accountable to the governing authority for the quality of care provided by a medical staff member to a patient in a hospital;



2. The medical staff bylaws and medical staff regulations are approved according to the medical staff bylaws and governing authority requirements;
3. A medical staff member complies with medical staff bylaws and medical staff regulations;
4. The medical staff of a general hospital or a special hospital includes at least two physicians who have clinical privileges to admit inpatients to the general hospital or special hospital;
5. The medical staff of a rural general hospital includes at least one physician who has clinical privileges to admit inpatients to the rural general hospital and one additional physician who serves on a committee according to subsection (A)(7)(c);
6. A medical staff member is available to direct patient care;
7. Medical staff bylaws or medical staff regulations are established, documented, and implemented for the process of:
  - a. Conducting peer review according to A.R.S. Title 36, Chapter 4, Article 5;
  - b. Appointing members to the medical staff, subject to approval by the governing authority;
  - c. Establishing committees including identifying the purpose and organization of each committee;
  - d. Appointing one or more medical staff members to a committee;
  - e. Obtaining and documenting permission for an autopsy of a patient, performing an autopsy, and notifying, if applicable, the medical practitioner coordinating the patient's medical services when an autopsy is performed;
  - f. Requiring that each inpatient has a medical practitioner who coordinates the inpatient's care;
  - g. Defining the responsibilities of a medical staff member to provide medical services to the medical staff member's patient;
  - h. Defining a medical staff member's responsibilities for the transport or transfer of a patient;
  - i. Specifying requirements for oral, telephone, and electronic orders including which orders require identification of the time of the order;
  - j. Establishing a time-frame for a medical staff member to complete a patient's medical record;
  - k. Establishing criteria for granting, denying, revoking, and suspending clinical privileges;
  - l. Specifying pre-anesthesia and post-anesthesia responsibilities for medical staff members; and
  - m. Approving the use of medication and devices under investigation by the U.S. Department of Health and Human Services, Food and Drug Administration including:
    - i. Establishing criteria for patient selection;
    - ii. Obtaining informed consent before administering the investigational medication or device; and
    - iii. Documenting the administration of and, if applicable, the adverse reaction to an investigational medication or device; and
8. The organized medical staff reviews the medical staff bylaws and the medical staff regulations at least once every three years and updates the bylaws and regulations as needed.

**B. An administrator shall ensure that:**

1. A medical staff member provides evidence of freedom from infectious tuberculosis according to the requirements in R9-10-230(A)(5);

2. A record for each medical staff member is established and maintained that includes:
  - a. A completed application for clinical privileges;
  - b. The dates and lengths of appointment and reappointment of clinical privileges;
  - c. The specific clinical privileges granted to the medical staff member, including revision or revocation dates for each clinical privilege; and
  - d. A verification of current Arizona health care professional active license according to A.R.S. Title 32; and
3. Except for documentation of peer review conducted according to A.R.S. § 36-445, a record under subsection (B)(2) is provided to the Department for review:
  - a. As soon as possible, but not more than two hours after the time of the Department's request, if the individual is a current medical staff member; and
  - b. Within 72 hours after the time of the Department's request if the individual is no longer a current medical staff member.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-208. Admission**

An administrator shall ensure that:

1. A patient is admitted as an inpatient on the order of a medical staff member;
2. An individual, authorized by policies and procedures, is available to accept a patient for admission;
3. Except in an emergency, informed consent is obtained from a patient or the patient's representative before or at the time of admission;
4. The informed consent obtained in subsection (3) or the lack of consent in an emergency is documented in the patient's medical record;
5. A physician or other medical staff member performs a medical history and physical examination on a patient within 30 calendar days before admission or within 48 hours after admission and documents the medical history and physical examination in the patient's medical record within 48 hours after admission; and
6. If a physician or other medical staff member performs a medical history and physical examination on a patient before admission, the physician or the medical staff member enters an interval note into the patient's medical record at the time of admission.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Amended by final rulemaking at 11 A.A.R. 536, effective March 5, 2005 (Supp. 05-1). Section R9-10-208 renumbered to R9-10-214; new Section R9-10-208 renumbered from R9-10-210 and amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-209. Discharge Planning; Discharge**

- A.** For an inpatient, an administrator shall ensure that discharge planning:

1. Identifies the specific needs of the patient after discharge, if applicable;
  2. Includes the participation of the patient or the patient's representative;
  3. Is completed before discharge occurs;
  4. Provides the patient or the patient's representative with written information identifying classes or subclasses of health care institutions and the level of care that the health care institutions provide that may meet the patient's assessed and anticipated needs after discharge, if applicable; and
  5. Is documented in the patient's medical record.
- B.** For an inpatient discharge or a transfer of an inpatient, an administrator shall ensure that:
1. There is a discharge summary that includes:
    - a. A description of the patient's medical condition and the medical services provided to the patient; and
    - b. The signature of the medical practitioner coordinating the patient's medical services;
  2. There is a documented discharge order for the patient by a medical practitioner coordinating the patient's medical services before discharge unless the patient leaves the hospital against a medical staff member's advice; and
  3. If the patient is not being transferred:
    - a. There are documented discharge instructions; and
    - b. The patient or the patient's representative is provided with a copy of the discharge instructions.
- C.** Except as provided in subsection (D), an administrator shall ensure that an outpatient is discharged according to policies and procedures.
- D.** For a discharge of an outpatient receiving emergency services, an administrator shall ensure that:
1. A discharge order is documented by a medical practitioner who provided medical services to the patient before the patient is discharged unless the patient leaves against a medical staff member's advice; and
  2. Discharge instructions are documented and provided to the patient or the patient's representative before the patient is discharged unless the patient leaves the hospital against a medical staff member's advice.

#### Historical Note

New Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Amended by final rulemaking at 11 A.A.R. 536, effective March 5, 2005 (Supp. 05-1). Section R9-10-209 renumbered to R9-10-212; new Section R9-10-209 renumbered from R9-10-211 and amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2).

#### R9-10-210. Transport

- A.** For a transport of a patient, the administrator of a sending hospital shall ensure that:
1. Policies and procedures are established, documented, and implemented that:
    - a. Specify the process by which the sending hospital personnel members coordinate the transport and the medical services provided to a patient to protect the health and safety of the patient;
    - b. Require an assessment of the patient by a registered nurse or a medical staff member before transporting the patient and after the patient's return;
    - c. Specify the information in the sending hospital's patient medical record that is required to accompany the patient, which shall include the information related to the medical services to be provided to the patient at the receiving health care institution;
    - d. Specify how the sending hospital personnel members communicate patient medical record information that the sending hospital does not provide at the time of transport but is requested by the receiving health care institution; and
    - e. Specify how a medical staff member explains the risks and benefits of a transport to the patient or the patient's representative based on the:
      - i. Patient's medical condition, and
      - ii. Mode of transport; and
  2. Documentation in the patient's medical record includes:
    - a. Consent for transport by the patient or the patient's representative or why consent could not be obtained;
    - b. The acceptance of the patient by and communication with an individual at the receiving health care institution;
    - c. The date and the time of the transport to the receiving health care institution;
    - d. The date and time of the patient's return to the sending hospital, if applicable;
    - e. The mode of transportation; and
    - f. The type of personnel member or medical staff member assisting in the transport if an order requires that a patient be assisted during transport.
- B.** For a transport of a patient to a receiving hospital, the administrator of the receiving hospital shall ensure that:
1. Policies and procedures are established, documented, and implemented that:
    - a. Specify the process by which the receiving hospital personnel members coordinate the transport and the medical services provided to a patient to protect the health and safety of the patient;
    - b. Require an assessment of the patient by a registered nurse or a medical staff member upon arrival of the patient and before the patient is returned to the sending hospital unless the receiving facility is a satellite facility, as established in A.R.S. § 36-422, and does not have a registered nurse or a medical staff member at the satellite facility;
    - c. Specify the information in the receiving hospital's patient medical record required to accompany the patient when the patient is returned to the sending hospital, if applicable; and
    - d. Specify how the receiving hospital personnel members communicate patient medical record information to the sending hospital that is not provided at the time of the patient's return; and
  2. Documentation in the patient's medical record includes:
    - a. The date and time the patient arrives at the receiving hospital;
    - b. The medical services provided to the patient at the receiving hospital;
    - c. Any adverse reaction or negative outcome the patient experiences at the receiving hospital, if applicable;
    - d. The date and time the receiving hospital returns the patient to the sending hospital, if applicable;
    - e. The mode of transportation to return the patient to the sending hospital, if applicable; and
    - f. The type of personnel member or medical staff member assisting in the transport if an order requires that a patient be assisted during transport.

#### Historical Note

New Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Section R9-10-210 renumbered to R9-10-208; new Section R9-10-210

renumbered from R9-10-212 and amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### **R9-10-211. Transfer**

For a transfer of a patient, the administrator of a sending hospital shall ensure that:

1. Policies and procedures are established, documented, and implemented that:
  - a. Specify the process by which the sending hospital personnel members coordinate the transfer and the medical services provided to a patient to protect the health and safety of the patient during the transfer;
  - b. Require an assessment of the patient by a registered nurse or a medical staff member of the sending hospital before the patient is transferred;
  - c. Specify how the sending hospital personnel members communicate medical record information that is not provided at the time of the transfer; and
  - d. Specify how a medical staff member explains the risks and benefits of a transfer to the patient or the patient's representative based on the:
    - i. Patient's medical condition, and
    - ii. Mode of transfer;
2. One of the following accompanies the patient during transfer:
  - a. A copy of the patient's medical record for the current inpatient admission; or
  - b. All of the following for the current inpatient admission:
    - i. A medical staff member's summary of medical services provided to the patient,
    - ii. A care plan containing up-to-date information,
    - iii. Consultation reports,
    - iv. Laboratory and radiology reports,
    - v. A record of medications administered to the patient for the seven calendar days before the date of transfer,
    - vi. Medical staff member's orders in effect at the time of transfer, and
    - vii. Any known allergy; and
3. Documentation in the patient's medical record includes:
  - a. Consent for transfer by the patient or the patient's representative, except in an emergency;
  - b. The acceptance of the patient by and communication with an individual at the receiving health care institution;
  - c. The date and the time of the transfer to the receiving health care institution;
  - d. The mode of transportation; and
  - e. The type of personnel member or medical staff member assisting in the transfer if an order requires that a patient be assisted during transfer.

#### **Historical Note**

Former Section R9-10-211 renumbered as R9-10-311 as an emergency effective February 22, 1979, new Section R9-10-211 adopted effective February 23, 1979 (Supp. 79-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Section R9-10-211 renumbered to R9-10-209; new Section R9-10-211 renumbered from R9-10-213 and amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2).

#### **R9-10-212. Patient Rights**

- A.** An administrator shall ensure that:
  1. The requirements in subsection (B) and the patient rights in subsection (C) are conspicuously posted on the hospital's premises;
  2. At the time of admission, a patient or the patient's representative receives a written copy of the requirements in subsection (B) and the patient rights in subsection (C); and
  3. Policies and procedures include:
    - a. How and when a patient or the patient's representative is informed of patient rights in subsection (C), and
    - b. Where patient rights are posted as required in subsection (A)(1).
- B.** An administrator shall ensure that:
  1. A patient is treated with dignity, respect, and consideration;
  2. A patient is not subjected to:
    - a. Abuse;
    - b. Neglect;
    - c. Exploitation;
    - d. Coercion;
    - e. Manipulation;
    - f. Sexual abuse;
    - g. Sexual assault;
    - h. Seclusion, except as allowed under R9-10-217 or R9-10-225;
    - i. Restraint, if not necessary to prevent imminent harm to self or others or as allowed under R9-10-225;
    - j. Retaliation for submitting a complaint to the Department or another entity; or
    - k. Misappropriation of personal and private property by a hospital's medical staff, personnel members, employees, volunteers, or students; and
  3. A patient or the patient's representative:
    - a. Except in an emergency, either consents to or refuses treatment;
    - b. May refuse examination or withdraw consent for treatment before treatment is initiated;
    - c. Is informed of:
      - i. Except in an emergency, alternatives to a proposed psychotropic medication or surgical procedure and associated risks and possible complications of the proposed psychotropic medication or surgical procedure;
      - ii. How to obtain a schedule of hospital rates and charges required in A.R.S. § 36-436.01(B);
      - iii. The patient complaint policies and procedures, including the telephone number of hospital personnel to contact about complaints, and the Department's telephone number if the hospital is unable to resolve the patient's complaint; and
      - iv. Except as authorized by the Health Insurance Portability and Accountability Act of 1996, proposed involvement of the patient in research, experimentation, or education, if applicable;
    - d. Except in an emergency, is provided a description of the health care directives policies and procedures:
      - i. If an inpatient, at the time of admission; or
      - ii. If an outpatient:
        - (1) Before any invasive procedure, except phlebotomy for obtaining blood for diagnostic purposes; or
        - (2) If the hospital services include a planned

- series of treatments, at the start of each series;
- e. Consents to photographs of the patient before the patient is photographed, except that a patient may be photographed when admitted to a hospital for identification and administrative purposes; and
  - f. Except as otherwise permitted by law, provides written consent to the release of information in the patient's:
    - i. Medical record, or
    - ii. Financial records.
- C.** A patient has the following rights:
1. Not to be discriminated against based on race, national origin, religion, gender, sexual orientation, age, disability, marital status, or diagnosis;
  2. To receive treatment that supports and respects the patient's individuality, choices, strengths, and abilities;
  3. To receive privacy in treatment and care for personal needs;
  4. To have access to a telephone;
  5. To review, upon written request, the patient's own medical record according to A.R.S. §§ 12-2293, 12-2294, and 12-2294.01;
  6. To receive a referral to another health care institution if the hospital is not authorized or not able to provide physical health services or behavioral health services needed by the patient;
  7. To participate or have the patient's representative participate in the development of, or decisions concerning, treatment;
  8. To participate or refuse to participate in research or experimental treatment; and
  9. To receive assistance from a family member, representative, or other individual in understanding, protecting, or exercising the patient's rights.
- Historical Note**
- Former Section R9-10-212 renumbered as R9-10-312 as an emergency effective February 22, 1979, new Section R9-10-212 adopted effective February 23, 1979 (Supp. 79-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Amended by final rulemaking at 11 A.A.R. 536, effective March 5, 2005 (Supp. 05-1). Section R9-10-212 renumbered to R9-10-210; new Section R9-10-212 renumbered from R9-10-209 and amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).
- R9-10-213. Medical Records**
- A.** An administrator shall ensure that:
1. A medical record is established and maintained for each patient according to A.R.S. § Title 12, Chapter 13, Article 7.1;
  2. An entry in a patient's medical record is:
    - a. Recorded only by a personnel member authorized by policies and procedures to make the entry;
    - b. Dated, legible, and authenticated; and
    - c. Not changed to make the initial entry illegible;
  3. An order is:
    - a. Dated when the order is entered in the patient's medical record and includes the time of the order;
    - b. Authenticated by a medical staff member according to policies and procedures; and
    - c. If the order is a verbal order, authenticated by a medical staff member or medical practitioner;
  4. If a rubber-stamp signature or an electronic signature is used to authenticate an order, the individual whose signature the rubber-stamp signature or electronic signature represents is accountable for the use of the rubber-stamp signature or electronic signature;
  5. A patient's medical record is available to personnel members and medical staff members authorized by policies and procedures to access the medical record;
  6. Policies and procedures include the maximum time-frame to retrieve an onsite or off-site patient's medical record at the request of a medical staff member or authorized personnel member; and
  7. A patient's medical record is protected from loss, damage, or unauthorized use.
- B.** If a hospital maintains patients' medical records electronically, an administrator shall ensure that:
1. Safeguards exist to prevent unauthorized access, and
  2. The date and time of an entry in a patient's medical record is recorded by the computer's internal clock.
- C.** An administrator shall ensure that a medical record for an inpatient contains:
1. Patient information that includes:
    - a. The patient's name;
    - b. The patient's address;
    - c. The patient's date of birth; and
    - d. Any known allergy, including medication allergies or sensitivities;
  2. Medication information that includes:
    - a. A medication ordered for the patient; and
    - b. A medication administered to the patient including:
      - i. The date and time of administration;
      - ii. The name, strength, dosage, amount, and route of administration;
      - iii. The identification and authentication of the individual administering the medication; and
      - iv. Any adverse reaction the patient has to the medication;
  3. Documentation of general consent and, if applicable, informed consent for treatment by the patient or the patient's representative, except in an emergency;
  4. A medical history and results of a physical examination or an interval note;
  5. If the patient provides a health care directive, the health care directive signed by the patient;
  6. An admitting diagnosis;
  7. The date of admission and, if applicable, the date of discharge;
  8. Names of the admitting medical staff member and medical practitioners coordinating the patient's care;
  9. If applicable, the name and contact information of the patient's representative and:
    - a. If the patient is 18 years of age or older or an emancipated minor, the document signed by the patient consenting for the patient's representative to act on the patient's behalf; or
    - b. If the patient's representative:
      - i. Has a health care power of attorney established under A.R.S. § 36-3221 or a mental health care power of attorney executed under A.R.S. § 36-3282, a copy of the health care power of attorney or mental health care power of attorney; or
      - ii. Is a legal guardian, a copy of the court order establishing guardianship;
  10. Orders;

11. Care plans;
12. Documentation of hospital services provided to the patient;
13. Progress notes;
14. The disposition of the patient after discharge;
15. Discharge planning, including discharge instructions required in R9-10-209(B)(3);
16. A discharge summary; and
17. If applicable:
  - a. A laboratory report,
  - b. A pathology report,
  - c. An autopsy report,
  - d. A radiologic report,
  - e. A diagnostic imaging report,
  - f. Documentation of restraint or seclusion, and
  - g. A consultation report.

**D.** An administrator shall ensure that a hospital's medical record for an outpatient contains:

1. Patient information that includes:
  - a. The patient's name;
  - b. The patient's address;
  - c. The patient's date of birth;
  - d. The name and contact information of the patient's representative, if applicable; and
  - e. Any known allergy including medication allergies or sensitivities;
2. If necessary for treatment, medication information that includes:
  - a. A medication ordered for the patient; and
  - b. A medication administered to the patient including:
    - i. The date and time of administration;
    - ii. The name, strength, dosage, amount, and route of administration;
    - iii. The identification and authentication of the individual administering the medication; and
    - iv. Any adverse reaction the patient has to the medication;
3. Documentation of general and, if applicable, informed consent for treatment by the patient or the patient's representative, except in an emergency;
4. An admitting diagnosis or reason for outpatient medical services;
5. Orders;
6. Documentation of hospital services provided to the patient; and
7. If applicable:
  - a. A laboratory report,
  - b. A pathology report,
  - c. An autopsy report,
  - d. A radiologic report,
  - e. A diagnostic imaging report,
  - f. Documentation of restraint or seclusion, and
  - g. A consultation report.

**E.** In addition to the requirements in subsection (D), an administrator shall ensure that the hospital's record of emergency services provided to a patient contains:

1. Documentation of treatment the patient received before arrival at the hospital, if available;
2. The patient's medical history;
3. An assessment, including the name of the individual performing the assessment;
4. The patient's chief complaint;
5. The name of the individual who treated the patient in the emergency room, if applicable; and
6. The disposition of the patient after discharge.

### Historical Note

Former Section R9-10-213 renumbered as R9-10-313 as an emergency effective February 23, 1979, new Section R9-10-213 adopted effective February 23, 1979 (Supp. 79-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Amended by final rulemaking at 11 A.A.R. 536, effective March 5, 2005 (Supp. 05-1). Section R9-10-213 renumbered to R9-10-211; new Section R9-10-213 renumbered from R9-10-228 and amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

### R9-10-214. Nursing Services

- A.** An administrator shall ensure that:
1. Nursing services are provided 24 hours a day, and
  2. A nurse executive is appointed who is qualified according to policies and procedures.
- B.** A nurse executive shall designate a registered nurse who is present on the hospital's premises to be accountable for managing the nursing services when the nurse executive is not present in the hospital.
- C.** A nurse executive shall ensure that:
1. Policies and procedures for nursing services are established, documented, and implemented;
  2. An acuity plan is established, documented, and implemented that includes:
    - a. A method that establishes the types and numbers of nursing personnel that are required for each unit in the hospital;
    - b. An assessment of a patient's need for nursing services made by a registered nurse providing nursing services directly to the patient; and
    - c. A policy and procedure stating the steps a hospital will take to:
      - i. Obtain the necessary nursing personnel to meet patient acuity, and
      - ii. Make assignments for patient care according to the acuity plan;
  3. Registered nurses, including registered nurses providing nursing services directly to a patient, are knowledgeable about the acuity plan and implement the acuity plan established under subsection (C)(2);
  4. If licensed capacity in an organized service is exceeded or patients are kept in areas without licensed beds, nursing personnel are assigned according to the specific rules for the organized service in this Chapter;
  5. There is at least one registered nurse on the hospital's premises whether or not there is a patient;
  6. A general hospital has at least two registered nurses on the general hospital's premises when there is more than one patient;
  7. A special hospital offering emergency services or obstetrical services has at least two registered nurses on the special hospital's premises when there is more than one patient;
  8. A special hospital not offering emergency services or obstetrical services has at least one registered nurse and one other nurse on the special hospital's premises when there is more than one patient;
  9. A rural general hospital with more than one patient has at least one registered nurse and at least one other nursing personnel member on the rural general hospital's premises. If there is only one registered nurse on the rural general hospital's premises, an additional registered nurse is

- on-call who is able to be present on the rural general hospital's premises within 15 minutes after being called;
10. If a hospital has a patient in a unit, there is at least one registered nurse present in the unit;
  11. If a hospital has more than one patient in a unit, there is at least one registered nurse and one additional nursing personnel member present in the unit;
  12. At least one registered nurse is present and accountable for the nursing services provided to a patient:
    - a. During the delivery of a neonate,
    - b. In an operating room, and
    - c. In a post-anesthesia care unit;
  13. Nursing personnel work schedules are planned, reviewed, adjusted, and documented to meet patient needs and emergencies;
  14. A registered nurse assesses, plans, directs, and evaluates nursing services provided to a patient;
  15. There is a care plan for each inpatient based on the inpatient's need for nursing services; and
  16. Nursing personnel document nursing services in a patient's medical record.

#### Historical Note

Former Section R9-10-214 renumbered as R9-10-314 as an emergency effective February 22, 1979, new Section R9-10-214 adopted effective February 23, 1979 (Supp. 79-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Section R9-10-214 renumbered to R9-10-215; new Section R9-10-214 renumbered from R9-10-208 and amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-215. Surgical Services

An administrator of a general hospital shall ensure that:

1. There is an organized service that provides surgical services under the direction of a medical staff member;
2. There is a designated area for providing surgical services as an organized service;
3. The area of the hospital designated for surgical services is managed by a registered nurse or a physician;
4. Documentation is available in the surgical services area that specifies each medical staff member's clinical privileges to perform surgical procedures in the surgical services area;
5. Postoperative orders are documented in the patient's medical record;
6. There is a chronological log of surgical procedures performed in the surgical services area that contains:
  - a. The date of the surgical procedure,
  - b. The patient's name,
  - c. The type of surgical procedure,
  - d. The time in and time out of the operating room,
  - e. The name and title of each individual performing or assisting in the surgical procedure,
  - f. The type of anesthesia used,
  - g. An identification of the operating room used, and
  - h. The disposition of the patient after the surgical procedure;
7. The chronological log required in subsection (A)(6) is maintained in the surgical services area for at least 12 months after the date of the surgical procedure and then maintained by the hospital for an additional 12 months;

8. The medical staff designate in writing the surgical procedures that may be performed in areas other than the surgical services area;
9. The hospital has the medical staff members, personnel members, and equipment to provide the surgical procedures offered in the surgical services area;
10. A patient and the surgical procedure to be performed on the patient are identified before initiating the surgical procedure;
11. Except in an emergency, a medical staff member or a surgeon performs a medical history and physical examination within 30 calendar days before performing a surgical procedure on a patient;
12. Except in an emergency, a medical staff member or a surgeon enters an interval note in the patient's medical record before performing a surgical procedure;
13. Except in an emergency, the following are documented in a patient's medical record before a surgical procedure:
  - a. A preoperative diagnosis;
  - b. Each diagnostic test performed in the hospital;
  - c. A medical history and physical examination as required in subsection (A)(11) and an interval note as required in subsection (A)(12);
  - d. A consent or refusal for blood or blood products signed by the patient or the patient's representative, if applicable; and
  - e. Informed consent according to policies and procedures; and
14. Within 24 hours after a surgical procedure on a patient is completed.

#### Historical Note

Former Section R9-10-215 renumbered as R9-10-315 as an emergency effective February 22, 1979, new Section R9-10-215 adopted effective February 23, 1979 (Supp. 79-1). Amended subsection (D) effective August 31, 1988 (Supp. 88-3). Section repealed; new Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Section R9-10-215 renumbered to R9-10-216; new Section R9-10-215 renumbered from R9-10-214 and amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-216. Anesthesia Services

An administrator shall ensure that:

1. Anesthesia services provided in conjunction with surgical services performed in the operating room are provided as an organized service under the direction of a medical staff member;
2. Documentation is available in the surgical services area that specifies the medical staff member's clinical privileges to administer anesthesia;
3. Except in an emergency, an anesthesiologist or a nurse anesthetist performs a pre-anesthesia evaluation within 48 hours before anesthesia is administered in conjunction with surgical services;
4. Anesthesia administration is documented in a patient's medical record and includes:
  - a. A pre-anesthesia evaluation, if applicable;
  - b. An intra-operative anesthesia record;
  - c. The postoperative status of the patient upon leaving the operating room; and
  - d. Post-anesthesia documentation by the individual performing the post-anesthesia evaluation that

- includes the information required by the medical staff bylaws and medical staff regulations; and
5. A registered nurse or a physician documents resuscitative measures in the patient's medical record.

#### Historical Note

Adopted as an emergency effective April 2, 1976 (Supp. 76-2). Adopted effective August 25, 1977 (Supp. 77-4). Former Section R9-10-216 renumbered as R9-10-316 as an emergency effective February 22, 1979, new Section R9-10-216 adopted effective February 23, 1979 (Supp. 79-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Section R9-10-216 renumbered to R9-10-217; new Section R9-10-216 renumbered from R9-10-215 and amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2).

#### R9-10-217. Emergency Services

- A. An administrator of a general hospital or a rural general hospital shall ensure that:
  1. Emergency services are provided 24 hours a day in a designated area of the hospital;
  2. Emergency services are provided as an organized service under the direction of a medical staff member;
  3. The scope and extent of emergency services offered are documented in the hospital's scope of services;
  4. Emergency services are provided to an individual, including a woman in active labor, requesting emergency services;
  5. If emergency services cannot be provided at the hospital to meet the needs of a patient in an emergency, measures and procedures are implemented to minimize risk to the patient until the patient is transported or transferred to another hospital;
  6. A roster of on-call medical staff members is available in the emergency services area;
  7. There is a chronological log of emergency services provided to patients that includes:
    - a. The patient's name;
    - b. The date, time, and mode of arrival; and
    - c. The disposition of the patient including discharge, transfer, or admission; and
  8. The chronological log required in subsection (A)(7) is maintained:
    - a. In the emergency services area for at least 12 months after the date of the emergency services; and
    - b. By the hospital for at least an additional four years.
- B. An administrator of a special hospital that provides emergency services shall comply with subsection (A).
- C. An administrator of a hospital that provides emergency services, but does not provide perinatal organized services, shall ensure that emergency perinatal services are provided within the hospital's capabilities to meet the needs of a patient and a neonate, including the capability to deliver a neonate and to keep the neonate warm until transfer to a hospital providing perinatal organized services.
- D. An administrator of a hospital that provides emergency services shall ensure that a room used for seclusion in a designated area of the hospital used for providing emergency services, complies with applicable physical plant health and safety codes and standards for seclusion rooms, incorporated by reference in A.A.C. R9-1-412.

#### Historical Note

Adopted effective February 23, 1979 (Supp. 79-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2).

Section R9-10-217 renumbered to R9-10-218; new Section R9-10-217 renumbered from R9-10-216 and amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-218. Pharmaceutical Services

An administrator shall ensure that:

1. Pharmaceutical services are provided under the direction of a pharmacist according to A.R.S. Title 36, Chapter 27; A.R.S. Title 32, Chapter 18; and 4 A.A.C. 23;
2. A copy of the pharmacy license is provided to the Department for review upon the Department's request;
3. A committee, composed of at least one physician, one pharmacist, and other personnel members as determined by policies and procedures, is established to:
  - a. Develop a drug formulary,
  - b. Update the drug formulary at least once every 12 months,
  - c. Develop medication usage and medication substitution policies and procedures, and
  - d. Specify which medications and medication classifications are required to be automatically stopped after a specified time period unless the ordering medical staff member specifically orders otherwise;
4. An expired, mislabeled, or unusable medication is disposed of according to policies and procedures;
5. A medication administration error or an adverse reaction is reported to the ordering medical staff member or the medical staff member's designee;
6. A pharmacy medication dispensing error is reported to the pharmacist;
7. In a pharmacist's absence, personnel members designated by policies and procedures have access to a locked area containing a medication;
8. A medication is maintained at temperatures recommended by the manufacturer;
9. A cart used for an emergency:
  - a. Contains medication, supplies, and equipment as specified in policies and procedures;
  - b. Is available to a unit; and
  - c. Is sealed until opened in an emergency;
10. Emergency cart contents and sealing of the emergency cart are verified and documented according to policies and procedures;
11. Policies and procedures specify individuals who may:
  - a. Order medication, and
  - b. Administer medication;
12. A medication is administered in compliance with an order;
13. A medication administered to a patient is documented as required in R9-10-213;
14. If pain medication is administered to a patient, documentation in the patient's medical record includes:
  - a. An assessment of the patient's pain before administering the medication, and
  - b. The effect of the pain medication administered; and
15. Policies and procedures specify a process for review through the quality management program of:
  - a. A medication administration error,
  - b. An adverse reaction to a medication, and
  - c. A pharmacy medication dispensing error.

#### Historical Note

Adopted effective February 23, 1979 (Supp. 79-1). Section repealed; new Section made by final rulemaking at 8

A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Amended by final rulemaking at 11 A.A.R. 536, effective March 5, 2005 (Supp. 05-1). Section R9-10-218 renumbered to R9-10-219; new Section R9-10-218 renumbered from R9-10-217 and amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### **R9-10-219. Clinical Laboratory Services and Pathology Services**

An administrator shall ensure that:

1. Clinical laboratory services and pathology services are provided by a hospital through a laboratory that holds a certificate of accreditation or certificate of compliance issued by the United States Department of Health and Human Services under the 1988 amendments to the Clinical Laboratories Improvement Act of 1967;
2. A copy of the certificate of accreditation or compliance in subsection (1) is provided to the Department for review upon the Department's request;
3. A general hospital or a rural general hospital provides clinical laboratory services 24 hours a day on the hospital's premises to meet the needs of a patient in an emergency;
4. A special hospital whose patients require clinical laboratory services:
  - a. Is able to provide clinical laboratory services when needed by the patients;
  - b. Obtains specimens for clinical laboratory services without transporting the patients from the special hospital's premises; and
  - c. Has the examination of the specimens performed by a clinical laboratory on the special hospital's premises or by arrangement with a clinical laboratory not on the special hospital's premises;
5. A hospital that provides clinical laboratory services 24 hours a day has on duty or on-call laboratory personnel authorized by policies and procedures to perform testing;
6. A hospital that offers surgical services provides pathology services on the hospital's premises or by contracted service to meet the needs of a patient;
7. Clinical laboratory and pathology test results are:
  - a. Available to the medical staff:
    - i. Within 24 hours after the test is completed if the test is performed at a laboratory on the hospital's premises; or
    - ii. Within 24 hours after the test result is received if the test is performed at a laboratory not on the hospital's premises; and
  - b. Documented in a patient's medical record;
8. If a test result is obtained that indicates a patient may have an emergency medical condition, as established by medical staff, laboratory personnel notify the ordering medical staff member or a registered nurse in the patient's assigned unit;
9. If a clinical laboratory report, a pathology report, or an autopsy report is completed on a patient, a copy of the report is included in the patient's medical record;
10. Policies and procedures are established, documented, and implemented for:
  - a. Procuring, storing, transfusing, and disposing of blood and blood products;
  - b. Blood typing, antibody detection, and blood compatibility testing; and
  - c. Investigating transfusion adverse reactions that specify a process for review through the quality management program;
11. If blood and blood products are provided by contract, the contract includes:
  - a. The availability of blood and blood products from the contractor; and
  - b. The process for delivery of blood and blood products from the contractor; and
12. Expired laboratory supplies are discarded according to policies and procedures.

#### **Historical Note**

Adopted effective February 23, 1979 (Supp. 79-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Amended by final rulemaking at 11 A.A.R. 536, effective March 5, 2005 (Supp. 05-1). Section R9-10-219 renumbered to R9-10-220; new Section R9-10-219 renumbered from R9-10-218 and amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### **R9-10-220. Radiology Services and Diagnostic Imaging Services**

**A.** An administrator shall ensure that:

1. Radiology services and diagnostic imaging services are provided in compliance with A.R.S. Title 30, Chapter 4 and 12 A.A.C. 1;
2. A copy of a certificate documenting compliance with subsection (1) is provided to the Department for review upon the Department's request;
3. A general hospital or a rural general hospital provides radiology services 24 hours a day on the hospital's premises to meet the emergency needs of a patient;
4. A hospital that provides surgical services has radiology services and diagnostic imaging services on the hospital's premises to meet the needs of patients;
5. A general hospital or a rural general hospital has a radiologic technologist on duty or on-call; and
6. Except as provided in subsection (A)(4), a special hospital whose patients require radiology services and diagnostic imaging services is able to provide the radiology services and diagnostic imaging services when needed by the patients:
  - a. On the special hospital's premises; or
  - b. By arrangement with a radiology and diagnostic imaging facility that is not on the special hospital's premises.

**B.** An administrator of a hospital that provides radiology services or diagnostic imaging services on the hospital's premises shall ensure that:

1. Radiology services and diagnostic imaging services are provided:
  - a. Under the direction of a medical staff member; and
  - b. According to an order that includes:
    - i. The patient's name,
    - ii. The name of the ordering individual,
    - iii. The radiological or diagnostic imaging procedure ordered, and
    - iv. The reason for the procedure;
2. A medical staff member or radiologist interprets the radiologic or diagnostic image;
3. A radiologic or diagnostic imaging patient report is prepared that includes:



- a. The patient's name;
  - b. The date of the procedure;
  - c. A medical staff member's or radiologist's interpretation of the image;
  - d. The type and amount of radiopharmaceutical used, if applicable; and
  - e. The adverse reaction to the radiopharmaceutical, if any; and
4. A radiologic or diagnostic imaging report is included in the patient's medical record.

**Historical Note**

Adopted effective February 23, 1979 (Supp. 79-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Amended by final rulemaking at 11 A.A.R. 536, effective March 5, 2005 (Supp. 05-1). Section R9-10-220 renumbered to R9-10-221; new Section R9-10-220 renumbered from R9-10-219 and amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-221. Intensive Care Services**

Except for a special hospital that provides only psychiatric services, an administrator of a hospital that provides intensive care services shall ensure that:

1. Intensive care services are provided as an organized service in a designated area under the direction of a medical staff member;
2. An inpatient admitted for intensive care services is personally visited by a physician at least once every 24 hours;
3. Admission and discharge criteria for intensive care services are established;
4. A personnel member's responsibilities for initiation of medical services in an emergency to a patient in an intensive care unit pending the arrival of a medical staff member are established and documented in policies and procedures;
5. In addition to the requirements in R9-10-214(C), an intensive care unit is staffed:
  - a. With at least one registered nurse assigned for every two patients, and
  - b. According to an acuity plan as required in R9-10-214;
6. Each intensive care unit has a policy and procedure that provides for meeting the needs of the patients;
7. If the medical services of an intensive care patient are reduced to a lesser level of care in the hospital, but the patient is not physically relocated, the nurse to patient ratio is based on the needs of the patient;
8. Private duty staff do not provide hospital services in an intensive care unit;
9. At least one registered nurse assigned to a patient in an intensive care unit is certified in advanced cardiac life support specific to the age of the patient;
10. Resuscitation, emergency, and other equipment are available to meet the needs of a patient including:
  - a. Ventilatory assistance equipment,
  - b. Respiratory and cardiac monitoring equipment,
  - c. Suction equipment,
  - d. Portable radiologic equipment, and
  - e. A patient weighing device for patients restricted to a bed; and

11. An intensive care unit has at least one emergency cart that is maintained according to R9-10-218.

**Historical Note**

Former Section R9-10-221 renumbered as R9-10-317 as an emergency effective February 22, 1979, new Section R9-10-221 adopted effective February 23, 1979 (Supp. 79-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Section R9-10-221 renumbered to R9-10-222; new Section R9-10-221 renumbered from R9-10-220 and amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-222. Respiratory Care Services**

An administrator of a hospital that provides respiratory care services shall ensure that:

1. Respiratory care services are provided under the direction of a medical staff member;
2. Respiratory care services are provided according to an order that includes:
  - a. The patient's name;
  - b. The name and signature of the ordering individual;
  - c. The type, frequency, and, if applicable, duration of treatment;
  - d. The type and dosage of medication and diluent; and
  - e. The oxygen concentration or oxygen liter flow and method of administration;
3. Respiratory care services provided to a patient are documented in the patient's medical record and include:
  - a. The date and time of administration;
  - b. The type of respiratory care services;
  - c. The effect of respiratory care services;
  - d. If applicable, any adverse reaction to respiratory care services; and
  - e. The authentication of the individual providing the respiratory care services; and
4. Any area or unit that performs blood gases or clinical laboratory tests complies with the requirements in R9-10-219.

**Historical Note**

Former Section R9-10-222 renumbered as R9-10-318 as an emergency effective February 22, 1979, new Section R9-10-222 adopted effective February 23, 1979 (Supp. 79-1). Correction, subsection (D)(3) reference to paragraph (E)(2) should read subsection (D)(2). (Supp. 79-6). Section repealed; new Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Amended by final rulemaking at 11 A.A.R. 536, effective March 5, 2005 (Supp. 05-1). Section R9-10-222 renumbered to R9-10-223; new Section R9-10-222 renumbered from R9-10-221 and amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-223. Perinatal Services**

- A. An administrator of a hospital that provides perinatal organized services shall ensure that:
  1. Perinatal services are provided in a designated area under the direction of a medical staff member;
  2. Only medical and surgical procedures approved by the medical staff are performed in the perinatal services unit;

3. The perinatal services unit has the capability to initiate an emergency cesarean delivery within the time-frame established by the medical staff and documented in policies and procedures;
  4. Only a patient in need of perinatal services or gynecological services receives perinatal services or gynecological services in the perinatal services unit;
  5. A patient receiving gynecological services does not share a room with a patient receiving perinatal services;
  6. A chronological log of perinatal services provided to patients is maintained that includes:
    - a. The patient's name;
    - b. The date, time, and mode of the patient's arrival;
    - c. The disposition of the patient including discharge, transfer, or admission time; and
    - d. The following information for a delivery of a neonate:
      - i. The neonate's name or other identifier;
      - ii. The name of the medical staff member who delivered the neonate;
      - iii. The delivery time and date; and
      - iv. Complications of delivery, if any;
  7. The chronological log required in subsection (A)(6) is maintained by the hospital in the perinatal services unit for at least 12 months after the date the perinatal services are provided and then maintained by the hospital for at least an additional 12 months;
  8. The perinatal services unit provides fetal monitoring;
  9. The perinatal services unit has ultrasound capability;
  10. Except in an emergency, a neonate is identified as required by policies and procedures before moving the neonate from a delivery area;
  11. Policies and procedures specify:
    - a. Security measures to prevent neonatal abduction, and
    - b. How the hospital determines to whom a neonate may be discharged;
  12. A neonate is discharged only to an individual who:
    - a. Is authorized according to subsection (A)(11), and
    - b. Provides identification;
  13. A neonate's medical record identifies the individual to whom the neonate is discharged;
  14. A patient or the individual to whom the neonate is discharged receives perinatal education, discharge instructions, and a referral for follow-up care for a neonate in addition to the discharge planning requirements in R9-10-209;
  15. Intensive care services for neonates comply with the requirements in R9-10-221;
  16. At least one registered nurse is on duty in a nursery when there is a neonate in the nursery except as provided in subsection (A)(17);
  17. A nursery occupied only by a neonate, who is placed in the nursery for the convenience of the neonate's mother and does not require treatment as established in this Article, is staffed by a nurse;
  18. Equipment and supplies are available to a nursery, labor-delivery-recovery room, or labor-delivery-recovery-postpartum room to meet the needs of each neonate; and
  19. In a nursery, only a neonate's bed or bassinet is used for changing diapers, bathing, or dressing the neonate.
- B.** An administrator of a hospital that does not provide perinatal organized services shall comply with the requirements in R9-10-217(C).

#### Historical Note

Former Section R9-10-223 renumbered as R9-10-319 as

an emergency effective February 22, 1979, new Section R9-10-223 adopted effective February 23, 1979 (Supp. 79-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Section R9-10-223 renumbered to R9-10-224; new Section R9-10-223 renumbered from R9-10-222 and amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-224. Pediatric Services

- A.** An administrator of a hospital that provides pediatric services or organized pediatric services according to the requirements in this Section shall ensure that:
1. Consistent with the health and safety of a pediatric patient, arrangements are made for a parent or a guardian of the pediatric patient to stay overnight;
  2. Policies and procedures are established, documented, and implemented for:
    - a. Infection control for shared toys, books, stuffed animals, and other items in a community playroom; and
    - b. Visitation of a pediatric patient, including age limits if applicable;
  3. A pediatric inpatient is only admitted if the hospital has the staff, equipment, and supplies available to meet the needs of the pediatric patient based on the pediatric patient's medical condition and the hospital's scope of services; and
  4. If the hospital provides pediatric intensive care services, the pediatric intensive care services comply with intensive care services requirements in R9-10-221.
- B.** An administrator of a hospital that provides pediatric organized services shall ensure that pediatric services are provided in a designated area under the direction of a medical staff member.
- C.** An administrator shall ensure that in a multi-organized service unit or a patient care unit that is providing medical and nursing services to an adult patient and a pediatric patient according to this Section:
1. A pediatric patient is not placed in a patient room with an adult patient, and
  2. A medication for a pediatric patient that is stored in the patient care unit is stored separately from a medication for an adult patient.
- D.** Except as provided in subsections (F) and (G), an administrator of a hospital that does not provide pediatric organized services may admit a pediatric inpatient only in an emergency.
- E.** A hospital may use a bed in a pediatric organized services patient care unit for an adult patient if an administrator establishes, documents, and implements policies and procedures that:
1. Delineate the specific conditions under which an adult patient is placed in a bed in the pediatric organized services unit, and
  2. Except as provided in subsection (H) and (I), ensure that an adult patient is:
    - a. Not placed in a pediatric organized services patient care unit if a pediatric patient is admitted to and present in the pediatric organized services patient care unit, and
    - b. Transferred out of the pediatric organized services patient care unit to an appropriate level of care when a pediatric patient is admitted to the pediatric organized services patient care unit.

- F.** Subsection (G) only applies to a general hospital or rural general hospital that:
1. Does not provide pediatric organized services;
  2. Has designated in the general hospital's or rural general hospital's scope of services, inpatient services that are available to a pediatric patient;
  3. Has a licensed capacity of less than 100; and
  4. Is located in a county with a population of less than 500,000.
- G.** An administrator of a general hospital or rural general hospital that meets the criteria in subsection (F) shall ensure that:
1. There are pediatric-appropriate equipment and supplies available based on the hospital services designated for pediatric patients in the general hospital or rural general hospital's scope of services; and
  2. Personnel members that are or may be assigned to provide hospital services to a pediatric patient have the appropriate skills and knowledge for providing hospital services to a pediatric patient based on the general hospital's or rural general hospital's scope of services.
- H.** Subsection (I) only applies to a general hospital or a rural general hospital that:
1. Provides organized pediatric services in a patient care unit;
  2. Has designated in the general hospital's or rural general hospital's scope of services, inpatient services that are available to an adult patient in an organized pediatric services patient care unit;
  3. Has a licensed capacity of less than 100; and
  4. Is located in a county with a population of less than 500,000.
- I.** An administrator of a general hospital or rural general hospital that meets the criteria in subsection (H) shall comply with the requirements in subsection (E)(1).
- Historical Note**
- Adopted effective February 23, 1979 (Supp. 79-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Amended by exempt rulemaking at 18 A.A.R. 1719, effective June 30, 2012 (Supp. 12-2). Section R9-10-224 renumbered to R9-10-225; new Section R9-10-224 renumbered from R9-10-223 and amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).
- R9-10-225. Psychiatric Services**
- A.** An administrator of a hospital that contains an organized psychiatric services unit or a special hospital licensed to provide psychiatric services shall ensure that in the organized psychiatric unit or special hospital:
1. Psychiatric services are provided under the direction of a medical staff member;
  2. An inpatient admitted to the organized psychiatric services unit or special hospital has a principal diagnosis of a mental disorder, a personality disorder, substance abuse, or a significant psychological or behavioral response to an identifiable stressor;
  3. Except in an emergency, a patient receives a nursing assessment before treatment for the patient is initiated;
  4. An individual whose medical needs cannot be met while the individual is an inpatient in an organized psychiatric services unit or a special hospital is not admitted to or is transferred out of the organized psychiatric services unit or special hospital;
5. Policies and procedures for the organized psychiatric services unit or special hospital are established, documented, and implemented that:
    - a. Establish qualifications for medical staff members and personnel members who provide clinical oversight to behavioral health technicians;
    - b. Establish the process for patient assessment, including identification of a patient's medical conditions and criteria for the on-going monitoring of any identified medical condition;
    - c. Establish the process for developing and implementing a patient's care plan including:
      - i. Obtaining the patient's or the patient's representative's participation in the development of the patient's care plan;
      - ii. Ensuring that the patient is informed of the modality, frequency, and duration of any treatments that are included in the patient's care plan;
      - iii. Informing the patient that the patient has the right to refuse any treatment;
      - iv. Updating the patient's care plan and informing the patient of any changes to the patient's care plan; and
      - v. Documenting the actions in subsection (A)(5)(c)(i) through (iv) in the patient's medical record;
    - d. Establish the process for warning an identified or identifiable individual, as described in A.R.S. § 36-517.02 (B) through (C), if a patient communicates to a medical staff member or personnel member a threat of imminent serious physical harm or death to the individual and the patient has the apparent intent and ability to carry out the threat;
    - e. Establish the criteria for determining when an inpatient's absence is unauthorized, including whether the inpatient:
      - i. Was admitted under A.R.S. Title 36, Chapter 5, Articles 1, 2, or 3;
      - ii. Is absent against medical advice; or
      - iii. Is under 18 years of age;
    - f. Identify each type of restraint and seclusion used in the organized psychiatric services unit or special hospital and include for each type of restraint and seclusion used:
      - i. The qualifications of a medical staff member or personnel member who can:
        - (1) Order the restraint or seclusion,
        - (2) Place a patient in the restraint or seclusion,
        - (3) Monitor a patient in the restraint or seclusion,
        - (4) Evaluate a patient's physical and psychological well-being after being placed in the restraint or seclusion and when released from the restraint or seclusion, or
        - (5) Renew the order for restraint or seclusion;
      - ii. On-going training requirements for a medical staff member or personnel member who has direct patient contact while the patient is in a restraint or in seclusion; and
      - iii. Criteria for monitoring and assessing a patient including:
        - (1) Frequencies of monitoring and assessment based on a patient's condition, cognitive status, situational factors, and risks associated with the specific restraint or seclusion;

- sion;
- (2) For the renewal of an order for restraint or seclusion, whether an assessment is required before the order is renewed and, if an assessment is required, who may conduct the assessment;
- (3) Assessment content, which may include, depending on a patient's condition, the patient's vital signs, respiration, circulation, hydration needs, elimination needs, level of distress and agitation, mental status, cognitive functioning, neurological functioning, and skin integrity;
- (4) If a mechanical restraint is used, how often the mechanical restraint is monitored or loosened; and
- (5) A process for meeting a patient's nutritional needs and elimination needs;
- g. Establish the criteria and procedures for renewing an order for restraint or seclusion;
- h. Establish procedures for internal review of the use of restraint or seclusion;
- i. Establish requirements for notifying the parent or guardian of a patient who is under 18 years of age and who is restrained or secluded; and
- j. Establish medical record and personnel record documentation requirements for restraint and seclusion, if applicable;
- 6. If time out is used in the organized psychiatric services unit or special hospital, a time out:
  - a. Takes place in an area that is unlocked, lighted, quiet, and private;
  - b. Does not take place in the room approved for seclusion by the Department under R9-10-104;
  - c. Is time-limited and does not exceed two hours per incident or four hours per day;
  - d. Does not result in a patient's missing a meal if the patient is in time out at mealtime;
  - e. Includes monitoring of the patient by a medical staff member or personnel member at least once every 15 minutes to ensure the patient's health, safety, and welfare and to determine if the patient is ready to leave time out; and
  - f. Is documented in the patient's medical record, to include:
    - i. The date of the time out,
    - ii. The reason for the time out,
    - iii. The duration of the time out, and
    - iv. The action planned and taken to address the reason for the time out;
- 7. Restraint or seclusion is:
  - a. Not used as a means of coercion, discipline, convenience, or retaliation;
  - b. Only used when all of the following conditions are met:
    - i. Except as provided in subsection (A)(8), after obtaining an order for the restraint or seclusion;
    - ii. For the management of a patient's aggressive, violent, or self-destructive behavior;
    - iii. When less restrictive interventions have been determined to be ineffective; and
    - iv. To ensure the immediate physical safety of the patient, to prevent imminent harm to the patient or another individual, or to stop physical harm to another individual; and
  - c. Discontinued at the earliest possible time;
- 8. If as a result of a patient's aggressive, violent, or self-destructive behavior, harm to the patient or another individual is imminent or the patient or another individual is being physically harmed, a personnel member:
  - a. May initiate an emergency application of restraint or seclusion for the patient before obtaining an order for the restraint or seclusion, and
  - b. Obtains an order for the restraint or seclusion of the patient during the emergency application of the restraint or seclusion;
- 9. Restraint or seclusion is:
  - a. Only ordered by a physician or a registered nurse practitioner, and
  - b. Not written as a standing order or on an as-needed basis;
- 10. An order for restraint or seclusion includes:
  - a. The name of the individual ordering the restraint or seclusion;
  - b. The date and time that the restraint or seclusion was ordered;
  - c. The specific restraint or seclusion ordered;
  - d. If a drug is ordered as a chemical restraint, the drug's name, strength, dosage, and route of administration;
  - e. The specific criteria for release from restraint or seclusion without an additional order; and
  - f. The maximum duration authorized for the restraint or seclusion;
- 11. An order for restraint or seclusion is limited to the duration of the emergency situation and does not exceed:
  - a. Four continuous hours for a patient who is 18 years of age or older,
  - b. Two continuous hours for a patient who is between the ages of nine and 17 years of age, or
  - c. One continuous hour for a patient who is younger than nine years of age;
- 12. If restraint and seclusion are used on a patient simultaneously, the patient receives continuous:
  - a. Face-to-face monitoring by a medical staff member or personnel member, or
  - b. Video and audio monitoring by a medical staff member or personnel member who is in close proximity to the patient;
- 13. If an order for restraint or seclusion of a patient is not provided by a medical practitioner coordinating the patient's medical services, the medical practitioner is notified as soon as possible;
- 14. A medical staff member or personnel member does not participate in restraint or seclusion, monitor a patient during restraint or seclusion, or evaluate a patient after restraint or seclusion until the medical staff member or personnel member completes education and training that:
  - a. Includes:
    - i. Techniques to identify medical staff member, personnel member, and patient behaviors; events; and environmental factors that may trigger circumstances that require restraint or seclusion;
    - ii. The use of nonphysical intervention skills, such as de-escalation, mediation, conflict resolution, active listening, and verbal and observational methods;
    - iii. Techniques for identifying the least restrictive intervention based on an assessment of the patient's medical or behavioral health condition;

- iv. The safe use of restraint and the safe use of seclusion, including training in how to recognize and respond to signs of physical and psychological distress in a patient who is restrained or secluded;
  - v. Clinical identification of specific behavioral changes that indicate that the restraint or seclusion is no longer necessary;
  - vi. Monitoring and assessing a patient while the patient is in restraint or seclusion according to policies and procedures; and
  - vii. Training exercises in which medical staff members and personnel members successfully demonstrate the techniques that the medical staff members and personnel members have learned for managing emergency situations; and
  - b. Is provided by individuals qualified according to policies and procedures;
15. When a patient is placed in restraint or seclusion:
- a. The restraint or seclusion is conducted according to policies and procedures;
  - b. The restraint or seclusion is proportionate and appropriate to the severity of the patient's behavior and the patient's:
    - i. Chronological and developmental age;
    - ii. Size;
    - iii. Gender;
    - iv. Physical condition;
    - v. Medical condition;
    - vi. Psychiatric condition; and
    - vii. Personal history, including any history of physical or sexual abuse;
  - c. The physician or registered nurse practitioner who ordered the restraint or seclusion is available for consultation throughout the duration of the restraint or seclusion;
  - d. A patient is monitored and assessed according to policies and procedures;
  - e. A physician or other health professional authorized by policies and procedures assesses the patient within one hour after the patient is placed in the restraint or seclusion and determines:
    - i. The patient's current behavior,
    - ii. The patient's reaction to the restraint or seclusion used,
    - iii. The patient's medical and behavioral condition, and
    - iv. Whether to continue or terminate the restraint or seclusion;
  - f. The patient is given the opportunity:
    - i. To eat during mealtime, and
    - ii. To use the toilet; and
  - g. The restraint or seclusion is discontinued at the earliest possible time, regardless of the length of time identified in the order;
16. If a patient is placed in seclusion, the room used for seclusion:
- a. Is approved for use as a seclusion room by the Department under R9-10-104;
  - b. Is not used as a patient's bedroom or a sleeping area;
  - c. Allows full view of the patient in all areas of the room;
  - d. Is free of hazards, such as unprotected light fixtures or electrical outlets;
  - e. Contains at least 60 square feet of floor space; and
  - f. Except as provided in subsection (A)(17), contains a non-adjustable bed that:
    - i. Consists of a mattress on a solid platform that is:
      - (1) Constructed of a durable, non-hazardous material; and
      - (2) Raised off of the floor;
    - ii. Does not have wire springs or a storage drawer; and
    - iii. Is securely anchored in place;
17. If a room used for seclusion does not contain a non-adjustable bed required in subsection (A)(16)(f):
- a. A piece of equipment is available for use in the room used for seclusion that:
    - i. Is commercially manufactured to safely and humanely restrain a patient's body;
    - ii. Provides support to the trunk and head of a patient's body;
    - iii. Provides restraint to the trunk of a patient's body;
    - iv. Is able to restrict movement of a patient's arms, legs, trunk, and head;
    - v. Allows a patient's body to recline; and
    - vi. Does not inflict harm on a patient's body; and
  - b. Documentation of the manufacturer's specifications for the piece of equipment in subsection (A)(17)(a) is maintained;
18. A seclusion room may be used for services or activities other than seclusion if:
- a. A sign stating the service or activity scheduled or being provided in the room is conspicuously posted outside the room;
  - b. No permanent equipment other than the bed required in subsection (A)(16)(f) is in the room;
  - c. Policies and procedures are established, documented, and implemented that:
    - i. Delineate which services or activities other than seclusion may be provided in the room,
    - ii. List what types of equipment or supplies may be placed in the room for the delineated services, and
    - iii. Provide for the prompt removal of equipment and supplies from the room before the room is used for seclusion; and
  - d. The sign required in subsection (A)(18)(a) and equipment and supplies in the room, other than the bed required in subsection (A)(16)(f), are removed before a patient is placed in seclusion in the room;
19. A medical staff member or personnel member documents the following information in a patient's medical record before the end of the shift in which the patient is placed in restraint or seclusion or, if the patient's restraint or seclusion does not end during the shift in which it began, during the shift in which the patient's restraint or seclusion ends:
- a. The emergency situation that required the patient to be restrained or put in seclusion;
  - b. The times the patient's restraint or seclusion actually began and ended;
  - c. The time of the face-to-face assessment required in subsection (A)(12)(a);
  - d. The monitoring required in subsection (A)(12)(b) or (15)(d), as applicable;
  - e. The times the patient was given the opportunity to eat or use the toilet according to subsection (A)(15)(f); and

- f. The names of the medical staff members and personnel members with direct patient contact while the patient was in the restraint or seclusion; and
  - 20. If an emergency situation continues beyond the time limit of an order for restraint or seclusion, the order is renewed according to policies and procedures.
- B.** An administrator of a hospital that provides opioid treatment services to an outpatient shall comply with the requirements in R9-10-1020.

#### Historical Note

Adopted effective February 23, 1979 (Supp. 79-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Section R9-10-225 renumbered to R9-10-227; new Section R9-10-225 renumbered from R9-10-224 and amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-226. Behavioral Health Observation/Stabilization Services

An administrator of a hospital that is authorized to provide behavioral health observation/stabilizations services shall ensure that:

- 1. Behavioral health observation/stabilization services are provided according to the requirements in R9-10-1012, and
- 2. Restraint and seclusion are provided according to the requirements for restraint and seclusion in R9-10-225.

#### Historical Note

Adopted effective February 23, 1979 (Supp. 79-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Section R9-10-226 renumbered to R9-10-229; new Section R9-10-226 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-227. Rehabilitation Services

An administrator shall ensure that:

- 1. If rehabilitation services are provided as an organized service, the rehabilitation services are provided under the direction of an individual qualified according to policies and procedures;
- 2. Rehabilitation services are provided according to an order; and
- 3. The medical record of a patient receiving rehabilitation services includes:
  - a. An order for rehabilitation services that includes the name of the ordering individual and a referring diagnosis,
  - b. A documented care plan that is developed in coordination with the ordering individual and the individual providing the rehabilitation services,
  - c. The rehabilitation services provided,
  - d. The patient's response to the rehabilitation services, and
  - e. The authentication of the individual providing the rehabilitation services.

#### Historical Note

Adopted effective February 23, 1979 (Supp. 79-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Section R9-10-227 renumbered to R9-10-231; new Sec-

tion R9-10-227 renumbered from R9-10-225 and amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2).

#### R9-10-228. Multi-organized Service Unit

- A.** A governing authority may designate the following as a multi-organized service unit:
- 1. An adult unit that provides both intensive care services and medical and nursing services other than intensive care services,
  - 2. A pediatric unit that provides both intensive care services and medical and nursing services other than intensive care services,
  - 3. A unit that provides both perinatal services and intensive care services for obstetrical patients,
  - 4. A unit that provides both intensive care services for neonates and a continuing care nursery, or
  - 5. A unit that provides medical and nursing services to adult and pediatric patients.
- B.** An administrator shall ensure that:
- 1. For a patient in a multi-organized service unit, a medical staff member designates in the patient's medical record which organized service is to be provided to the patient;
  - 2. A multi-organized service unit is in compliance with the requirements in this Article that would apply if each organized service were offered as a single organized service unit; and
  - 3. A multi-organized service unit and each bed in the unit are in compliance with physical plant health and safety codes and standards incorporated by reference in A.A.C. R9-1-412 for all organized services provided in the multi-organized service unit.

#### Historical Note

Adopted effective February 23, 1979 (Supp. 79-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Amended by final rulemaking at 11 A.A.R. 536, effective March 5, 2005 (Supp. 05-1). Section R9-10-228 renumbered to R9-10-213; new Section R9-10-228 renumbered from R9-10-234 and amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2).

#### R9-10-229. Social Services

An administrator of a hospital that provides social services shall ensure that:

- 1. A registered nurse or another personnel member designated according to policies and procedures coordinates social services;
- 2. If a personnel member provides social services that require a license under A.R.S. Title 32, Chapter 33, Article 5, the personnel member is licensed under A.R.S. Title 32, Chapter 33, Article 5;
- 3. A medical staff member, nurse, patient, patient's representative, or member of the patient's family may request social services;
- 4. A personnel member providing social services participates in discharge planning as necessary to meet the needs of a patient;
- 5. The patient has privacy when communicating with a personnel member providing social services; and
- 6. Social services provided to a patient are documented in the patient's medical record and the entries are authenticated by the individual providing the social services.

#### Historical Note

Adopted effective February 23, 1979 (Supp. 79-1). Section repealed; new Section made by final rulemaking at 8

A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Section R9-10-229 renumbered to R9-10-230; new Section R9-10-229 renumbered from R9-10-226 and amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

### **R9-10-230. Infection Control**

An administrator shall ensure that:

1. An infection control program that meets the requirements of this Section is established under the direction of an individual qualified according to policies and procedures;
2. An infection control program has a procedure for documenting:
  - a. The collection and analysis of infection control data;
  - b. The actions taken relating to infections and communicable diseases; and
  - c. Reports of communicable diseases to the governing authority and state and county health departments;
3. Infection control documents are maintained for at least 12 months after the date of the document;
4. Policies and procedures are established, documented, and implemented:
  - a. To prevent or minimize, identify, report, and investigate infections and communicable diseases that include:
    - i. Isolating a patient;
    - ii. Sterilizing equipment and supplies;
    - iii. Maintaining and storing sterile equipment and supplies;
    - iv. Using personal protective equipment such as gowns, masks, or face protection;
    - v. Disposing of biohazardous medical waste; and
    - vi. Moving and processing soiled linens and clothing;
  - b. That specify communicable diseases, medical conditions, or criteria that prevent an individual, a personnel member, or a medical staff member from:
    - i. Working in the hospital;
    - ii. Providing patient care; or
    - iii. Providing environmental services;
  - c. That establish criteria for determining whether a medical staff member is at an increased risk of exposure to infectious tuberculosis based on:
    - i. The level of risk in the area of the hospital premises where the medical staff member practices; and
    - ii. The work that the medical staff member performs; and
  - d. That establish the frequency of tuberculosis screening for an individual determined to be at an increased risk of exposure;
5. Tuberculosis screening is performed:
  - a. As part of a tuberculosis infection control program that complies with the Guidelines for Preventing the Transmission of *Mycobacterium tuberculosis* in Health-care Settings according to R9-10-113(2); or
  - b. Using a screening method described in R9-10-113(1), as follows:
    - i. For a personnel member, on or before the date the personnel member begins providing services at or on behalf of the hospital and at least once every 12 months thereafter or more frequently if the personnel member is determined to be at an increased risk of exposure based on the criteria in subsection (4)(c);

- ii. Except as required in subsection (4)(d), for a medical staff member, at least once every 24 months; and
- iii. For a medical staff member at an increased risk of exposure based on the criteria in subsection (4)(c), at the frequency required by policies and procedures, but no less frequently than once every 24 months;

6. Soiled linen and clothing are:
  - a. Collected in a manner to minimize or prevent contamination;
  - b. Bagged at the site of use; and
  - c. Maintained separate from clean linen and clothing and away from food storage, kitchen, or dining areas;
7. A personnel member washes hands or uses a hand disinfection product after each patient contact and after handling soiled linen, soiled clothing, or potentially infectious material;
8. An infection control committee is established according to policies and procedures and consists of:
  - a. At least one medical staff member;
  - b. The individual directing the infection control program; and
  - c. Other personnel identified in policies and procedures; and
9. The infection control committee:
  - a. Develops a plan for preventing, tracking, and controlling infections;
  - b. Reviews the type and frequency of infections and develops recommendations for improvement;
  - c. Meets and provides a quarterly written report for inclusion by the quality management program; and
  - d. Maintains a record of actions taken and minutes of meetings.

### **Historical Note**

Adopted effective February 23, 1979 (Supp. 79-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Section R9-10-230 renumbered to R9-10-233; new Section R9-10-230 renumbered from R9-10-229 and amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

### **R9-10-231. Dietary Services**

An administrator shall ensure that:

1. Dietary services are provided according to 9 A.A.C. 8, Article 1;
2. A copy of the hospital's food establishment license or permit under 9 A.A.C. 8, Article 1, is maintained;
3. For a hospital that contracts with a food establishment, as established in 9 A.A.C. 8, Article 1, to prepare and deliver food to the hospital, a copy of the contracted food establishment's license or permit under 9 A.A.C. 8, Article 1, is maintained;
4. If a hospital contracts with a food establishment to prepare and deliver food to the hospital, the hospital is able to store, refrigerate, and reheat food to meet the dietary needs of a patient;
5. Dietary services are provided under the direction of an individual qualified to direct the provision of dietary services according to policies and procedures;
6. There are personnel members on duty to meet the dietary needs of patients;

7. Personnel members providing dietary services are qualified to provide dietary services according to policies and procedures;
8. A nutrition assessment of a patient is:
  - a. Performed according to policies and procedures, and
  - b. Communicated to the medical practitioner coordinating the patient's medical services if the nutrition assessment reveals a specific dietary need;
9. A medical staff member documents an order for a diet for each patient in the patient's medical record;
10. A current diet manual approved by a registered dietitian is available to personnel members and medical staff members; and
11. A patient's dietary needs are met 24 hours a day.

#### Historical Note

Former Section R9-10-231 renumbered as R9-10-320 as an emergency effective February 22, 1979, new Section R9-10-231 adopted effective February 23, 1979 (Supp. 79-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Section R9-10-231 renumbered to R9-10-232; new Section R9-10-231 renumbered from R9-10-227 and amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-232. Disaster Management

An administrator shall ensure that:

1. A disaster plan is developed and documented that includes:
  - a. Procedures for protecting the health and safety of patients and other individuals;
  - b. Assigned personnel responsibilities; and
  - c. Instructions for the evacuation, transport, or transfer of patients, maintenance of medical records, and arrangements to provide any other hospital services to meet the patients' needs;
2. A plan exists for back-up power and water supply;
3. A fire drill is performed on each shift at least once every three months;
4. A disaster drill is performed on each shift at least once every 12 months;
5. Documentation of a fire drill required in subsection (3) and a disaster drill required in subsection (4) includes:
  - a. The date and time of the drill;
  - b. A critique of the drill; and
  - c. Recommendations for improvement, if applicable; and
6. Documentation of a fire drill or a disaster drill is maintained by the hospital for at least 12 months after the date of the drill.

#### Historical Note

Former Section R9-10-232 renumbered as R9-10-321 as an emergency effective February 22, 1979, new Section R9-10-232 adopted effective February 23, 1979 (Supp. 79-1). Section amended by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Section R9-10-232 renumbered to R9-10-234; new Section R9-10-232 renumbered from R9-10-231 and amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-233. Environmental Standards

An administrator shall ensure that:

1. An individual providing environmental services who has the potential to transmit infectious tuberculosis to patients, as determined by the infection control risk assessment criteria in R9-10-230(4)(c), provides evidence of freedom from infectious tuberculosis:
  - a. Using a screening method described in R9-10-113(1), on or before the date the individual begins providing environmental services at or on behalf of the hospital and at least once every 12 months thereafter; or
  - b. According to R9-10-113(2);
2. The hospital premises and equipment are:
  - a. Cleaned and disinfected according to policies and procedures or manufacturer's instructions to prevent, minimize, and control infection or illness; and
  - b. Free from a condition or situation that may cause a patient or other individual to suffer physical injury;
3. A pest control program is implemented and documented;
4. The hospital maintains a tobacco smoke-free environment;
5. Biohazardous medical waste is identified, stored, and disposed of according to 18 A.A.C. 13, Article 14 and policies and procedures;
6. Equipment used to provide hospital services is:
  - a. Maintained in working order;
  - b. Tested and calibrated according to the manufacturer's recommendations or, if there are no manufacturer's recommendations, as specified in policies and procedures; and
  - c. Used according to the manufacturer's recommendations; and
7. Documentation of equipment testing, calibration, and repair is maintained for at least 12 months after the date of the testing, calibration, or repair.

#### Historical Note

Former Section R9-10-233 renumbered as R9-10-322 as an emergency effective February 22, 1979, new Section R9-10-233 adopted effective February 23, 1979 (Supp. 79-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). Section expired under A.R.S. § 41-1056(E) at 14 A.A.R. 2374, effective February 29, 2008 (Supp. 08-2). New Section R9-10-233 renumbered from R9-10-230 and amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-234. Physical Plant Standards

A. An administrator shall ensure that:

1. A hospital complies with the applicable physical plant health and safety codes and standards incorporated by reference in A.A.C. R9-1-412 in effect on the date the hospital submitted, according to R9-10-104, an application for an approval of architectural plans and specifications to the Department;
2. A hospital's premises or any part of the hospital premises is not leased to or used by another person;
3. A unit with inpatient beds is not used as a passageway to another health care institution; and
4. A hospital's premises are not licensed as more than one health care institution.

B. An administrator shall:



1. Obtain a fire inspection conducted according to the time-frame established by the local fire department or the State Fire Marshal,
2. Make any repairs or corrections stated on the inspection report, and
3. Maintain documentation of a current fire inspection report.

**Historical Note**

New Section made by final rulemaking 14 A.A.R. 4646, effective December 2, 2008 (Supp. 08-4). Section R9-10-234 renumbered to R9-10-228; new Section R9-10-234 renumbered from R9-10-232 and amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-235. Administrative Separation**

- A. In addition to the definitions in A.R.S. § 36-401, R9-10-101, and R9-10-201, the following definition applies in this Section: “Administrative separation” means the temporary isolation of a patient for the purpose of preserving the integrity of evidence during the course of a criminal investigation or for a situation where not isolating the patient presents a risk of serious harm to other individuals or a serious risk to the safety or security of a hospital.
- B. Only a hospital established according to A.R.S. § 36-202 may use administrative separation.
- C. An administrator appointed according to A.R.S. § 36-205 shall ensure that:
  1. Administrative separation:
    - a. Is only used for a patient admitted to the hospital pursuant to a criminal court order; and
    - b. Is not used:
      - i. In conjunction with a restraint,
      - ii. As a method to manage behaviors, or
      - iii. If prohibited by law; and
  2. Policies and procedures are established, documented, and implemented for administrative separation that:
    - a. Include the process and criteria for requesting an administrative separation;
    - b. Include the process and deadlines for approving a request for an administrative separation;
    - c. Cover patient notification of the right to appeal the administrative separation and to file a complaint;
    - d. Include the process for providing a patient access to:
      - i. Incoming mail, and
      - ii. An advocate or legal representative;
    - e. Include the process for providing treatment to a patient while in administrative separation;
    - f. Include the process for establishing investigative goals; and
    - g. Include the process for determining when administrative separation will no longer be used for a patient.

**Historical Note**

New Section R9-10-235 made by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**ARTICLE 3. BEHAVIORAL HEALTH INPATIENT FACILITIES**

*Article 3, consisting of Sections R9-10-311 through R9-10-333, repealed at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2).*

**R9-10-301. Definitions**

In addition to the definitions in A.R.S. § 36-401 and R9-10-101, the following applies in this Article unless otherwise specified:

“Child and adolescent residential treatment services” means behavioral health services and physical health services provided in or by a behavioral health inpatient facility to a patient who is:

- Under 18 years of age, or
- Under 21 years of age and meets the criteria in R9-10-318(B).

**Historical Note**

New Section R9-10-301 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-302. Supplemental Application Requirements**

In addition to the license application requirements in A.R.S. § 36-422 and R9-10-105, an applicant for an initial license as a behavioral health inpatient facility shall include in a Department-provided format whether the applicant is requesting authorization to provide:

1. Inpatient services to individuals 18 years of age and older, including the licensed capacity requested;
2. Court-ordered pre-petition screening;
3. Court-ordered evaluation;
4. Court-ordered treatment;
5. Behavioral health observation/stabilization services, including the licensed occupancy requested for providing behavioral health observation/stabilization services to individuals:
  - a. Under 18 years of age, and
  - b. 18 years of age and older;
6. Child and adolescent residential treatment services, including the licensed capacity requested;
7. Detoxification services;
8. Seclusion;
9. Clinical laboratory services;
10. Radiology services; or
11. Diagnostic imaging services.

**Historical Note**

New Section R9-10-302 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-303. Administration**

- A. A governing authority shall:
  1. Consist of one or more individuals responsible for the organization, operation, and administration of a behavioral health inpatient facility;
  2. Establish, in writing:
    - a. A behavioral health inpatient facility’s scope of services, and
    - b. Qualifications for an administrator;
  3. Designate, in writing, an administrator who has the qualifications established in subsection (A)(2)(b);
  4. Adopt a quality management program according to R9-10-304;
  5. Review and evaluate the effectiveness of the quality management program at least once every 12 months;
  6. Designate, in writing, an acting administrator who has the qualifications established in subsection (A)(2)(b), if the administrator is:

- a. Expected not to be present on the behavioral health inpatient facility's premises for more than 30 calendar days, or
    - b. Not present on the behavioral health inpatient facility's premises for more than 30 calendar days; and
  7. Except as provided in subsection (A)(6), notify the Department according to A.R.S. § 36-425(I) when there is a change in the administrator and identify the name and qualifications of the new administrator.
- B. An administrator:**
1. Is directly accountable to the governing authority of a behavioral health inpatient facility for the daily operation of the behavioral health inpatient facility and for all services provided by or at the behavioral health inpatient facility;
  2. Has the authority and responsibility to manage the behavioral health inpatient facility; and
  3. Except as provided in subsection (A)(6), designates, in writing, an individual who is present on the behavioral health inpatient facility's premises and accountable for the behavioral health inpatient facility when the administrator is not present on the behavioral health inpatient facility's premises.
- C. An administrator shall ensure that:**
1. Policies and procedures are established, documented, and implemented to protect the health and safety of a patient that:
    - a. Cover job descriptions, duties, and qualifications, including required skills, knowledge, education, and experience for personnel members, employees, volunteers, and students;
    - b. Cover orientation and in-service education for personnel members, employees, volunteers, and students;
    - c. Include how a personnel member may submit a complaint relating to services provided to a patient;
    - d. Cover the requirements in A.R.S. Title 36, Chapter 4, Article 11;
    - e. Cover cardiopulmonary resuscitation training including:
      - i. The method and content of cardiopulmonary resuscitation training,
      - ii. The qualifications for an individual to provide cardiopulmonary resuscitation training,
      - iii. The time-frame for renewal of cardiopulmonary resuscitation training, and
      - iv. The documentation that verifies that the individual has received cardiopulmonary resuscitation training;
    - f. Cover first aid training;
    - g. Include a method to identify a patient to ensure the patient receives physical health and behavioral health services as ordered;
    - h. Cover patient rights, including assisting a patient who does not speak English or who has a physical or other disability to become aware of patient rights;
    - i. Cover specific steps for:
      - i. A patient to file a complaint, and
      - ii. The behavioral health inpatient facility to respond to a patient's complaint;
    - j. Cover health care directives;
    - k. Cover medical records, including electronic medical records;
    - l. Cover quality management, including incident reports and supporting documentation;
    - m. Cover contracted services; and
    - n. Cover when an individual may visit a patient in the behavioral health inpatient facility;
  2. Policies and procedures for behavioral health services and physical health services are established, documented, and implemented to protect the health and safety of a patient that:
    - a. Cover patient screening, admission, assessment, treatment plan, transport, transfer, discharge planning, and discharge;
    - b. Cover the provision of behavioral health services and physical health services;
    - c. Include when general consent and informed consent are required;
    - d. Cover restraint and, if applicable, seclusion;
    - e. Cover dispensing, administering, and disposing of medication, including provisions for inventory control and preventing diversion of controlled substances;
    - f. Cover prescribing a controlled substance to minimize substance abuse by a patient;
    - g. Cover infection control;
    - h. Cover telemedicine, if applicable;
    - i. Cover environmental services that affect patient care;
    - j. Cover patient outings;
    - k. Cover whether pets and animals are allowed on the premises, including procedures to ensure that any pets or animals allowed on the premises do not endanger the health or safety of patients or the public;
    - l. If the behavioral health inpatient facility is involved in research, cover the establishment or use of a Human Subject Review Committee;
    - m. Cover the process for receiving a fee from a patient and refunding a fee to a patient;
    - n. Cover the process for obtaining patient preferences for social, recreational, or rehabilitative activities and meals and snacks;
    - o. Cover the security of a patient's possessions that are allowed on the premises; and
    - p. Cover smoking and the use of tobacco products on the premises;
  3. Policies and procedures are reviewed at least once every three years and updated as needed;
  4. Policies and procedures are available to personnel members, employees, volunteers and students; and
  5. Unless otherwise stated:
    - a. Documentation required by this Article is provided to the Department within two hours after a Department request; and
    - b. When documentation or information is required by this Chapter to be submitted on behalf of a behavioral health inpatient facility, the documentation or information is provided to the unit in the Department that is responsible for licensing and monitoring the behavioral health inpatient facility.
- D. An administrator shall designate a:**
1. Medical director who:
    - a. Provides direction for physical health services provided by or at the behavioral health inpatient facility;
    - b. Is a physician or registered nurse practitioner; and
    - c. May be the same individual as the administrator, if the individual meets the qualifications in subsections (A)(2)(b) and (D)(1)(a) and (b);
  2. Clinical director who:

- a. Provides direction for the behavioral health services provided by or at the behavioral health inpatient facility;
  - b. Is a behavioral health professional; and
  - c. May be the same individual as the administrator, if the individual meets the qualifications in subsections (A)(2)(b) and (D)(2)(a) and (b); and
3. Registered nurse to provide direction for nursing services provided by or at the behavioral health inpatient facility.
- E.** An administrator shall provide written notification to the Department of a patient's:
1. Death, if the patient's death is required to be reported according to A.R.S. § 11-593, within one working day after the patient's death; and
  2. Self-injury, within two working days after the patient inflicts a self-injury that requires immediate intervention by an emergency medical services provider.
- F.** Except as specified in R9-10-318(A)(1), if abuse, neglect, or exploitation of a patient is alleged or suspected to have occurred before the patient was admitted or while the patient is not on the premises and not receiving services from a behavioral health inpatient facility's employee or personnel member, an administrator shall report the alleged or suspected abuse, neglect, or exploitation of the patient according to A.R.S. § 46-454.
- G.** If an administrator has a reasonable basis, according to A.R.S. § 46-454, to believe abuse, neglect, or exploitation has occurred on the premises or while a patient is receiving services from a behavioral health inpatient facility's employee or personnel member, the administrator shall:
1. If applicable, take immediate action to stop the suspected abuse, neglect, or exploitation;
  2. Report the suspected abuse, neglect, or exploitation of the patient according to A.R.S. § 46-454;
  3. Document:
    - a. The suspected abuse, neglect, or exploitation;
    - b. Any action taken according to subsection (G)(1); and
    - c. The report in subsection (G)(2);
  4. Maintain the documentation in subsection (G)(3) for at least 12 months after the date of the report in subsection (G)(2);
  5. Initiate an investigation of the suspected abuse, neglect, or exploitation and document the following information within five working days after the report required in subsection (G)(2):
    - a. The dates, times, and description of the suspected abuse, neglect, or exploitation;
    - b. A description of any injury to the patient related to the suspected abuse or neglect and any change to the patient's physical, cognitive, functional, or emotional condition;
    - c. The names of witnesses to the suspected abuse, neglect, or exploitation; and
    - d. The actions taken by the administrator to prevent the suspected abuse, neglect, or exploitation from occurring in the future; and
  6. Maintain a copy of the documented information required in subsection (G)(5) and any other information obtained during the investigation for at least 12 months after the date the investigation was initiated.
- H.** An administrator shall establish and document the criteria for determining when a patient's absence is unauthorized, including the criteria for a patient who:
1. Was admitted under A.R.S. Title 36, Chapter 5, Articles 1, 2, or 3;
  2. Is absent against medical advice; or
  3. Is under the age of 18.
- I.** An administrator shall:
1. For a patient who is under a court's jurisdiction, within an hour after determining that the patient's absence is unauthorized according to the criteria in subsection (H), notify the appropriate court or a person designated by the appropriate court;
  2. Document the notification in subsection (I)(1) and the written log required in subsection (I)(3);
  3. Maintain a written log of unauthorized absences for at least 12 months after the date of a patient's absence that includes the:
    - a. Name of a patient absent without authorization;
    - b. If applicable, name of the person notified as required in subsection (I)(1); and
    - c. Date of the notification; and
  4. Evaluate and take action related to unauthorized absences under the quality management program in R9-10-304.

**Historical Note**

New Section R9-10-303 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-304. Quality Management**

An administrator shall ensure that:

1. A plan is established, documented, and implemented for an ongoing quality management program that, at a minimum, includes:
  - a. A method to identify, document, and evaluate incidents;
  - b. A method to collect data to evaluate services provided to patients;
  - c. A method to evaluate the data collected to identify a concern about the delivery of services related to patient care;
  - d. A method to make changes or take action as a result of the identification of a concern about the delivery of services related to patient care; and
  - e. The frequency of submitting a documented report required in subsection (2) to the governing authority;
2. A documented report is submitted to the governing authority that includes:
  - a. An identification of each concern about the delivery of services related to patient care, and
  - b. Any changes made or actions taken as a result of the identification of a concern about the delivery of services related to patient care; and
3. The report required in subsection (2) and the supporting documentation for the report are maintained for at least 12 months after the date the report is submitted to the governing authority.

**Historical Note**

New Section R9-10-304 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-305. Contracted Services**

An administrator shall ensure that:

1. Contracted services are provided according to the requirements in this Article, and

2. Documentation of current contracted services is maintained that includes a description of the contracted services provided.

#### Historical Note

New Section R9-10-305 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-306. Personnel

- A. An administrator shall ensure that:
  1. A personnel member is:
    - a. At least 21 years old, or
    - b. At least 18 years old and is licensed or certified under A.R.S. Title 32 and providing services within the personnel member's scope of practice;
  2. An employee is at least 18 years old;
  3. A student is at least 18 years old; and
  4. A volunteer is at least 21 years old.
- B. An administrator shall ensure that:
  1. The qualifications, skills, and knowledge required for each type of personnel member:
    - a. Are based on:
      - i. The type of physical health services or behavioral health services expected to be provided by the personnel member according to the established job description, and
      - ii. The acuity of the patients receiving physical health services or behavioral health services from the personnel member according to the established job description; and
    - b. Include:
      - i. The specific skills and knowledge necessary for the personnel member to provide the expected physical health services and behavioral health services listed in the established job description,
      - ii. The type and duration of education that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected physical health services or behavioral health services listed in the established job description, and
      - iii. The type and duration of experience that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected physical health services or behavioral health services listed in the established job description;
  2. A personnel member's skills and knowledge are verified and documented:
    - a. Before the personnel member provides physical health services or behavioral health services, and
    - b. According to policies and procedures; and
  3. Sufficient personnel members are present on a behavioral health inpatient facility's premises with the qualifications, skills, and knowledge necessary to:
    - a. Provide the services in the behavioral health inpatient facility's scope of services,
    - b. Meet the needs of a patient, and
    - c. Ensure the health and safety of a patient.
- C. An administrator shall comply with the requirements for behavioral health technicians and behavioral health paraprofessionals in R9-10-115.
- D. An administrator shall ensure that an individual who is licensed under A.R.S. Title 32, Chapter 33 as a baccalaureate social worker, master social worker, associate marriage and family therapist, associate counselor, or associate substance abuse counselor is under direct supervision, as defined in A.A.C. R4-6-101.
- E. An administrator shall ensure that a personnel member or an employee, volunteer, or student who has or is expected to have direct interaction with a patient, provides evidence of freedom from infectious tuberculosis:
  1. On or before the date the individual begins providing services at or on behalf of the behavioral health inpatient facility, and
  2. As specified in R9-10-113.
- F. An administrator shall ensure that a personnel record is maintained for each personnel member, employee, volunteer, or student that includes:
  1. The individual's name, date of birth, and contact telephone number;
  2. The individual's starting date of employment or volunteer service and, if applicable, the ending date; and
  3. Documentation of:
    - a. The individual's qualifications, including skills and knowledge applicable to the employee's job duties;
    - b. The individual's education and experience applicable to the employee's job duties;
    - c. The individual's completed orientation and in-service education as required by policies and procedures;
    - d. The individual's license or certification, if the individual is required to be licensed or certified in this Article or policies and procedures;
    - e. The individual's qualifications and on-going training for each type of restraint or seclusion used, as required in R9-10-316;
    - f. If the individual is a behavioral health technician, clinical oversight required in R9-10-115;
    - g. Cardiopulmonary resuscitation training, if required for the individual according to R9-10-303(C)(1)(e);
    - h. First aid training, if required for the individual according to this Article or policies and procedures; and
    - i. Evidence of freedom from infectious tuberculosis, if required for the individual according to subsection (E).
- G. An administrator shall ensure that personnel records are:
  1. Maintained:
    - a. Throughout an individual's period of providing services in or for the behavioral health inpatient facility, and
    - b. For at least 24 months after the last date the individual provided services in or for the behavioral health inpatient facility; and
  2. For a personnel member who has not provided physical health services or behavioral health services at or for the behavioral health inpatient facility during the previous 12 months, provided to the Department within 72 hours after the Department's request.
- H. An administrator shall ensure that:
  1. A plan to provide orientation specific to the duties of a personnel member, an employee, a volunteer, and a student is developed, documented, and implemented;
  2. A personnel member completes orientation before providing behavioral health services or physical health services;
  3. An individual's orientation is documented, to include:

- a. The individual's name,
    - b. The date of the orientation, and
    - c. The subject or topics covered in the orientation;
  - 4. A clinical director develops, documents, and implements a plan to provide in-service education specific to the duties of a personnel member; and
  - 5. A personnel member's in-service education is documented, to include:
    - a. The personnel member's name,
    - b. The date of the training, and
    - c. The subject or topics covered in the training.
  - I.** An administrator shall ensure that a behavioral health inpatient facility has a daily staffing schedule that:
    - 1. Indicates the date, scheduled work hours, and name of each employee assigned to work, including on-call personnel members;
    - 2. Includes documentation of the employees who work each calendar day and the hours worked by each employee; and
    - 3. Is maintained for at least 12 months after the last date on the daily staffing schedule.
  - J.** An administrator shall ensure that:
    - 1. A physician or registered nurse practitioner is present on the behavioral health inpatient facility's premises or on-call,
    - 2. A registered nurse is present on the behavioral health inpatient facility's premises, and
    - 3. A registered nurse who provides direction for the nursing services provided at the behavioral health inpatient facility is present at the behavioral health inpatient facility at least 40 hours every week.
- Historical Note**
- New Section R9-10-306 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).
- R9-10-307. Admission; Assessment**
- Except as provided in R9-10-315(E) or (F), an administrator shall ensure that:
- 1. A patient is admitted based upon the patient's presenting behavioral health issue and treatment needs and the behavioral health inpatient facility's ability and authority to provide physical health services, behavioral health services, and ancillary services consistent with the patient's treatment needs;
  - 2. A patient is admitted on the order of a medical practitioner or clinical director;
  - 3. A medical practitioner or clinical director, authorized by policies and procedures to accept a patient for admission, is available;
  - 4. Except in an emergency or as provided in subsections (6) and (7), general consent is obtained from a patient or, if applicable, the patient's representative before or at the time of admission;
  - 5. The general consent obtained in subsection (4) or the lack of consent in an emergency is documented in the patient's medical record;
  - 6. General consent is not required from a patient receiving a court-ordered evaluation or court-ordered treatment;
  - 7. General consent is not required from a patient receiving treatment according to A.R.S. § 36-512;
  - 8. A medical practitioner performs a medical history and physical examination on a patient within 30 calendar days before admission or within 72 hours after admission and documents the medical history and physical examination in the patient's medical record within 72 hours after admission;
  - 9. If a medical practitioner performs a medical history and physical examination on a patient before admission, the medical practitioner enters an interval note into the patient's medical record within seven calendar days after admission;
  - 10. Except when a patient needs crisis services, a behavioral health assessment of a patient is completed before treatment for the patient is initiated;
  - 11. If a behavioral health assessment is conducted by a:
    - a. Behavioral health technician or registered nurse, within 24 hours a behavioral health professional, certified or licensed under A.R.S. Title 32 to provide the behavioral health services needed by the patient, reviews and signs the behavioral health assessment to ensure that the behavioral health assessment identifies the behavioral health services needed by the patient; or
    - b. Behavioral health paraprofessional, a behavioral health professional, certified or licensed under A.R.S. Title 32 to provide the behavioral health services needed by the patient, supervises the behavioral health paraprofessional during the completion of the behavioral health assessment and signs the behavioral health assessment to ensure that the behavioral health assessment identifies the behavioral health services needed by the patient;
  - 12. When a patient is admitted, a registered nurse:
    - a. Conducts a nursing assessment of a patient's medical condition and history;
    - b. Determines whether the:
      - i. Patient requires immediate physical health services, and
      - ii. Patient's behavioral health issue may be related to the patient's medical condition and history;
    - c. Documents the patient's nursing assessment and the determinations required in subsection (12)(b) in the patient's medical record; and
    - d. Signs the patient's medical record;
  - 13. A behavioral health assessment:
    - a. Documents the patient's:
      - i. Presenting issue;
      - ii. Substance abuse history;
      - iii. Co-occurring disorder;
      - iv. Legal history, including:
        - (1) Custody,
        - (2) Guardianship, and
        - (3) Pending litigation;
      - v. Court-ordered evaluation;
      - vi. Court-ordered treatment;
      - vii. Criminal justice record;
      - viii. Family history;
      - ix. Behavioral health treatment history;
      - x. Symptoms reported by the patient; and
      - xi. Referrals needed by the patient, if any; and
    - b. Includes:
      - i. Recommendations for further assessment or examination of the patient's needs;
      - ii. For a patient who:
        - (1) Is admitted to receive crisis services, the behavioral health services and physical health services that will be provided to the patient; or
        - (2) Does not need crisis services, the behav-

- ioral health services or physical health services that will be provided to the patient until the patient's treatment plan is completed; and
- iii. The signature and date signed of the personnel member conducting the behavioral health assessment;
- 14. A patient is referred to a medical practitioner if a determination is made that the patient requires immediate physical health services or the patient's behavioral health issue may be related to the patient's medical condition;
- 15. A request for participation in a patient's behavioral health assessment is made to the patient or the patient's representative;
- 16. An opportunity for participation in the patient's behavioral health assessment is provided to the patient or the patient's representative;
- 17. The request in subsection (15) and the opportunity in subsection (16) are documented in the patient's medical record;
- 18. For a patient who is admitted to receive crisis services, the patient's behavioral health assessment is documented in the patient's medical record within 24 hours after admission;
- 19. Except as provided in subsection (18), a patient's behavioral health assessment is documented in the patient's medical record within 48 hours after completing the assessment; and
- 20. If the information listed in subsection (13) is obtained about a patient after the patient's behavioral health assessment is completed, an interval note, including the information, is documented in the patient's medical record within 48 hours after the information is obtained.

#### Historical Note

New Section R9-10-307 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-308. Treatment Plan

- A. Except for a patient admitted to receive crisis services or as provided in R9-10-315(E) or (F), an administrator shall ensure that a treatment plan is developed and implemented for a patient that is:
  - 1. Based on the behavioral health assessment and on-going changes to the behavioral health assessment of the patient;
  - 2. Completed:
    - a. By a behavioral health professional or by a behavioral health technician under the clinical oversight of a behavioral health professional, and
    - b. Before the patient receives treatment;
  - 3. Documented in the patient's medical record within 48 hours after the patient first receives treatment;
  - 4. Includes:
    - a. The patient's presenting issue;
    - b. The behavioral health services and physical health services to be provided to the patient;
    - c. The signature of the patient or the patient's representative and date signed, or documentation of the refusal to sign;
    - d. The date when the patient's treatment plan will be reviewed;
    - e. If a discharge date has been determined, the treatment needed after discharge; and

- f. The signature of the personnel member who developed the treatment plan and the date signed;
- 5. If the treatment plan was completed by a behavioral health technician, reviewed and signed by a behavioral health professional within 24 hours after the completion of the treatment plan to ensure that the treatment plan meets the patient's treatment needs; and
- 6. Reviewed and updated on an on-going basis:
  - a. According to the review date specified in the treatment plan,
  - b. When a treatment goal is accomplished or changes,
  - c. When additional information that affects the patient's behavioral health assessment is identified, and
  - d. When a patient has a significant change in condition or experiences an event that affects treatment.
- B. An administrator shall ensure that:
  - 1. A request for participation in developing a patient's treatment plan is made to the patient or the patient's representative;
  - 2. An opportunity for participation in developing the patient's treatment plan is provided to the patient or the patient's representative; and
  - 3. The request in subsection (B)(1) and the opportunity in subsection (B)(2) are documented in the patient's medical record.
- C. If a patient who is admitted to receive crisis services remains admitted as a patient after the patient no longer needs crisis services, an administrator shall ensure that a treatment plan for the patient is:
  - 1. Except for subsection (A)(3), completed according to the requirements in subsection (A); and
  - 2. Documented in the patient's medical record within 24 hours after the patient no longer needs crisis services.

#### Historical Note

New Section R9-10-308 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-309. Discharge

- A. Except as provided in R9-10-315(E) or (F), an administrator shall ensure that a discharge plan for a patient is:
  - 1. Developed that:
    - a. Identifies any specific needs of the patient after discharge;
    - b. If the discharge date has been determined, includes the discharge date;
    - c. Is completed before discharge occurs; and
    - d. Includes a description of the level of care that may meet the patient's assessed and anticipated needs after discharge;
  - 2. Documented in the patient's medical record within 48 hours after the discharge plan is completed; and
  - 3. Provided to the patient or the patient's representative before the discharge occurs.
- B. An administrator shall ensure that:
  - 1. A request for participation in developing a patient's discharge plan is made to the patient or the patient's representative,
  - 2. An opportunity for participation in developing the patient's discharge plan is provided to the patient or the patient's representative, and

3. The request in subsection (B)(1) and the opportunity in subsection (B)(2) are documented in the patient's medical record.
- C. An administrator shall ensure that a patient is discharged from a behavioral health inpatient facility when the patient's treatment needs are not consistent with the services that the behavioral health inpatient facility is authorized and able to provide.
- D. An administrator shall ensure that there is a documented discharge order by a medical practitioner or behavioral health professional before a patient is discharged unless the patient leaves the behavioral health inpatient facility against a medical practitioner's or behavioral health professional's advice.
- E. An administrator shall ensure that, at the time of discharge, a patient receives a referral for treatment or ancillary services that the patient may need after discharge, if applicable.
- F. If a patient is discharged to any location other than a health care institution, an administrator shall ensure that:
  1. Discharge instructions are documented, and
  2. The patient or the patient's representative is provided with a copy of the discharge instructions.
- G. An administrator shall ensure that a discharge summary:
  1. Is entered into the patient's medical record within 10 working days after a patient's discharge; and
  2. Includes:
    - a. The following information authenticated by a medical practitioner or behavioral health professional:
      - i. The patient's presenting issue and other physical health and behavioral health issues identified in the patient's nursing assessment, behavioral health assessment, or treatment plan;
      - ii. A summary of the treatment provided to the patient;
      - iii. The patient's progress in meeting treatment goals, including treatment goals that were and were not achieved; and
      - iv. The name, dosage, and frequency of each medication ordered for the patient by a medical practitioner at the behavioral health inpatient facility at the time of the patient's discharge; and
    - b. A description of the disposition of the patient's possessions, funds, or medications brought to the behavioral health inpatient facility by the patient.
- H. An administrator shall ensure that a patient who is dependent upon a prescribed medication is offered detoxification services, opioid treatment, or a written referral to detoxification services or opioid treatment before the patient is discharged from the behavioral health inpatient facility if a medical practitioner for the behavioral health inpatient facility will not be prescribing the medication for the patient at or after discharge.
- b. Information from the patient's medical record is provided to a receiving health care institution,
- c. A personnel member explains risks and benefits of the transport to the patient or the patient's representative, and
- d. A personnel member communicates or documents why the personnel member did not communicate with an individual at a receiving health care institution; and
3. The patient's medical record includes documentation of:
  - a. Communication or lack of communication with an individual at a receiving health care institution;
  - b. The date and time of the transport;
  - c. The mode of transportation; and
  - d. If applicable, the name of the personnel member accompanying the patient during a transport.
- B. Subsection (A) does not apply to:
  1. Transportation to a location other than a licensed health care institution,
  2. Transportation provided for a patient by the patient or the patient's representative,
  3. Transportation provided by an outside entity that was arranged for a patient by the patient or the patient's representative, or
  4. A transport to another licensed health care institution in an emergency.
- C. Except for a transfer of a patient due to an emergency, an administrator shall ensure that:
  1. A personnel member coordinates the transfer and the services provided to the patient;
  2. According to policies and procedures:
    - a. An evaluation of the patient is conducted before the transfer;
    - b. Information from the patient's medical record, including orders that are in effect at the time of the transfer, is provided to a receiving health care institution; and
    - c. A personnel member explains risks and benefits of the transfer to the patient or the patient's representative; and
  3. Documentation in the patient's medical record includes:
    - a. Communication with an individual at a receiving health care institution;
    - b. The date and time of the transfer;
    - c. The mode of transportation; and
    - d. If applicable, the name of the personnel member accompanying the patient during a transfer.

#### Historical Note

Adopted as an emergency effective February 22, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-1). Adopted effective June 4, 1979 (Supp. 79-3). Amended effective January 28, 1980 (Supp. 80-1). Repealed effective February 4, 1981 (Supp. 81-1). New Section R9-10-310 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-310. Transport; Transfer

- A. Except as provided in subsection (B), an administrator shall ensure that:
  1. A personnel member coordinates the transport and the services provided to the patient;
  2. According to policies and procedures:
    - a. An evaluation of the patient is conducted before and after the transport,

#### R9-10-311. Patient Rights

- A. An administrator shall ensure that:
  1. The requirements in subsection (B) and the patient rights in subsection (D) are conspicuously posted on the premises;
  2. At the time of admission, a patient or the patient's representative receives a written copy of the requirements in

- subsection (B) and the patient rights in subsection (D); and
3. Policies and procedures include:
    - a. How and when a patient or the patient's representative is informed of patient rights in subsection (D), and
    - b. Where patient rights are posted as required in subsection (A)(1).
- B.** An administrator shall ensure that:
1. A patient is treated with dignity, respect, and consideration;
  2. A patient is not subjected to:
    - a. Abuse;
    - b. Neglect;
    - c. Exploitation;
    - d. Coercion;
    - e. Manipulation;
    - f. Sexual abuse;
    - g. Sexual assault;
    - h. Except as allowed under R9-10-316, restraint or seclusion;
    - i. Retaliation for submitting a complaint to the Department or another entity;
    - j. Misappropriation of personal and private property by the behavioral health inpatient facility's personnel members, employees, volunteers, or students;
    - k. Discharge or transfer, or threat of discharge or transfer, for reasons unrelated to the patient's treatment needs, except as established in a fee agreement signed by the patient or the patient's representative; or
    - l. Treatment that involves the denial of:
      - i. Food,
      - ii. The opportunity to sleep, or
      - iii. The opportunity to use the toilet;
  3. Except as provided in subsection (C), a patient is allowed to:
    - a. Associate with individuals of the patient's choice, receive visitors, and make telephone calls during the hours established by the behavioral health inpatient facility;
    - b. Have privacy in correspondence, communication, visitation, financial affairs, and personal hygiene; and
    - c. Unless restricted by a court order, send and receive uncensored and unopened mail; and
  4. Except as provided in R9-10-318, a patient or, if applicable, the patient's representative:
    - a. Except in an emergency, either consents to or refuses treatment;
    - b. May refuse or withdraw consent for treatment before treatment is initiated, unless the treatment is ordered by a court according to A.R.S. Title 36, Chapter 5; is necessary to save the patient's life or physical health; or is provided according to A.R.S. § 36-512;
    - c. Except in an emergency, is informed of alternatives to a proposed psychotropic medication and the associated risks and possible complications of the proposed psychotropic medication;
    - d. Is informed of the following:
      - i. The policy on health care directives, and
      - ii. The patient complaint process; and
    - e. Except as otherwise permitted by law, provides written consent to the release of information in the patient's:
      - i. Medical record, or
      - ii. Financial records.
- C.** If a medical director or clinical director determines that a patient's treatment requires the behavioral health inpatient facility to restrict the patient's ability to participate in an activity in subsection (B)(3), the medical director or clinical director shall:
1. Document a specific treatment purpose in the patient's medical record that justifies restricting the patient from the activity,
  2. Inform the patient of the reason why the activity is being restricted, and
  3. Inform the patient of the patient's right to file a complaint and the procedure for filing a complaint.
- D.** A patient has the following rights:
1. Not to be discriminated against based on race, national origin, religion, gender, sexual orientation, age, disability, marital status, or diagnosis;
  2. To receive treatment that:
    - a. Supports and respects the patient's individuality, choices, strengths, and abilities;
    - b. Supports the patient's personal liberty and only restricts the patient's personal liberty according to a court order, by the patient's or the patient's representative's general consent, or as permitted in this Chapter; and
    - c. Is provided in the least restrictive environment that meets the patient's treatment needs;
  3. To receive privacy in treatment and care for personal needs, including the right not to be fingerprinted, photographed, or recorded without consent, except:
    - a. A patient may be photographed when admitted to a behavioral health inpatient facility for identification and administrative purposes;
    - b. For a patient receiving treatment according to A.R.S. Title 36, Chapter 37; or
    - c. For video recordings used for security purposes that are maintained only on a temporary basis;
  4. Not to be prevented or impeded from exercising the patient's civil rights unless the patient has been adjudicated incompetent or a court of competent jurisdiction has found that the patient is not able to exercise a specific right or category of rights;
  5. To review, upon written request, the patient's own medical record according to A.R.S. §§12-2293, 12-2294, and 12-2294.01;
  6. To receive a referral to another health care institution if the behavioral health inpatient facility is not authorized or not able to provide physical health services or behavioral health services needed by the patient;
  7. To participate or have the patient's representative participate in the development of a treatment plan or decisions concerning treatment;
  8. To participate or refuse to participate in research or experimental treatment; and
  9. To receive assistance from a family member, the patient's representative, or other individual in understanding, protecting, or exercising the patient's rights.

#### Historical Note

Section R9-10-311, formerly numbered as R9-10-211, renumbered as an emergency effective February 22, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-1). Adopted effective June 14, 1979 (Supp. 79-3). Former Section R9-10-311 repealed, new Section R9-10-311 adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2).



New Section R9-10-311 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

### **R9-10-312. Medical Records**

#### **A.** An administrator shall ensure that:

1. A medical record is established and maintained for each patient according to A.R.S. Title 12, Chapter 13, Article 7.1;
2. An entry in a patient's medical record is:
  - a. Recorded only by a personnel member authorized by policies and procedures to make the entry;
  - b. Dated, legible, and authenticated; and
  - c. Not changed to make the initial entry illegible;
3. An order is:
  - a. Dated when the order is entered in the patient's medical record and includes the time of the order;
  - b. Authenticated by a medical practitioner or behavioral health professional according to policies and procedures; and
  - c. If the order is a verbal order, authenticated by the medical practitioner or behavioral health professional issuing the order;
4. If a rubber-stamp signature or an electronic signature is used to authenticate an order, the individual whose signature the rubber-stamp signature or electronic signature represents is accountable for the use of the rubber-stamp signature or electronic signature;
5. A patient's medical record is available to an individual:
  - a. Authorized according to policies and procedures to access the patient's medical record;
  - b. If the individual is not authorized according to policies and procedures, with the written consent of the patient or the patient's representative, or
  - c. As permitted by law; and
6. A patient's medical record is protected from loss, damage, or unauthorized use.

#### **B.** If a behavioral health inpatient facility maintains patients' medical records electronically, an administrator shall ensure that:

1. Safeguards exist to prevent unauthorized access, and
2. The date and time of an entry in a medical record is recorded by the computer's internal clock.

#### **C.** An administrator shall ensure that a patient's medical record contains:

1. Patient information that includes:
  - a. The patient's name;
  - b. The patient's address;
  - c. The patient's date of birth; and
  - d. Any known allergy, including medication allergies;
2. Medication information that includes:
  - a. Documentation of medication ordered for the patient; and
  - b. Documentation of medication administered to the patient that includes:
    - i. The date and time of administration;
    - ii. The name, strength, dosage, amount, and route of administration;
    - iii. For a medication administered for pain on a PRN basis:
      - (1) An assessment of the patient's pain before administering the medication, and
      - (2) The effect of the medication administered;
    - iv. For a psychotropic medication administered on a PRN basis:

- (1) An assessment of the patient's behavior before administering the psychotropic medication, and
  - (2) The effect of the psychotropic medication administered;
- v. The identification and authentication of the individual administering the medication or providing assistance in the self-administration of the medication; and
- vi. Any adverse reaction the patient has to the medication;
3. If applicable, documented general consent and informed consent by the patient or the patient's representative;
4. If applicable, the name and contact information of the patient's representative and:
  - a. If the patient is 18 years of age or older or an emancipated minor, the document signed by the patient consenting for the patient's representative to act on the patient's behalf; or
  - b. If the patient's representative:
    - i. Has a health care power of attorney established under A.R.S. § 36-3221 or a mental health care power of attorney executed under A.R.S. § 36-3282, a copy of the health care power of attorney or mental health care power of attorney; or
    - ii. Is a legal guardian, a copy of the court order establishing guardianship;
5. The patient's medical history and results of a physical examination or an interval note;
6. If the patient provides a health care directive, the health care directive signed by the patient or the patient's representative;
7. An admitting diagnosis or presenting symptoms;
8. The date of admission and, if applicable, the date of discharge;
9. The name of the admitting medical practitioner or behavioral health professional;
10. Orders;
11. The patient's nursing assessment and behavioral health assessment and any interval notes;
12. Treatment plans;
13. Documentation of behavioral health services and physical health services provided to the patient;
14. Progress notes;
15. If applicable, documentation of restraint or seclusion;
16. If applicable, documentation that evacuation from the behavioral health inpatient facility would cause harm to the patient;
17. The disposition of the patient after discharge;
18. The discharge plan;
19. The discharge summary; and
20. If applicable:
  - a. A laboratory report,
  - b. A radiologic report,
  - c. A diagnostic report, and
  - d. A consultation report.

#### **Historical Note**

Section R9-10-312, formerly numbered as R9-10-212, renumbered as an emergency effective February 22, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-1). Adopted effective June 14, 1979 (Supp. 79-3). Former Section R9-10-312 repealed, new Section R9-10-312 adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-312 made by exempt rulemaking at

19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### **R9-10-313. Transportation; Patient Outings**

- A.** An administrator of a behavioral health inpatient facility that uses a vehicle owned or leased by the behavioral health inpatient facility to provide transportation to a patient shall ensure that:
1. The vehicle:
    - a. Is safe and in good repair,
    - b. Contains a first aid kit,
    - c. Contains drinking water sufficient to meet the needs of each patient present in the vehicle, and
    - d. Contains a working heating and air conditioning system;
  2. Documentation of current vehicle insurance and a record of maintenance performed or a repair of the vehicle is maintained;
  3. A driver of the vehicle:
    - a. Is 21 years of age or older;
    - b. Has a valid driver license;
    - c. Operates the vehicle in a manner that does not endanger a patient in the vehicle;
    - d. Does not leave in the vehicle an unattended:
      - i. Child;
      - ii. Patient who may be a threat to the health, safety, or welfare of the patient or another individual; or
      - iii. Patient who is incapable of independent exit from the vehicle; and
    - e. Ensures the safe and hazard-free loading and unloading of patients; and
  4. Transportation safety is maintained as follows:
    - a. An individual in the vehicle is sitting in a seat and wearing a working seat belt while the vehicle is in motion, and
    - b. Each seat in the vehicle is securely fastened to the vehicle and provides sufficient space for a patient's body.
- B.** An administrator shall ensure that an outing is consistent with the age, developmental level, physical ability, medical condition, and treatment needs of each patient participating in the outing.
- C.** An administrator shall ensure that:
1. At least two personnel members are present on an outing;
  2. In addition to the personnel members required in subsection (C)(1), a sufficient number of personnel members are present on an outing to ensure the health and safety of a patient on the outing;
  3. Each personnel member on the outing has documentation of current training in cardiopulmonary resuscitation according to R9-10-303(C)(1)(e) and first aid training;
  4. Documentation is developed before an outing that includes:
    - a. The name of each patient participating in the outing;
    - b. A description of the outing;
    - c. The date of the outing;
    - d. The anticipated departure and return times;
    - e. The name, address, and, if available, telephone number of the outing destination; and
    - f. If applicable, the license plate number of a vehicle used to provide transportation for the outing;
  5. The documentation described in subsection (C)(4) is updated to include the actual departure and return times

and is maintained for at least 12 months after the date of the outing; and

6. Emergency information for a patient participating in the outing is maintained by a personnel member participating in the outing or in the vehicle used to provide transportation for the outing and includes:
  - a. The patient's name;
  - b. Medication information, including the name, dosage, route of administration, and directions for each medication needed by the patient during the anticipated duration of the outing;
  - c. The patient's allergies; and
  - d. The name and telephone number of a designated individual, to notify in case of an emergency, who is present on the behavioral health inpatient facility's premises.

#### **Historical Note**

Section R9-10-313, formerly numbered as R9-10-213, renumbered as an emergency effective February 22, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-1). Adopted effective June 14, 1979 (Supp. 79-3). Former Section R9-10-313 repealed, new Section R9-10-313 adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-313 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### **R9-10-314. Physical Health Services**

- A.** An administrator shall ensure that:
1. Medical services are provided under the direction of a physician;
  2. Nursing services are provided under the direction of a registered nurse; and
  3. If a behavioral health inpatient facility is authorized to provide:
    - a. Clinical laboratory services, as defined in R9-10-101, the behavioral health inpatient facility complies with the requirements for clinical laboratory services in R9-10-219; or
    - b. Radiology services or diagnostic imaging services, the behavioral health inpatient facility complies with the requirements in R9-10-220.
- B.** An administrator shall ensure that, if a patient requires immediate medical services to ensure the patient's health and safety that the behavioral health inpatient facility is not authorized or not able to provide, a personnel member arranges for the patient to be transported to a hospital, another health care institution, or a health care provider where the medical services can be provided.

#### **Historical Note**

Section R9-10-314, formerly numbered as R9-10-214, renumbered as an emergency effective February 22, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-1). Adopted effective June 14, 1979 (Supp. 79-3). Former Section R9-10-314 repealed, new Section R9-10-314 adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-314 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014

(Supp. 14-2).

**R9-10-315. Behavioral Health Services**

- A.** An administrator shall ensure that:
1. Behavioral health services listed in the behavioral health inpatient facility's scope of services are provided to meet the needs of a patient;
  2. When behavioral health services are:
    - a. Listed in the behavioral health inpatient facility's scope of services, the behavioral health services are provided on the behavioral health inpatient facility's premises; and
    - b. Provided in a setting or activity with more than one patient participating, before a patient participates, the diagnoses, treatment needs, developmental levels, social skills, verbal skills, and personal histories, including any history of physical abuse or sexual abuse, of the patients participating are reviewed to ensure that the:
      - i. Health and safety of each patient is protected, and
      - ii. Treatment needs of each patient participating in the setting or activity are being met; and
  3. A patient does not share any space, participate in any activity or treatment, or verbally or physically interact with any other patient that, based on the other patient's documented diagnosis, treatment needs, developmental levels, social skills, verbal skills, and personal history, may present a threat to the patient's health and safety.
- B.** An administrator shall ensure that counseling is:
1. Offered as described in the behavioral health inpatient facility's scope of services,
  2. Provided according to the frequency and number of hours identified in the patient's treatment plan, and
  3. Provided by a behavioral health professional or a behavioral health technician.
- C.** An administrator shall ensure that each counseling session is documented in a patient's medical record to include:
1. The date of the counseling session;
  2. The amount of time spent in the counseling session;
  3. Whether the counseling was individual counseling, family counseling, or group counseling;
  4. The treatment goals addressed in the counseling session; and
  5. The signature of the personnel member who provided the counseling and the date signed.
- D.** An administrator of a behavioral health inpatient facility authorized to provide pre-petition screening shall ensure pre-petition screening is provided according to the pre-petition screening requirements in A.R.S. Title 36, Chapter 5.
- E.** An administrator of a behavioral health inpatient facility authorized to provide court-ordered evaluation shall ensure that court-ordered evaluation is provided according to the court-evaluation requirements in A.R.S. Title 36, Chapter 5.
- F.** An administrator is not required to comply with the following provisions in this Chapter for a patient receiving court-ordered evaluation:
1. Admission requirements in R9-10-307,
  2. Patient assessment requirements in R9-10-307,
  3. Treatment plan requirements in R9-10-308, and
  4. Discharge requirements in R9-10-309.
- G.** An administrator of a behavioral health inpatient facility authorized to provide court-ordered treatment shall ensure that court-ordered treatment is provided according to the court-ordered treatment requirements in A.R.S. Title 36, Chapter 5.

**Historical Note**

Section R9-10-315, formerly numbered as R9-10-215, renumbered as an emergency effective February 22, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-1). Adopted effective June 14, 1979 (Supp. 79-3). Former Section R9-10-315 repealed, new Section R9-10-315 adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-315 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-316. Seclusion; Restraint**

- A.** An administrator shall ensure that restraint is provided according to the requirements in subsection (C).
- B.** An administrator of a behavioral health inpatient facility authorized to provide seclusion shall ensure that:
1. Seclusion is provided according to the requirements in subsection (C);
  2. If a patient is placed in seclusion, the room used for seclusion:
    - a. Is approved for use as a seclusion room by the Department;
    - b. Is not used as a patient's bedroom or a sleeping area;
    - c. Allows full view of the patient in all areas of the room;
    - d. Is free of hazards, such as unprotected light fixtures or electrical outlets;
    - e. Contains at least 60 square feet of floor space; and
    - f. Except as provided in subsection (B)(3), contains a non-adjustable bed that:
      - i. Consists of a mattress on a solid platform that is:
        - (1) Constructed of a durable, non-hazardous material; and
        - (2) Raised off of the floor;
      - ii. Does not have wire springs or a storage drawer; and
      - iii. Is securely anchored in place;
  3. If a room used for seclusion does not contain a non-adjustable bed required in subsection (B)(2)(f):
    - a. A piece of equipment is available that:
      - i. Is commercially manufactured to safely and humanely restrain a patient's body;
      - ii. Provides support to the trunk and head of a patient's body;
      - iii. Provides restraint to the trunk of a patient's body;
      - iv. Is able to restrict movement of a patient's arms, legs, body, and head;
      - v. Allows a patient's body to recline; and
      - vi. Does not inflict harm on a patient's body; and
    - b. Documentation of the manufacturer's specifications for the piece of equipment in subsection (B)(3)(a) is maintained; and
  4. A seclusion room may be used for services or activities other than seclusion if:
    - a. A sign stating the service or activity scheduled or being provided in the room is conspicuously posted outside the room;
    - b. No permanent equipment other than the bed required in subsection (B)(2)(f) is in the room;
    - c. Policies and procedures:

- i. Delineate which services or activities other than seclusion may be provided in the room,
    - ii. List what types of equipment or supplies may be placed in the room for the delineated services, and
    - iii. Provide for the prompt removal of equipment and supplies from the room before the room is used for seclusion; and
  - d. The sign required in subsection (B)(4)(a) and equipment and supplies in the room, other than the bed required in subsection (B)(2)(f), are removed before use.
- C. An administrator shall ensure that:
1. Policies and procedures for providing restraint or seclusion are established, documented, and implemented to protect the health and safety of a patient that:
    - a. Establish the process for patient assessment, including identification of a patient's medical conditions and criteria for the on-going monitoring of any identified medical condition;
    - b. Identify each type of restraint or seclusion used and include for each type of restraint or seclusion used:
      - i. The qualifications of a personnel member who can:
        - (1) Order the restraint or seclusion,
        - (2) Place a patient in the restraint or seclusion,
        - (3) Monitor a patient in the restraint or seclusion,
        - (4) Evaluate a patient's physical and psychological well-being after being placed in the restraint or seclusion and when released from the restraint or seclusion, or
        - (5) Renew the order for restraint or seclusion;
      - ii. On-going training requirements for a personnel member who has direct patient contact while the patient is in a restraint or seclusion; and
      - iii. Criteria for monitoring and assessing a patient including:
        - (1) Frequencies of monitoring and assessment based on a patient's medical condition and risks associated with the specific restraint or seclusion;
        - (2) For the renewal of an order for restraint or seclusion, whether an assessment is required before the order is renewed and, if an assessment is required, who may conduct the assessment;
        - (3) Assessment content, which may include, depending on a patient's condition, the patient's vital signs, respiration, circulation, hydration needs, elimination needs, level of distress and agitation, mental status, cognitive functioning, neurological functioning, and skin integrity;
        - (4) If a mechanical restraint is used, how often the mechanical restraint is loosened; and
        - (5) A process for meeting a patient's nutritional needs and elimination needs;
    - c. Establish the criteria and procedures for renewing an order for restraint or seclusion;
    - d. Establish procedures for internal review of the use of restraint or seclusion; and
  - e. Establish medical record and personnel record documentation requirements for restraint and seclusion, if applicable;
2. An order for restraint or seclusion is:
    - a. Obtained from a physician or registered nurse practitioner, and
    - b. Not written as a standing order or on an as-needed basis;
  3. Restraint or seclusion is:
    - a. Not used as a means of coercion, discipline, convenience, or retaliation;
    - b. Only used when all of the following conditions are met:
      - i. Except as provided in subsection (C)(4), after obtaining an order for the restraint or seclusion;
      - ii. For the management of a patient's aggressive, violent, or self-destructive behavior;
      - iii. When less restrictive interventions have been determined to be ineffective; and
      - iv. To ensure the immediate physical safety of the patient, to prevent imminent harm to the patient or another individual, or to stop physical harm to another individual; and
    - c. Discontinued at the earliest possible time;
  4. If as a result of a patient's aggressive, violent, or self-destructive behavior, harm to the patient or another individual is imminent or the patient or another individual is being physically harmed, a personnel member:
    - a. May initiate an emergency application of restraint or seclusion for the patient before obtaining an order for the restraint or seclusion, and
    - b. Obtains an order for the restraint or seclusion of the patient during the emergency application of the restraint or seclusion;
  5. An order for restraint or seclusion includes:
    - a. The name of the physician or registered nurse practitioner ordering the restraint or seclusion;
    - b. The date and time that the restraint or seclusion was ordered;
    - c. The specific restraint or seclusion ordered;
    - d. If a drug is ordered as a chemical restraint, the drug's name, strength, dosage, and route of administration;
    - e. The specific criteria for release from restraint or seclusion without an additional order; and
    - f. The maximum duration authorized for the restraint or seclusion;
  6. An order for restraint or seclusion is limited to the duration of the emergency situation and does not exceed three continuous hours;
  7. If an order for restraint or seclusion of a patient is not provided by the patient's attending physician, the patient's attending physician is notified as soon as possible;
  8. A medical practitioner or personnel member does not participate in restraint or seclusion, assess or monitor a patient during restraint or seclusion, or evaluate a patient after restraint or seclusion, and a physician or registered nurse practitioner does not order restraint or seclusion, until the medical practitioner or personnel member, completes education and training that:
    - a. Includes:
      - i. Techniques to identify medical practitioner, personnel member, and patient behaviors, events, and environmental factors that may trigger circumstances that require restraint or seclusion;

- ii. The use of nonphysical intervention skills, such as de-escalation, mediation, conflict resolution, active listening, and verbal and observational methods;
  - iii. Techniques for identifying the least restrictive intervention based on an assessment of the patient's medical or behavioral health condition;
  - iv. The safe use of restraint and the safe use of seclusion, including training in how to recognize and respond to signs of physical and psychological distress in a patient who is restrained or secluded;
  - v. Clinical identification of specific behavioral changes that indicate that the restraint or seclusion is no longer necessary;
  - vi. Monitoring and assessing a patient while the patient is in restraint or seclusion according to policies and procedures; and
  - vii. Except for the medical practitioner, training exercises in which the personnel member successfully demonstrates the techniques that the medical practitioner or personnel member has learned for managing emergency situations; and
- b. Is provided by individuals qualified according to policies and procedures;
9. When a patient is placed in restraint or seclusion:
- a. The restraint or seclusion is conducted according to policies and procedures;
  - b. The restraint or seclusion is proportionate and appropriate to the severity of the patient's behavior and the patient's:
    - i. Chronological and developmental age;
    - ii. Size;
    - iii. Gender;
    - iv. Physical condition;
    - v. Medical condition;
    - vi. Psychiatric condition; and
    - vii. Personal history, including any history of physical or sexual abuse;
  - c. The physician or registered nurse practitioner who ordered the restraint or seclusion is available for consultation throughout the duration of the restraint or seclusion;
  - d. The patient is monitored and assessed according to policies and procedures;
  - e. A physician or registered nurse assesses the patient within one hour after the patient is placed in the restraint or seclusion and determines:
    - i. The patient's current behavior,
    - ii. The patient's reaction to the restraint or seclusion used,
    - iii. The patient's medical and behavioral condition, and
    - iv. Whether to continue or terminate the restraint or seclusion;
  - f. The patient is given the opportunity:
    - i. To eat during mealtime, and
    - ii. To use the toilet; and
  - g. The restraint or seclusion is discontinued at the earliest possible time, regardless of the length of time identified in the order;
10. A medical practitioner or personnel member documents the following information in a patient's medical record before the end of the shift in which the patient is placed in restraint or seclusion or, if the patient's restraint or seclusion does not end during the shift in which it began, during the shift in which the patient's restraint or seclusion ends:
- a. The emergency situation that required the patient to be restrained or put in seclusion;
  - b. The times the patient's restraint or seclusion actually began and ended;
  - c. The time of the assessment required in subsection (C)(9)(e);
  - d. The monitoring required in subsection (C)(9)(d);
  - e. The names of the medical practitioners and personnel members with direct patient contact while the patient was in the restraint or seclusion;
  - f. The times the patient was given the opportunity to eat or use the toilet according to subsection (C)(9)(f); and
  - g. The patient evaluation required in subsection (C)(12);
11. If an emergency situation continues beyond the time limit of an order for restraint or seclusion, the order is renewed according to policies and procedures that include:
- a. The specific criteria for release from restraint or seclusion without an additional order, and
  - b. The maximum duration authorized for the restraint or seclusion; and
12. A patient is evaluated after restraint or seclusion is no longer being used for the patient.

#### Historical Note

Section R9-10-316, formerly numbered as R9-10-216, renumbered as an emergency effective February 22, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-1). Adopted effective June 14, 1979 (Supp. 79-3). Former Section R9-10-316 repealed, new Section R9-10-316 adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-316 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-317. Behavioral Health Observation/Stabilization Services

- A. An administrator of a behavioral health inpatient facility authorized to provide behavioral health observation/stabilization services shall comply with the requirements for behavioral health observation/stabilization services in R9-10-1012.
- B. If a behavioral health inpatient facility is authorized to provide behavioral health observation/stabilization services to individuals under 18 years of age, an administrator shall ensure that, in addition to complying with the requirements in R9-10-1012, the behavioral health inpatient facility complies with the requirements for a patient under 18 years of age, personnel records, and physical plant in R9-10-318.

#### Historical Note

Section R9-10-317, formerly numbered as R9-10-221, renumbered as an emergency effective February 22, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-1). Adopted effective June 14, 1979 (Supp. 79-3). Former Section R9-10-317 repealed, new Section R9-10-317 adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-317 made by exempt rulemaking at

19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2).  
Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-318. Child and Adolescent Residential Treatment Services**

- A.** An administrator of a behavioral health inpatient facility authorized to provide child and adolescent residential treatment services shall:
1. If abuse, neglect, or exploitation of a patient under 18 years of age is alleged or suspected to have occurred before the patient was accepted or while the patient is not on the premises and not receiving services from an employee or personnel member of the behavioral health inpatient facility, report the alleged or suspected abuse, neglect, or exploitation of the patient according to A.R.S. § 13-3620;
  2. If the administrator has a reasonable basis, according to A.R.S. § 13-3620, to believe that abuse, neglect, or exploitation of a patient under 18 years of age has occurred on the premises or while the patient is receiving services from an employee or a personnel member:
    - a. If applicable, take immediate action to stop the suspected abuse, neglect, or exploitation;
    - b. Report the suspected abuse, neglect, or exploitation of the patient according to A.R.S. § 13-3620;
    - c. Document:
      - i. The suspected abuse, neglect, or exploitation;
      - ii. Any action taken according to subsection (A)(2)(a); and
      - iii. The report in subsection (A)(2)(b);
    - d. Maintain the documentation in subsection (A)(2)(c) for at least 12 months after the date of the report in subsection (A)(2)(b);
    - e. Initiate an investigation of the suspected abuse, neglect, or exploitation and document the following information within five working days after the report required in subsection (A)(2)(b):
      - i. The dates, times, and description of the suspected abuse, neglect, or exploitation;
      - ii. A description of any injury to the patient related to the suspected abuse or neglect and any change to the patient's physical, cognitive, functional, or emotional condition;
      - iii. The names of witnesses to the suspected abuse, neglect, or exploitation; and
      - iv. The actions taken by the administrator to prevent the suspected abuse, neglect, or exploitation from occurring in the future; and
    - f. Maintain a copy of the documented information required in subsection (A)(2)(e) and any other information obtained during the investigation for at least 12 months after the date the investigation was initiated;
  3. If a patient who is under 18 years of age is absent and the absence is unauthorized as determined according to the criteria in R9-10-303(H), within an hour after determining that the patient's absence is unauthorized, notify:
    - a. Except as provided in subsection (A)(3)(b), the patient's parent or legal guardian; and
    - b. For a patient who is under a court's jurisdiction, the appropriate court or a person designated by the appropriate court;
  4. Document the notification in subsection (A)(3) in the patient's medical record and the written log required in R9-10-303(I)(3);
  5. In addition to the personnel records requirements in R9-10-306(F), ensure that a personnel record for each employee, volunteer, and student contains documentation of the individual's compliance with the fingerprinting requirements in A.R.S. § 36-425.03;
  6. Ensure that the patient's representative for a patient who is under 18 years of age:
    - a. Except in an emergency, either consents to or refuses treatment;
    - b. May refuse or withdraw consent to treatment before treatment is initiated, unless the treatment is ordered by a court according to A.R.S. Title 36, Chapter 5 or A.R.S. § 8-341.01; is necessary to save the patient's life or physical health; or is provided according to A.R.S. § 36-512;
    - c. Except in an emergency, is informed of alternatives to a proposed psychotropic medication and the associated risks and possible complications of the proposed psychotropic medication;
    - d. Is informed of the following:
      - i. The policy on health care directives, and
      - ii. The patient complaint process; and
    - e. Except as otherwise permitted by law, provides written consent to the release of information in the patient's:
      - i. Medical record, or
      - ii. Financial records;
  7. In addition to the restrictions provided in R9-10-311(C), ensure that a parent of a patient under 18 years of age is allowed to restrict the patient from:
    - a. Associating with individuals of the patient's choice, receiving visitors, and making telephone calls during the hours established by the behavioral health inpatient facility;
    - b. Having privacy in correspondence, communication, visitation, financial affairs, and personal hygiene; and
    - c. Sending and receiving uncensored and unopened mail;
  8. Establish, document, and implement policies and procedures to ensure that a patient is protected from the following from other patients at the behavioral health inpatient facility:
    - a. Threats,
    - b. Ridicule,
    - c. Verbal harassment,
    - d. Punishment, or
    - e. Abuse;
  9. Ensure that:
    - a. The interior of the behavioral health inpatient facility has furnishings and decorations appropriate to the ages of the patients receiving services at the behavioral health inpatient facility;
    - b. A patient older than three years of age does not sleep in a crib;
    - c. Clean and non-hazardous toys, educational materials, and physical activity equipment are available and accessible to patients in a quantity sufficient to meet each patient's needs and are appropriate to each patient's age, developmental level, and treatment needs; and
    - d. A patient's educational needs are met by establishing and providing an educational component, approved in writing by the Arizona Department of Education;
  10. In addition to the requirements for seclusion or restraint in R9-10-316, ensure that:

- a. An order for restraint or seclusion is limited to the duration of the emergency situation and does not exceed:
    - i. Two continuous hours for a patient who is between the ages of nine and 17, or
    - ii. One continuous hour for a patient who is younger than nine; and
  - b. Requirements are established for notifying the parent or guardian of a patient who is under 18 years of age and who is restrained or secluded; and
11. Prohibit a patient under 18 years of age from possessing or using tobacco products on the premises.
- B.** An administrator of a behavioral health inpatient facility authorized to provide child and adolescent residential treatment services may continue to provide behavioral health services to a patient who is 18 years of age or older:
1. If the patient:
    - a. Was admitted to the behavioral health inpatient facility before the patient's 18th birthday,
    - b. Is not 21 years of age or older, and
    - c. Is completing high school or a high school equivalency diploma or participating in a job training program; or
  2. Through the last calendar day of the month of the patient's 18th birthday.

#### Historical Note

Section R9-10-318, formerly numbered as R9-10-222, renumbered as an emergency effective February 22, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-1). Adopted effective June 14, 1979 (Supp. 79-3). Former Section R9-10-318 repealed, new Section R9-10-318 adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-318 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). R9-10-318 renumbered to R9-10-319; new Section made by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-319. Detoxification Services

An administrator of a behavioral health inpatient facility authorized to provide detoxification services shall ensure that:

1. Detoxification services are available;
2. Policies and procedures state:
  - a. Whether the behavioral health inpatient facility is authorized to provide involuntary, court-ordered alcohol treatment;
  - b. Whether the behavioral health inpatient facility includes a local alcoholism reception center, as defined in A.R.S. § 36-2021;
  - c. The types of substances for which the behavioral health inpatient facility provides detoxification services;
  - d. The detoxification process or processes used by the behavioral health inpatient facility; and
  - e. When an adjustable bed can be used by a patient and what actions are necessary, including supervision, to protect the patient's health and safety when the patient is in an adjustable bed; and
3. A physician or registered nurse practitioner with skills and knowledge in providing detoxification services is present at the behavioral health inpatient facility or on-call.

#### Historical Note

Section R9-10-319, formerly numbered as R9-10-223,

renumbered as an emergency effective February 22, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-1). Adopted effective June 14, 1979 (Supp. 79-3). Former Section R9-10-319 repealed, new Section R9-10-319 adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-319 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). R9-10-319 renumbered to R9-10-320; new Section R9-10-319 renumbered from R9-10-318 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-320. Medication Services

**A.** An administrator shall ensure that policies and procedures for medication services:

1. Include:
  - a. A process for providing information to a patient about medication prescribed for the patient including:
    - i. The prescribed medication's anticipated results,
    - ii. The prescribed medication's potential adverse reactions,
    - iii. The prescribed medication's potential side effects, and
    - iv. Potential adverse reactions that could result from not taking the medication as prescribed;
  - b. Procedures for preventing, responding to, and reporting:
    - i. A medication error,
    - ii. An adverse reaction to a medication, or
    - iii. A medication overdose;
  - c. Procedures to ensure that a patient's medication regimen is reviewed by a medical practitioner to ensure the medication regimen meets the patient's needs;
  - d. Procedures for documenting medication administration and assistance in the self-administration of medication;
  - e. Procedures for assisting a patient in obtaining medication; and
  - f. If applicable, procedures for providing medication administration or assistance in the self-administration of medication off the premises; and
2. Specify a process for review through the quality management program of:
  - a. A medication administration error, and
  - b. An adverse reaction to a medication.

**B.** If a behavioral health inpatient facility provides medication administration, an administrator shall ensure that:

1. Policies and procedures for medication administration:
  - a. Are reviewed and approved by a medical practitioner;
  - b. Specify the individuals who may:
    - i. Order medication, and
    - ii. Administer medication;
  - c. Ensure that medication is administered to a patient only as prescribed; and
  - d. Cover the documentation of a patient's refusal to take prescribed medication in the patient's medical record;
2. Verbal orders for medication services are taken by a nurse, unless otherwise provided by law; and
3. A medication administered to a patient is:
  - a. Administered in compliance with an order, and
  - b. Documented in the patient's medical record.

- C. If a behavioral health inpatient facility provides assistance in the self-administration of medication, an administrator shall ensure that:
1. A patient's medication is stored by the behavioral health inpatient facility;
  2. The following assistance is provided to a patient:
    - a. A reminder when it is time to take the medication;
    - b. Opening the medication container for the patient;
    - c. Observing the patient while the patient removes the medication from the container;
    - d. Verifying that the medication is taken as ordered by the patient's medical practitioner by confirming that:
      - i. The patient taking the medication is the individual stated on the medication container label,
      - ii. The patient is taking the dosage of the medication stated on the medication container label or according to an order from a medical practitioner dated later than the date on the medication container label, and
      - iii. The patient is taking the medication at the time stated on the medication container label or according to an order from a medical practitioner dated later than the date on the medication container label; or
    - e. Observing the patient while the patient takes the medication;
  3. Policies and procedures for assistance in the self-administration of medication are reviewed and approved by a medical practitioner or registered nurse;
  4. Training for a personnel member, other than a medical practitioner or registered nurse, in assistance in the self-administration of medication:
    - a. Is provided by a medical practitioner or registered nurse or an individual trained by a medical practitioner or registered nurse; and
    - b. Includes:
      - i. A demonstration of the personnel member's skills and knowledge necessary to provide assistance in the self-administration of medication,
      - ii. Identification of medication errors and medical emergencies related to medication that require emergency medical intervention, and
      - iii. The process for notifying the appropriate entities when an emergency medical intervention is needed;
  5. A personnel member, other than a medical practitioner or registered nurse, completes the training in subsection (C)(4) before the personnel member provides assistance in the self-administration of medication; and
  6. Assistance in the self-administration of medication provided to a patient:
    - a. Is in compliance with an order, and
    - b. Is documented in the patient's medical record.
- D. An administrator shall ensure that:
1. A current drug reference guide is available for use by personnel members;
  2. A current toxicology reference guide is available for use by personnel members; and
  3. If pharmaceutical services are provided on the premises:
    - a. A committee, composed of at least one physician, one pharmacist, and other personnel members as determined by policies and procedures, is established to:
      - i. Develop a drug formulary,
      - ii. Update the drug formulary at least once every 12 months,
      - iii. Develop medication usage and medication substitution policies and procedures, and
      - iv. Specify which medications and medication classifications are required to be stopped automatically after a specific time period unless the ordering medical practitioner specifically orders otherwise;
    - b. The pharmaceutical services are provided under the direction of a pharmacist;
    - c. The pharmaceutical services comply with A.R.S. Title 36, Chapter 27; A.R.S. Title 32, Chapter 18; and 4 A.A.C. 23; and
    - d. A copy of the pharmacy license is provided to the Department upon request.
- E. When medication is stored at a behavioral health inpatient facility, an administrator shall ensure that:
1. Medication is stored in a separate locked room, closet, or self-contained unit used only for medication storage;
  2. Medication is stored according to the instructions on the medication container; and
  3. Policies and procedures are established, documented, and implemented for:
    - a. Receiving, storing, inventorying, tracking, dispensing, and discarding medication, including expired medication;
    - b. Discarding or returning prepackaged and sample medication to the manufacturer if the manufacturer requests the discard or return of the medication;
    - c. A medication recall and notification of patients who received recalled medication; and
    - d. Storing, inventorying, and dispensing controlled substances.
- F. An administrator shall ensure that a personnel member immediately reports a medication error or a patient's adverse reaction to a medication to the medical practitioner who ordered the medication and, if applicable, the behavioral health inpatient facility's clinical director.

#### Historical Note

Section R9-10-320, formerly numbered as R9-10-231, renumbered as an emergency effective February 22, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-1). Adopted effective June 14, 1979 (Supp. 79-3). Former Section R9-10-320 repealed, new Section R9-10-320 adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-320 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). R9-10-320 renumbered to R9-10-321; new Section R9-10-320 renumbered from R9-10-319 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-321. Food Services

A. An administrator shall ensure that:

1. The behavioral health inpatient facility obtains a license or permit as a food establishment under 9 A.A.C. 8, Article 1;
2. A copy of the behavioral health inpatient facility's food establishment license or permit is maintained;
3. If a behavioral health inpatient facility contracts with a food establishment, as established in 9 A.A.C. 8, Article 1, to prepare and deliver food to the behavioral health inpatient facility:



- a. A copy of the contracted food establishment's license or permit under 9 A.A.C. 8, Article 1 is maintained by the behavioral health inpatient facility; and
  - b. The behavioral health inpatient facility is able to store, refrigerate, and reheat food to meet the dietary needs of a patient;
  4. A registered dietitian is employed full-time, part-time, or as a consultant; and
  5. If a registered dietitian is not employed full-time, an individual is designated as a director of food services who consults with a registered dietitian as often as necessary to meet the nutritional needs of the patients.
- B.** A registered dietitian or director of food services shall ensure that:
1. A food menu:
    - a. Is prepared at least one week in advance,
    - b. Includes the foods to be served each day,
    - c. Is conspicuously posted at least one calendar day before the first meal on the food menu will be served,
    - d. Includes any food substitution no later than the morning of the day of meal service with a food substitution, and
    - e. Is maintained for at least 60 calendar days after the last day included in the food menu;
  2. Meals and snacks provided by the behavioral health inpatient facility are served according to posted menus;
  3. Meals and snacks for each day are planned using:
    - a. The applicable guidelines in <http://www.health.gov/dietaryguidelines/2010.asp>, and
    - b. Preferences for meals and snacks obtained from patients;
  4. A patient is provided:
    - a. A diet that meets the patient's nutritional needs as specified in the patient's assessment or treatment plan;
    - b. Three meals a day with not more than 14 hours between the evening meal and breakfast except as provided in subsection (B)(4)(d);
    - c. The option to have a daily evening snack identified in subsection (B)(4)(d)(ii) or other snack; and
    - d. The option to extend the time span between the evening meal and breakfast from 14 hours to 16 hours if:
      - i. A patient group agrees; and
      - ii. The patient is offered an evening snack that includes meat, fish, eggs, cheese, or other protein, and a serving from either the fruit and vegetable food group or the bread and cereal food group;
  5. A patient requiring assistance to eat is provided with assistance that recognizes the patient's nutritional, physical, and social needs, including the use of adaptive eating equipment or utensils; and
  6. Water is available and accessible to patients.
- C.** An administrator shall ensure that food is obtained, prepared, served, and stored as follows:
1. Food is free from spoilage, filth, or other contamination and is safe for human consumption;
  2. Food is protected from potential contamination;
  3. Food is prepared:
    - a. Using methods that conserve nutritional value, flavor, and appearance; and
    - b. In a form to meet the needs of a patient such as cut, chopped, ground, pureed, or thickened;
  4. Potentially hazardous food is maintained as follows:
    - a. Foods requiring refrigeration are maintained at 41° F or below; and
    - b. Foods requiring cooking are cooked to heat all parts of the food to a temperature of at least 145° F for 15 seconds, except that:
      - i. Ground beef and ground meats are cooked to heat all parts of the food to at least 155° F;
      - ii. Poultry, poultry stuffing, stuffed meats, and stuffing that contains meat are cooked to heat all parts of the food to at least 165° F;
      - iii. Pork and any food containing pork are cooked to heat all parts of the food to at least 155° F;
      - iv. Raw shell eggs for immediate consumption are cooked to at least 145° F for 15 seconds and any food containing raw shell eggs is cooked to heat all parts of the food to at least 155° F;
      - v. Roast beef and beef steak are cooked to an internal temperature of at least 155° F; and
      - vi. Leftovers are reheated to a temperature of at least 165° F;
  5. A refrigerator contains a thermometer, accurate to plus or minus 3° F, placed at the warmest part of the refrigerator;
  6. Frozen foods are stored at a temperature of 0° F or below; and
  7. Tableware, utensils, equipment, and food-contact surfaces are clean and in good repair.

#### Historical Note

Section R9-10-321, formerly numbered as R9-10-232, renumbered as an emergency effective February 22, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-1). Adopted effective June 14, 1979 (Supp. 79-3). Former Section R9-10-321 repealed, new Section R9-10-321 adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-321 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). R9-10-321 renumbered to R9-10-322; new Section R9-10-321 renumbered from R9-10-320 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-322. Emergency and Safety Standards

- A.** An administrator shall ensure that a behavioral health inpatient facility has:
1. A fire alarm system installed according to the National Fire Protection Association 72: National Fire Alarm and Signaling Code, incorporated by reference in A.A.C. R9-1-412, and a sprinkler system installed according to the National Fire Protection Association 13 Standard for the Installation of Sprinkler Systems, incorporated by reference in A.A.C. R9-1-412, that are in working order; or
  2. An alternative method to ensure a patient's safety, documented and approved by the local jurisdiction.
- B.** An administrator shall ensure that:
1. A disaster plan is developed, documented, maintained in a location accessible to personnel members and other employees, and, if necessary, implemented that includes:
    - a. When, how, and where patients will be relocated;
    - b. How a patient's medical record will be available to individuals providing services to the patient during a disaster;
    - c. A plan to ensure each patient's medication will be available to administer to the patient during a disaster; and

- d. A plan for obtaining food and water for individuals present in the behavioral health inpatient facility or the behavioral health inpatient facility's relocation site during a disaster;
- 2. The disaster plan required in subsection (B)(1) is reviewed at least once every 12 months;
- 3. Documentation of a disaster plan review required in subsection (B)(2) is created, is maintained for at least 12 months after the date of the disaster plan review, and includes:
  - a. The date and time of the disaster plan review;
  - b. The name of each personnel member, employee, volunteer, or student participating in the disaster plan review;
  - c. A critique of the disaster plan review; and
  - d. If applicable, recommendations for improvement;
- 4. A disaster drill for employees is conducted on each shift at least once every three months and documented;
- 5. An evacuation drill for employees and patients:
  - a. Is conducted at least once every six months; and
  - b. Includes all individuals on the premises except for:
    - i. A patient whose medical record contains documentation that evacuation from the behavioral health inpatient facility would cause harm to the patient, and
    - ii. Sufficient personnel members to ensure the health and safety of patients not evacuated according to subsection (B)(5)(b)(i);
- 6. Documentation of each evacuation drill is created, is maintained for at least 12 months after the date of the evacuation drill, and includes:
  - a. The date and time of the evacuation drill;
  - b. The amount of time taken for employees and patients to evacuate to a designated area;
  - c. If applicable:
    - i. An identification of patients needing assistance for evacuation, and
    - ii. An identification of patients who were not evacuated;
  - d. Any problems encountered in conducting the evacuation drill; and
  - e. Recommendations for improvement, if applicable; and
- 7. An evacuation path is conspicuously posted on each hallway of each floor of the behavioral health inpatient facility.
- C. An administrator shall:
  - 1. Obtain a fire inspection conducted according to the time-frame established by the local fire department or the State Fire Marshal,
  - 2. Make any repairs or corrections stated on the fire inspection report, and
  - 3. Maintain documentation of a current fire inspection.

#### Historical Note

Section R9-10-322, formerly numbered as R9-10-233, renumbered as an emergency effective February 22, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-1). Adopted effective June 14, 1979 (Supp. 79-3). Former Section R9-10-322 repealed, new Section R9-10-322 adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-322 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). R9-10-322 renumbered to R9-10-323; new Section R9-

10-322 renumbered from R9-10-321 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-323. Environmental Standards

- A. An administrator shall ensure that:
  - 1. The premises and equipment are:
    - a. Cleaned and, if applicable, disinfected according to policies and procedures designed to prevent, minimize, and control illness or infection; and
    - b. Free from a condition or situation that may cause a patient or other individual to suffer physical injury;
  - 2. A pest control program is implemented and documented;
  - 3. Biohazardous medical waste is identified, stored, and disposed of according to 18 A.A.C. 13, Article 14 and policies and procedures;
  - 4. Equipment used at the behavioral health inpatient facility is:
    - a. Maintained in working order;
    - b. Tested and calibrated according to the manufacturer's recommendations or, if there are no manufacturer's recommendations, as specified in policies and procedures; and
    - c. Used according to the manufacturer's recommendations;
  - 5. Documentation of equipment testing, calibration, and repair is maintained for at least 12 months after the date of the testing, calibration, or repair;
  - 6. Garbage and refuse are:
    - a. In areas used for food storage, food preparation, or food service, stored in covered containers lined with plastic bags;
    - b. In areas not used for food storage, food preparation, or food service, stored:
      - i. According to the requirements in subsection (6)(a), or
      - ii. In a paper-lined container that is cleaned and sanitized as often as necessary to ensure that the container is clean; and
    - c. Removed from the premises at least once a week;
  - 7. Heating and cooling systems maintain the behavioral health inpatient facility at a temperature between 70° F and 84° F;
  - 8. Common areas:
    - a. Are lighted to assure the safety of patients, and
    - b. Have lighting sufficient to allow personnel members to monitor patient activity;
  - 9. Hot water temperatures are maintained between 95° F and 120° F in the areas of a behavioral health inpatient facility used by patients;
  - 10. The supply of hot and cold water is sufficient to meet the personal hygiene needs of patients and the cleaning and sanitation requirements in this Article;
  - 11. Soiled linen and soiled clothing stored by the behavioral health inpatient facility are maintained separate from clean linen and clothing and stored in closed containers away from food storage, kitchen, and dining areas;
  - 12. Oxygen containers are secured in an upright position;
  - 13. Poisonous or toxic materials stored by the behavioral health inpatient facility are maintained in labeled containers in a locked area separate from food preparation and storage, dining areas, and medications and are inaccessible to patients;
  - 14. Combustible or flammable liquids and hazardous materials stored by a behavioral health inpatient facility are stored in the original labeled containers or safety containers in a locked area inaccessible to patients;

15. If pets or animals are allowed in the behavioral health inpatient facility, pets or animals are:
    - a. Controlled to prevent endangering the patients and to maintain sanitation;
    - b. Licensed consistent with local ordinances; and
    - c. For a dog or cat, vaccinated against rabies;
  16. If a water source that is not regulated under 18 A.A.C. 4 by the Arizona Department of Environmental Quality is used:
    - a. The water source is tested at least once every 12 months for total coliform bacteria and fecal coliform or *E. coli* bacteria;
    - b. If necessary, corrective action is taken to ensure the water is safe to drink; and
    - c. Documentation of testing is maintained for at least 12 months after the date of the test; and
  17. If a non-municipal sewage system is used, the sewage system is in working order and is maintained according to applicable state laws and rules.
- B.** An administrator shall ensure that:
1. Smoking tobacco products is not permitted within a behavioral health inpatient facility; and
  2. Except as provided in R9-10-318(A)(11), smoking tobacco products may be permitted on the premises outside a behavioral health inpatient facility if:
    - a. Signs designating smoking areas are conspicuously posted, and
    - b. Smoking is prohibited in areas where combustible materials are stored or in use.
- C.** If a swimming pool is located on the premises, an administrator shall ensure that:
1. At least one personnel member with cardiopulmonary resuscitation training that meets the requirements in R9-10-303(C)(1)(e) is present in the pool area when a patient is in the pool area, and
  2. At least two personnel members are present in the pool area when two or more patients are in the pool area.
- Historical Note**
- Section R9-10-323, formerly numbered as R9-10-234, renumbered as an emergency effective February 22, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-1). Adopted effective June 14, 1979 (Supp. 79-3). Former Section R9-10-323 repealed, new Section R9-10-323 adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-323 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). R9-10-323 renumbered to R9-10-324; new Section R9-10-323 renumbered from R9-10-322 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).
- R9-10-324. Physical Plant Standards**
- A.** An administrator shall ensure that the premises and equipment are sufficient to accommodate:
1. The services stated in the behavioral health inpatient facility's scope of services, and
  2. An individual accepted as a patient by the behavioral health inpatient facility.
- B.** An administrator shall ensure that:
1. A behavioral health inpatient facility has a:
    - a. Waiting area with seating for patients and visitors;
    - b. Room that provides privacy for a patient to receive treatment or visitors; and
    - c. Common area and a dining area that:
      - i. Are not converted, partitioned, or otherwise used as a sleeping area; and
      - ii. Contain furniture and materials to accommodate the recreational and socialization needs of the patients and other individuals in the behavioral health inpatient facility;
  2. A bathroom is available for use by visitors during the behavioral health inpatient facility's hours of operation and:
    - a. Provides privacy; and
    - b. Contains:
      - i. A working sink with running water,
      - ii. A working toilet that flushes and has a seat,
      - iii. Toilet tissue,
      - iv. Soap for hand washing,
      - v. Paper towels or a mechanical air hand dryer,
      - vi. Lighting, and
      - vii. A window that opens or another means of ventilation;
  3. For every six patients, there is at least one working toilet that flushes and has a seat and one sink with running water;
  4. For every eight patients, there is at least one working bathtub or shower with a slip-resistant surface;
  5. A patient bathroom complies with the following:
    - a. Provides privacy when in use;
    - b. Contains:
      - i. A shatterproof mirror, unless the patient's treatment plan requires otherwise;
      - ii. A window that opens or another means of ventilation; and
      - iii. Nonporous surfaces for shower enclosures and slip-resistant surfaces in tubs and showers;
    - c. Has plumbing, piping, ductwork, or other potentially hazardous elements concealed above a ceiling;
    - d. If the bathroom or shower area has a door, the door swings outward to allow for staff emergency access;
    - e. If grab bars for the toilet and tub or shower or other assistive devices are identified in the patient's treatment plan, has grab bars or other assistive devices to provide for patient safety;
    - f. If a grab bar is provided, has the space between the grab bar and the wall filled to prevent a cord being tied around the grab bar;
    - g. Does not contain a towel bar, a shower curtain rod, or a lever handle that is not a specifically designed anti-ligature lever handle;
    - h. Has tamper-resistant lighting fixtures, sprinkler heads, and electrical outlets; and
    - i. For a bathroom with a sprinkler head where a patient is not supervised while the patient is in the bathroom, has a sprinkler head that is recessed or designed to minimize patient access;
  6. If a patient bathroom door locks from the inside, an employee has a key and access to the bathroom;
  7. Each patient is provided a bedroom for sleeping;
  8. A patient bedroom complies with the following:
    - a. Is not used as a common area;
    - b. Is not used as a passageway to another bedroom or bathroom unless the bathroom is for the exclusive use of the patient occupying the bedroom;
    - c. Contains a door that opens into a hallway, common area, or outdoors and, except as provided in subsection (E), another means of egress;
    - d. Is constructed and furnished to provide unimpeded access to the door;

- e. Has window or door covers that provide patient privacy;
  - f. Has floor to ceiling walls;
  - g. Is a:
    - i. Private bedroom that contains at least 60 square feet of floor space, not including the closet; or
    - ii. Shared bedroom that:
      - (1) Is shared by no more than four patients;
      - (2) Contains, except as provided in subsection (B)(9), at least 60 square feet of floor space, not including a closet, for each patient occupying the bedroom; and
      - (3) Provides sufficient space between beds to ensure that a patient has unobstructed access to the bedroom door;
  - h. Contains for each patient occupying the bedroom:
    - i. A bed that is: at least 36 inches wide and at least 72 inches long, and consists of at least a frame and mattress and linens that is not a threat to health and safety; and
    - ii. Individual storage space for personnel effects and clothing such as shelves, a dresser, or chest of drawers;
  - i. Has clean linen for each bed including mattress pad, sheets large enough to tuck under the mattress, pillows, pillow cases, bedspread, waterproof mattress covers as needed, and blankets to ensure warmth and comfort for each patient;
  - j. Has sufficient lighting for a patient occupying the bedroom to read; and
  - k. If applicable, has a drawer pull that is recessed to eliminate the possibility of use as a tie-off point;
9. If a behavioral health inpatient facility licensed before November 1, 2003 was approved for 50 square feet of floor space for each patient in a bedroom, ensure that the bedroom contains at least 50 square feet for each patient not including the closet;
10. In a patient bathroom or a patient bedroom:
- a. The ceiling is secured from access or at least 9 feet in height; and
  - b. A ventilation grille is:
    - i. Secured and has perforations that are too small to use as a tie-off point, or
    - ii. Of sufficient height to prevent patient access;
11. For a door located in an area of the behavioral health inpatient facility that is accessible to patients:
- a. A door closing device, if used on a patient bedroom door, is mounted on the public side of the door;
  - b. A door's hinges are designed to minimize points for hanging;
  - c. Except for a door lever handle that contains specifically designed anti-ligature hardware, a door lever handle points downward when in the latched or unlatched position; and
  - d. Hardware has tamper-resistant fasteners; and
12. A window located in an area of the behavioral health inpatient facility that is accessible to patients is fabricated with laminated safety glass or protected by polycarbonate, laminate, or safety screens.
- C.** An administrator of a licensed behavioral health inpatient facility may submit a request, in a Department-provided format, for additional time to comply with a physical plant requirement in subsection (B)(5)(c) through (B)(5)(i), (B)(10), (B)(11), or (B)(12) that includes:
- 1. The rule citation for the specific plant requirement,
  - 2. The current physical plant condition that does not comply with the physical plant requirement,
  - 3. How the current physical plant condition will be changed to comply with the physical plant requirement,
  - 4. Estimated completion date of the identified physical plant change, and
  - 5. Specific actions taken to ensure the health and safety of a patient until the physical plant requirement is met.
- D.** When the Department receives a request for additional time to comply with a physical plant requirement in subsection (B)(5)(c) through (B)(5)(i), (B)(10), (B)(11), or (B)(12) submitted according to subsection (C), the Department may approve the request for up to 24 months after the effective date of these rules based on:
- 1. The behavioral health inpatient facility's scope of services,
  - 2. The expected patient acuity based on the behavioral health inpatient facility's scope of services,
  - 3. The specific physical plant requirement in the request, and
  - 4. The threat to patients' health and safety.
- E.** A bedroom in a behavioral health inpatient facility is not required to have a second means of egress if:
- 1. An administrator ensures that policies and procedures are established, documented, and implemented that provide for the safe evacuation of a patient in the bedroom based on the patient's physical and mental limitations and the location of the bedroom; or
  - 2. The building where the bedroom is located has a fire alarm system and a sprinkler system required in R9-10-322(A)(1).
- F.** If a swimming pool is located on the premises, an administrator shall ensure that:
- 1. The swimming pool is enclosed by a wall or fence that:
    - a. Is at least five feet in height as measured on the exterior of the wall or fence;
    - b. Has no vertical openings greater than four inches across;
    - c. Has no horizontal openings, except as described in subsection (F)(1)(e);
    - d. Is not chain-link;
    - e. Does not have a space between the ground and the bottom fence rail that exceeds four inches in height; and
    - f. Has a self-closing, self-latching gate that:
      - i. Opens away from the swimming pool,
      - ii. Has a latch located at least 54 inches from the ground, and
      - iii. Is locked when the swimming pool is not in use; and
  - 2. A life preserver or shepherd's crook is available and accessible in the pool area.
- G.** An administrator shall ensure that a spa that is not enclosed by a wall or fence as described in subsection (F)(1) is covered and locked when not in use.

#### Historical Note

Section R9-10-324, formerly numbered as R9-10-235, renumbered as an emergency effective February 22, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-1). Adopted effective June 14, 1979 (Supp. 79-3). Former Section R9-10-324 repealed, new Section R9-10-324 adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-324 renumbered from R9-10-323 and amended by exempt rulemaking at 20 A.A.R. 1409,

pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### **R9-10-325. Repealed**

##### **Historical Note**

Section R9-10-325, formerly numbered as R9-10-236, renumbered as an emergency effective February 22, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-1). Adopted effective June 14, 1979 (Supp. 79-3). Former Section R9-10-325 repealed, new Section R9-10-325 adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2).

#### **R9-10-326. Repealed**

##### **Historical Note**

Section R9-10-326, formerly numbered as R9-10-237, renumbered as an emergency effective February 22, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-1). Adopted effective June 14, 1979 (Supp. 79-3). Former Section R9-10-326 repealed, new Section R9-10-326 adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2).

#### **R9-10-327. Repealed**

##### **Historical Note**

Section R9-10-327, formerly numbered as R9-10-241, renumbered as an emergency effective February 22, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-1). Adopted effective June 14, 1979 (Supp. 79-3). Former Section R9-10-327 repealed, new Section R9-10-327 adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2).

#### **R9-10-328. Repealed**

##### **Historical Note**

Section R9-10-328, formerly numbered as R9-10-242, renumbered as an emergency effective February 22, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-1). Adopted effective June 14, 1979 (Supp. 79-3). Former Section R9-10-328 repealed, new Section R9-10-328 adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2).

#### **R9-10-329. Repealed**

##### **Historical Note**

Section R9-10-329, formerly numbered as R9-10-243, renumbered as an emergency effective February 22, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-1). Adopted effective June 14, 1979 (Supp. 79-3). Former Section R9-10-329 repealed, new Section R9-10-329 adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2).

#### **R9-10-330. Repealed**

##### **Historical Note**

Section R9-10-330, formerly numbered as R9-10-244, renumbered as an emergency effective February 22, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-1). Adopted effective June 14, 1979 (Supp. 79-3). Former Section R9-10-330 repealed, new Section R9-10-330 adopted effective February 4, 1981

(Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2).

#### **R9-10-331. Repealed**

##### **Historical Note**

Section R9-10-331, formerly numbered as R9-10-245, renumbered as an emergency effective February 22, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-1). Adopted effective June 14, 1979 (Supp. 79-3). Former Section R9-10-331 repealed, new Section R9-10-331 adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2).

#### **R9-10-332. Repealed**

##### **Historical Note**

Section R9-10-332, formerly numbered as R9-10-246, renumbered as an emergency effective February 22, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-1). Adopted effective June 14, 1979 (Supp. 79-3). Former Section R9-10-332 repealed, new Section R9-10-332 adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2).

#### **R9-10-333. Repealed**

##### **Historical Note**

Section R9-10-333, formerly numbered as R9-10-247, renumbered as an emergency effective February 22, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-1). Adopted effective June 14, 1979 (Supp. 79-3). Former Section R9-10-333 repealed, new Section R9-10-333 adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2).

#### **R9-10-334. Repealed**

##### **Historical Note**

Section R9-10-334, formerly numbered as R9-10-249, renumbered as an emergency effective February 22, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-1). Adopted effective June 14, 1979 (Supp. 79-3). Repealed effective February 4, 1981 (Supp. 81-1).

#### **R9-10-335. Repealed**

##### **Historical Note**

Section R9-10-335, formerly numbered as R9-10-250, renumbered as an emergency effective February 22, 1979, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 79-1). Adopted effective June 14, 1979 (Supp. 79-3). Repealed effective February 4, 1981 (Supp. 81-1).

### **ARTICLE 4. NURSING CARE INSTITUTIONS**

*Article 4, consisting of Sections R9-10-411 through R9-10-438, repealed at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2).*

#### **R9-10-401. Definitions**

In addition to the definitions in A.R.S. § 36-401 and R9-10-101, the following definitions apply in this Article unless otherwise specified:

1. "Administrator" has the meaning in A.R.S. § 36-446.
2. "Care plan" means a documented description of physical health services and behavioral health services expected to be provided to a resident, based on the resident's compre-

hensive assessment, that includes measurable objectives and the methods for meeting the objectives.

3. “Direct care” means medical services, nursing services, or social services provided to a resident.
4. “Director of nursing” means an individual who is responsible for the nursing services provided in a nursing care institution.
5. “Full-time” means 40 hours or more every consecutive seven calendar days.
6. “Highest practicable” means a resident’s optimal level of functioning and well-being based on the resident’s current functional status and potential for improvement as determined by the resident’s comprehensive assessment.
7. “Interdisciplinary team” means a group of individuals consisting of a resident’s attending physician, a registered nurse responsible for the resident, and other individuals as determined in the resident’s comprehensive assessment.
8. “Intermittent” means not on a regular basis.
9. “Nursing care institution services” means medical services, nursing services, health-related services, ancillary services, social services, and environmental services provided to a resident.
10. “Resident group” means residents or residents’ family members who:
  - a. Plan and participate in resident activities, or
  - b. Meet to discuss nursing care institution issues and policies.
11. “Secured” means the use of a method, device, or structure that:
  - a. Prevents a resident from leaving an area of the nursing care institution’s premises, or
  - b. Alerts a personnel member of a resident’s departure from the nursing care institution.
12. “Social services” means assistance provided to or activities provided for a resident to maintain or improve the resident’s physical, mental, and psychosocial capabilities.
13. “Total health condition” means a resident’s overall physical and psychosocial well-being as determined by the resident’s comprehensive assessment.
14. “Unnecessary drug” means a medication that is not required because:
  - a. There is no documented indication for a resident’s use of the medication;
  - b. The medication is duplicative;
  - c. The medication is administered before determining whether the resident requires the medication; or
  - d. The resident has experienced an adverse reaction from the medication, indicating that the medication should be reduced or discontinued.
15. “Ventilator” means a device designed to provide, to a resident who is physically unable to breathe or who is breathing insufficiently, the mechanism of breathing by mechanically moving breathable air into and out of the resident’s lungs.

#### Historical Note

New Section R9-10-401 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2).

Amended by exempt rulemaking at 19 A.A.R. 3334, effective October 1, 2013 (Supp. 13-4). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-402. Supplemental Application Requirements

In addition to the license application requirements in A.R.S. § 36-422 and R9-10-105, an applicant for an initial license as a nursing care institution shall include:

1. In a Department-provided format whether the applicant:
  - a. Has:
    - i. A secured area for a resident with Alzheimer’s disease or other dementia, or
    - ii. An area for a resident on a ventilator;
  - b. Is requesting authorization to provide to a resident:
    - i. Behavioral health services,
    - ii. Clinical laboratory services,
    - iii. Dialysis services, or
    - iv. Radiology services and diagnostic imaging services; and
  - c. Is requesting authorization to operate a nutrition and feeding assistant training program; and
2. If the governing authority is requesting authorization to operate a nutrition and feeding assistant training program, the information in R9-10-116(B)(1)(a), (B)(1)(c), and (B)(2).

#### Historical Note

New Section R9-10-402 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2).

Amended by exempt rulemaking at 19 A.A.R. 3334, effective October 1, 2013 (Supp. 13-4). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-403. Administration

- A. A governing authority shall:
  1. Consist of one or more individuals responsible for the organization, operation, and administration of a nursing care institution;
  2. Establish, in writing, the nursing care institution’s scope of services;
  3. Designate, in writing, a nursing care institution administrator licensed according to A.R.S. Title 36, Chapter 4, Article 6;
  4. Adopt a quality management program according to R9-10-404;
  5. Review and evaluate the effectiveness of the quality management program at least once every 12 months;
  6. Designate, in writing, an acting administrator licensed according to A.R.S. § Title 36, Chapter 4, Article 6, if the administrator is:
    - a. Expected not to be present on the nursing care institution’s premises for more than 30 calendar days, or
    - b. Not present on the nursing care institution’s premises for more than 30 calendar days; and
  7. Except as permitted in subsection (A)(6), when there is a change of administrator, notify the Department according to A.R.S. § 36-425(I) and submit a copy of the new administrator’s license under A.R.S. Title 36, Chapter 4, Article 6 to the Department.
- B. An administrator:
  1. Is directly accountable to the governing authority of a nursing care institution for the daily operation of the nursing care institution and all services provided by or at the nursing care institution;
  2. Has the authority and responsibility to manage the nursing care institution;
  3. Except as provided in subsection (A)(6), designates, in writing, an individual who is present on the nursing care institution’s premises and accountable for the nursing care

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- institution when the administrator is not present on the nursing care institution's premises;
4. Ensures the nursing care institution's compliance with A.R.S. § 36-411; and
  5. If the nursing care institution provides feeding and nutrition assistant training, ensures the nursing care institution complies with the requirements for the operation of a feeding and nutrition assistant training program in R9-10-116.
- C.** An administrator shall ensure that:
1. Policies and procedures are established, documented, and implemented to protect the health and safety of a resident that:
    - a. Cover job descriptions, duties, and qualifications, including required skills, knowledge, education, and experience for personnel members, employees, volunteers, and students;
    - b. Cover orientation and in-service education for personnel members, employees, volunteers, and students;
    - c. Include how a personnel member may submit a complaint relating to resident care;
    - d. Cover the requirements in A.R.S. Title 36, Chapter 4, Article 11;
    - e. Cover cardiopulmonary resuscitation training including:
      - i. Which personnel members are required to obtain cardiopulmonary resuscitation training,
      - ii. The method and content of cardiopulmonary resuscitation training,
      - iii. The qualifications for an individual to provide cardiopulmonary resuscitation training,
      - iv. The time-frame for renewal of cardiopulmonary resuscitation training, and
      - v. The documentation that verifies an individual has received cardiopulmonary resuscitation training;
    - f. Cover first aid training;
    - g. Include a method to identify a resident to ensure the resident receives physical health services and behavioral health services as ordered;
    - h. Cover resident rights, including assisting a resident who does not speak English or who has a disability to become aware of resident rights;
    - i. Cover specific steps for:
      - i. A resident to file a complaint, and
      - ii. The nursing care institution to respond to a resident's complaint;
    - j. Cover health care directives;
    - k. Cover medical records, including electronic medical records;
    - l. Cover a quality management program, including incident reports and supporting documentation;
    - m. Cover contracted services;
    - n. Cover resident's personal accounts;
    - o. Cover petty cash funds;
    - p. Cover fees and refund policies;
    - q. Cover misappropriation of resident property; and
    - r. Cover when an individual may visit a resident in a nursing care institution; and
  2. Policies and procedures for physical health services and behavioral health services are established, documented, and implemented to protect the health and safety of a resident that:
    - a. Cover resident screening, admission, transport, transfer, discharge planning, and discharge;
    - b. Cover the provision of physical health services and behavioral health services;
    - c. Include when general consent and informed consent are required;
    - d. Cover storing, dispensing, administering, and disposing of medication;
    - e. Cover infection control;
    - f. Cover how personnel members will respond to a resident's sudden, intense, or out-of-control behavior to prevent harm to the resident or another individual;
    - g. Cover telemedicine, if applicable; and
    - h. Cover environmental services that affect resident care;
  3. Policies and procedures are reviewed at least once every three years and updated as needed;
  4. Policies and procedures are available to personnel members, employees, volunteers, and students; and
  5. Unless otherwise stated:
    - a. Documentation required by this Article is provided to the Department within two hours after a Department request; and
    - b. When documentation or information is required by this Chapter to be submitted on behalf of a nursing care institution, the documentation or information is provided to the unit in the Department that is responsible for licensing and monitoring the nursing care institution.
- D.** Except for health screening services, an administrator shall ensure that medical services, nursing services, health-related services, behavioral health services, or ancillary services provided by a nursing care institution are only provided to a resident.
- E.** If abuse, neglect, or exploitation of a resident is alleged or suspected to have occurred before the resident was admitted or while the resident is not on the premises and not receiving services from a nursing care institution's employee or personnel member, an administrator shall report the alleged or suspected abuse, neglect, or exploitation of the resident as follows:
1. For a resident 18 years of age or older, according to A.R.S. § 46-454; or
  2. For a resident under 18 years of age, according to A.R.S. § 13-3620;
- F.** If an administrator has a reasonable basis, according to A.R.S. § 13-3620 or 46-454, to believe that abuse, neglect, or exploitation has occurred on the premises or while a resident is receiving services from a nursing care institution's employee or personnel member, an administrator shall:
1. If applicable, take immediate action to stop the suspected abuse, neglect, or exploitation;
  2. Report the suspected abuse, neglect, or exploitation of the resident as follows:
    - a. For a resident 18 years of age or older, according to A.R.S. § 46-454; or
    - b. For a resident under 18 years of age, according to A.R.S. § 13-3620;
  3. Document:
    - a. The suspected abuse, neglect, or exploitation;
    - b. Any action taken according to subsection (F)(1); and
    - c. The report in subsection (F)(2);
  4. Maintain the documentation in subsection (F)(3) for at least 12 months after the date of the report in subsection (F)(2);
  5. Initiate an investigation of the suspected abuse, neglect, or exploitation and document the following information within five working days after the report required in subsection (F)(2):

- a. The dates, times, and description of the suspected abuse, neglect, or exploitation;
  - b. A description of any injury to the resident related to the suspected abuse or neglect and any change to the resident's physical, cognitive, functional, or emotional condition;
  - c. The names of witnesses to the suspected abuse, neglect, or exploitation; and
  - d. The actions taken by the administrator to prevent the suspected abuse, neglect, or exploitation from occurring in the future; and
6. Maintain a copy of the documented information required in subsection (F)(5) and any other information obtained during the investigation for at least 12 months after the date the investigation was initiated.
- G.** An administrator shall:
1. Allow a resident advocate to assist a resident, the resident's representative, or a resident group with a request or recommendation, and document in writing any complaint submitted to the nursing care institution;
  2. Ensure that a monthly schedule of recreational activities for residents is developed, documented and implemented; and
  3. Ensure that the following are conspicuously posted on the premises:
    - a. The current nursing care institution license and quality rating issued by the Department;
    - b. The name, address, and telephone number of:
      - i. The Department's Office of Long Term Care,
      - ii. The State Long-Term Care Ombudsman Program, and
      - iii. Adult Protective Services of the Department of Economic Security;
    - c. A notice that a resident may file a complaint with the Department concerning the nursing care institution;
    - d. The monthly schedule of recreational activities; and
    - e. One of the following:
      - i. A copy of the current license survey report with information identifying residents redacted, any subsequent reports issued by the Department, and any plan of correction that is in effect; or
      - ii. A notice that the current license survey report with information identifying residents redacted, any subsequent reports issued by the Department, and any plan of correction that is in effect are available for review upon request.
- H.** An administrator shall provide written notification to the Department of a resident's:
1. Death, if the resident's death is required to be reported according to A.R.S. § 11-593, within one working day after the resident's death; and
  2. Self-injury, within two working days after the resident inflicts a self-injury that requires immediate intervention by an emergency medical services provider.
- I.** If an administrator administers a resident's personal account at the request of the resident or the resident's representative, the administrator shall:
1. Comply with policies and procedures established according to subsection (C)(1)(n);
  2. Designate a personnel member who is responsible for the personal accounts;
  3. Maintain a complete and separate accounting of each personal account;
  4. Obtain written authorization from the resident or the resident's representative for a personal account transaction;
5. Document an account transaction and provide a copy of the documentation to the resident or the resident's representative upon request and at least every three months;
  6. Transfer all money from the resident's personal account in excess of \$50.00 to an interest-bearing account and credit the interest to the resident's personal account; and
  7. Within 30 calendar days after the resident's death, transfer, or discharge, return all money in the resident's personal account and a final accounting to the resident, the resident's representative, or the probate jurisdiction administering the resident's estate.
- J.** If a petty cash fund is established for use by residents, the administrator shall ensure that:
1. The policies and procedures established according to subsection (C)(1)(o) include:
    - a. A prescribed cash limit of the petty cash fund, and
    - b. The hours of the day a resident may access the petty cash fund; and
  2. A resident's written acknowledgment is obtained for a petty cash transaction.

**Historical Note**

New Section R9-10-403 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 19 A.A.R. 3334, effective October 1, 2013 (Supp. 13-4). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-404. Quality Management**

An administrator shall ensure that:

1. A plan is established, documented, and implemented for an ongoing quality management program that, at a minimum, includes:
  - a. A method to identify, document, and evaluate incidents;
  - b. A method to collect data to evaluate services provided to residents;
  - c. A method to evaluate the data collected to identify a concern about the delivery of services related to resident care;
  - d. A method to make changes or take action as a result of the identification of a concern about the delivery of services related to resident care; and
  - e. The frequency of submitting a documented report required in subsection (2) to the governing authority;
2. A documented report is submitted to the governing authority that includes:
  - a. An identification of each concern about the delivery of services related to resident care; and
  - b. Any change made or action taken as a result of the identification of a concern about the delivery of services related to resident care; and
3. The report required in subsection (2) and the supporting documentation for the report are maintained for at least 12 months after the date the report is submitted to the governing authority.

**Historical Note**

New Section R9-10-404 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2).

**R9-10-405. Contracted Services**

An administrator shall ensure that:

1. Contracted services are provided according to the requirements in this Article, and



2. Documentation of current contracted services is maintained that includes a description of the contracted services provided.

#### Historical Note

New Section R9-10-405 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-406. Personnel

##### A. An administrator shall ensure that:

1. A behavioral health technician is at least 21 years old, and
2. A behavioral health paraprofessional is at least 21 years old.

##### B. An administrator shall ensure that:

1. The qualifications, skills, and knowledge required for each type of personnel member:
  - a. Are based on:
    - i. The type of physical health services or behavioral health services expected to be provided by the personnel member according to the established job description, and
    - ii. The acuity of the residents receiving physical health services or behavioral health services from the personnel member according to the established job description; and
  - b. Include:
    - i. The specific skills and knowledge necessary for the personnel member to provide the expected physical health services and behavioral health services listed in the established job description,
    - ii. The type and duration of education that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected physical health services or behavioral health services listed in the established job description, and
    - iii. The type and duration of experience that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected physical health services or behavioral health services listed in the established job description;
2. A personnel member's skills and knowledge are verified and documented:
  - a. Before the personnel member provides physical health services or behavioral health services, and
  - b. According to policies and procedures; and
3. Sufficient personnel members are present on a nursing care institution's premises with the qualifications, skills, and knowledge necessary to:
  - a. Provide the services in the nursing care institution's scope of services,
  - b. Meet the needs of a resident, and
  - c. Ensure the health and safety of a resident.

##### C. Except as provided in R9-10-415, an administrator shall ensure that, if a personnel member provides social services that require a license under A.R.S. Title 32, Chapter 33, Article 5, the personnel member is licensed under A.R.S. Title 32, Chapter 33, Article 5.

##### D. An administrator shall ensure that an individual who is a licensed baccalaureate social worker, master social worker, associate marriage and family therapist, associate counselor, or

associate substance abuse counselor is under direct supervision as defined in 4 A.A.C. 6, Article 1.

##### E. An administrator shall ensure that a personnel member or an employee or volunteer who has or is expected to have direct interaction with a resident for more than eight hours a week provides evidence of freedom from infectious tuberculosis:

1. On or before the date the individual begins providing services at or on behalf of the nursing care institution, and
2. As specified in R9-10-113.

##### F. An administrator shall ensure that a personnel record is maintained for each personnel member, employee, volunteer, or student that includes:

1. The individual's name, date of birth, and contact telephone number;
2. The individual's starting date of employment or volunteer service and, if applicable, the ending date; and
3. Documentation of:
  - a. The individual's qualifications, including skills and knowledge applicable to the individual's job duties;
  - b. The individual's education and experience applicable to the individual's job duties;
  - c. The individual's compliance with the requirements in A.R.S. § 36-411;
  - d. Orientation and in-service education as required by policies and procedures;
  - e. The individual's license or certification, if the individual is required to be licensed or certified in this Article or policies and procedures;
  - f. If the individual is a behavioral health technician, clinical oversight required in R9-10-115;
  - g. Cardiopulmonary resuscitation training, if required for the individual according to R9-10-403(C)(1)(e);
  - h. First aid training, if required for the individual according to this Article or policies and procedures;
  - i. Evidence of freedom from infectious tuberculosis, if required for the individual according to subsection (E); and
  - j. If the individual is a nutrition and feeding assistant:
    - i. Completion of the nutrition and feeding assistant training course required in R9-10-116, and
    - ii. A nurse's observations required in R9-10-423(C)(6).

##### G. An administrator shall ensure that personnel records are:

1. Maintained:
  - a. Throughout the individual's period of providing services in or for the nursing care institution, and
  - b. For at least 24 months after the last date the individual provided services in or for the nursing care institution; and
2. For a personnel member who has not provided physical health services or behavioral health services at or for the nursing care institution during the previous 12 months, provided to the Department within 72 hours after the Department's request.

##### H. An administrator shall ensure that:

1. A plan to provide orientation specific to the duties of a personnel member, an employee, a volunteer, and a student is developed, documented, and implemented;
2. A personnel member completes orientation before providing physical health services or behavioral health services;
3. An individual's orientation is documented, to include:
  - a. The individual's name,
  - b. The date of the orientation, and
  - c. The subject or topics covered in the orientation;

4. A plan to provide in-service education specific to the duties of a personnel member is developed, documented, and implemented;
  5. A personnel member's in-service education is documented, to include:
    - a. The personnel member's name,
    - b. The date of the training, and
    - c. The subject or topics covered in the training; and
  6. A work schedule of each personnel member is developed and maintained at the nursing care institution for at least 12 months after the date of the work schedule.
- I.** An administrator shall designate a qualified individual to provide:
1. Social services, and
  2. Recreational activities.

#### Historical Note

New Section R9-10-406 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 19 A.A.R. 3334, effective October 1, 2013 (Supp. 13-4). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-407. Admission

An administrator shall ensure that:

1. A resident is admitted only on a physician's order;
2. The physician's admitting order includes the nursing care institution services required to meet the immediate needs of a resident, such as medication and food services;
3. At the time of a resident's admission, a registered nurse conducts or coordinates an initial assessment on a resident to ensure the resident's immediate needs for nursing care institution services are met;
4. A resident's needs do not exceed the medical services and nursing services available at the nursing care institution as established in the nursing care institution's scope of services;
5. Before or at the time of admission, a resident or the resident's representative:
  - a. Receives a documented agreement with the nursing care institution that includes rates and charges,
  - b. Is informed of third-party coverage for rates and charges,
  - c. Is informed of the nursing care institution's refund policy, and
  - d. Receives written information concerning the nursing care institution's policies and procedures related to a resident's health care directives;
6. Within 30 calendar days before admission or 10 working days after admission, a medical history and physical examination is completed on a resident by:
  - a. A physician, or
  - b. A physician assistant or a registered nurse practitioner designated by the attending physician;
7. Except as specified in subsection (8), a resident provides evidence of freedom from infectious tuberculosis:
  - a. Before or within seven calendar days after the resident's admission, and
  - b. As specified in R9-10-113;
8. A resident who transfers from a nursing care institution to another nursing care institution is not required to be rescreened for tuberculosis or provide another written statement by a physician, physician assistant, or registered nurse practitioner as specified in R9-10-113(1) if:

- a. Fewer than 12 months have passed since the resident was screened for tuberculosis or since the date of the written statement, and
  - b. The documentation of freedom from infectious tuberculosis required in subsection (7) accompanies the resident at the time of transfer; and
9. Compliance with the requirements in subsection (6) is documented in the resident's medical record.

#### Historical Note

New Section R9-10-407 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 19 A.A.R. 3334, effective October 1, 2013 (Supp. 13-4). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-408. Discharge

**A.** An administrator shall ensure that:

1. A resident is transferred or discharged if:
  - a. The nursing care institution is not authorized or not able to meet the needs of the resident, or
  - b. The resident's behavior is a threat to the health or safety of the resident or other individuals at the nursing care institution; and
2. Documentation of a resident's transfer or discharge includes:
  - a. The date of the transfer or discharge;
  - b. The reason for the transfer or discharge;
  - c. A 30-day written notice except:
    - i. In an emergency, or
    - ii. If the resident no longer requires nursing care institution services as determined by a physician or the physician's designee;
  - d. A notation by a physician or the physician's designee if the transfer or discharge is due to any of the reasons listed in subsection (A)(1); and
  - e. If applicable, actions taken by a personnel member to protect the resident or other individuals if the resident's behavior is a threat to the health and safety of the resident or other individuals in the nursing care institution.

**B.** An administrator may transfer or discharge a resident for failure to pay for residency if:

1. The resident or resident's representative receives a 30-day written notice of transfer or discharge, and
2. The 30-day written notice includes an explanation of the resident's right to appeal the transfer or discharge.

**C.** Except in an emergency, a director of nursing shall ensure that before a resident is discharged:

1. Written follow-up instructions are developed with the resident or the resident's representative that includes:
  - a. Information necessary to meet the resident's need for medical services and nursing services; and
  - b. The state long-term care ombudsman's name, address, and telephone number;
2. A copy of the written follow-up instructions is provided to the resident or the resident's representative; and
3. A discharge summary is developed by a personnel member and authenticated by the resident's attending physician or designee and includes:
  - a. The resident's medical condition at the time of transfer or discharge,
  - b. The resident's medical and psychosocial history,
  - c. The date of the transfer or discharge, and
  - d. The location of the resident after discharge.

**Historical Note**

New Section R9-10-408 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-409. Transport; Transfer**

**A.** Except as provided in subsection (B), an administrator shall ensure that:

1. A personnel member coordinates the transport and the services provided to the resident;
2. According to policies and procedures:
  - a. An evaluation of the resident is conducted before and after the transport,
  - b. Information from the resident's medical record is provided to a receiving health care institution, and
  - c. A personnel member explains risks and benefits of the transport to the resident or the resident's representative; and
3. Documentation in the resident's medical record includes:
  - a. Communication with an individual at a receiving health care institution;
  - b. The date and time of the transport;
  - c. The mode of transportation; and
  - d. If applicable, the name of the personnel member accompanying the resident during a transport.

**B.** Subsection (A) does not apply to:

1. Transportation to a location other than a licensed health care institution,
2. Transportation provided for a resident by the resident or the resident's representative,
3. Transportation provided by an outside entity that was arranged for a resident by the resident or the resident's representative, or
4. A transport to another licensed health care institution in an emergency.

**C.** Except for a transfer of a resident due to an emergency, an administrator shall ensure that:

1. A personnel member coordinates the transfer and the services provided to the resident;
2. According to policies and procedures:
  - a. An evaluation of the resident is conducted before the transfer;
  - b. Information from the resident's medical record, including orders that are in effect at the time of the transfer, is provided to a receiving health care institution; and
  - c. A personnel member explains risks and benefits of the transfer to the resident or the resident's representative; and
3. Documentation in the resident's medical record includes:
  - a. Communication with an individual at a receiving health care institution;
  - b. The date and time of the transfer;
  - c. The mode of transportation; and
  - d. If applicable, the name of the personnel member accompanying the resident during a transfer.

**Historical Note**

New Section R9-10-409 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-410. Resident Rights**

**A.** An administrator shall ensure that:

1. The requirements in subsection (B) and the resident rights in subsection (C) are conspicuously posted on the premises;
  2. At the time of admission, a resident or the resident's representative receives a written copy of the requirements in subsection (B) and the resident rights in subsection (C); and
  3. Policies and procedures include:
    - a. How and when a resident or the resident's representative is informed of resident rights in subsection (C), and
    - b. Where resident rights are posted as required in subsection (A)(1).
- B.** An administrator shall ensure that:
1. A resident has privacy in:
    - a. Treatment,
    - b. Bathing and toileting,
    - c. Room accommodations, and
    - d. A visit or meeting with another resident or an individual;
  2. A resident is treated with dignity, respect, and consideration;
  3. A resident is not subjected to:
    - a. Abuse;
    - b. Neglect;
    - c. Exploitation;
    - d. Coercion;
    - e. Manipulation;
    - f. Sexual abuse;
    - g. Sexual assault;
    - h. Seclusion;
    - i. Restraint;
    - j. Retaliation for submitting a complaint to the Department or another entity; or
    - k. Misappropriation of personal and private property by a nursing care institution's personnel members, employees, volunteers, or students; and
  4. A resident or the resident's representative:
    - a. Except in an emergency, either consents to or refuses treatment;
    - b. May refuse or withdraw consent for treatment before treatment is initiated;
    - c. Except in an emergency, is informed of proposed alternatives to psychotropic medication or a surgical procedure and the associated risks and possible complications of the psychotropic medication or surgical procedure;
    - d. Is informed of the following:
      - i. The health care institution's policy on health care directives, and
      - ii. The resident complaint process;
    - e. Consents to photographs of the resident before the resident is photographed, except that the resident may be photographed when admitted to a nursing care institution for identification and administrative purposes;
    - f. May manage the resident's financial affairs;
    - g. May review the nursing care institution's current license survey report and, if applicable, plan of correction in effect;
    - h. Has access to and may communicate with any individual, organization, or agency;
    - i. May participate in a resident group;
    - j. May review the resident's financial records within two working days and medical record within one

working day after the resident's or the resident's representative's request;

- k. May obtain a copy of the resident's financial records and medical record within two working days after the resident's request and in compliance with A.R.S. § 12-2295;
- l. Except as otherwise permitted by law, consents, in writing, to the release of information in the resident's:
  - i. Medical record, and
  - ii. Financial records;
- m. May select a pharmacy of choice if the pharmacy complies with policies and procedures and does not pose a risk to the resident;
- n. Is informed of the method for contacting the resident's attending physician;
- o. Is informed of the resident's total health condition;
- p. Is provided with a copy of those sections of the resident's medical record that are required for continuity of care free of charge, according to A.R.S. § 12-2295, if the resident is transferred or discharged;
- q. Is informed in writing of a change in rates and charges at least 60 calendar days before the effective date of the change; and
- r. Except in the event of an emergency, is informed orally or in writing before the nursing care institution makes a change in a resident's room or roommate assignment and notification is documented in the resident's medical record.

**C. A resident has the following rights:**

- 1. Not to be discriminated against based on race, national origin, religion, gender, sexual orientation, age, disability, marital status, or diagnosis;
- 2. To receive treatment that supports and respects the resident's individuality, choices, strengths, and abilities;
- 3. To choose activities and schedules consistent with the resident's interests that do not interfere with other residents;
- 4. To participate in social, religious, political, and community activities that do not interfere with other residents;
- 5. To retain personal possessions including furnishings and clothing as space permits unless use of the personal possession infringes on the rights or health and safety of other residents;
- 6. To share a room with the resident's spouse if space is available and the spouse consents;
- 7. To receive a referral to another health care institution if the nursing care institution is not authorized or not able to provide physical health services or behavioral health services needed by the resident;
- 8. To participate or have the resident's representative participate in the development of, or decisions concerning, treatment;
- 9. To participate or refuse to participate in research or experimental treatment; and
- 10. To receive assistance from a family member, the resident's representative, or other individual in understanding, protecting, or exercising the resident's rights.

**Historical Note**

New Section R9-10-410 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2).

Amended by exempt rulemaking at 19 A.A.R. 3334, effective October 1, 2013 (Supp. 13-4). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-411. Medical Records**

**A. An administrator shall ensure that:**

- 1. A medical record is established and maintained for each resident according to A.R.S. Title 12, Chapter 13, Article 7.1;
- 2. An entry in a resident's medical record is:
  - a. Recorded only by an individual authorized by policies and procedures to make the entry;
  - b. Dated, legible, and authenticated; and
  - c. Not changed to make the initial entry illegible;
- 3. An order is:
  - a. Dated when the order is entered in the resident's medical record and includes the time of the order;
  - b. Authenticated by a medical practitioner or behavioral health professional according to policies and procedures; and
  - c. If the order is a verbal order, authenticated by the medical practitioner or behavioral health professional issuing the order;
- 4. If a rubber-stamp signature or an electronic signature is used to authenticate an order, the individual whose signature the rubber-stamp signature or electronic signature represents is accountable for the use of the rubber-stamp signature or electronic signature;
- 5. A resident's medical record is available to an individual:
  - a. Authorized to access the resident's medical record according to policies and procedures;
  - b. If the individual is not authorized to access the resident's medical record according to policies and procedures, with the written consent of the resident or the resident's representative; or
  - c. As permitted by law; and
- 6. A resident's medical record is protected from loss, damage, or unauthorized use.

**B. If a nursing care institution maintains residents' medical records electronically, an administrator shall ensure that:**

- 1. Safeguards exist to prevent unauthorized access, and
- 2. The date and time of an entry in a resident's medical record is recorded by the computer's internal clock.

**C. An administrator shall ensure that a resident's medical record contains:**

- 1. Resident information that includes:
  - a. The resident's name;
  - b. The resident's date of birth; and
  - c. Any known allergies, including medication allergies;
- 2. The admission date and, if applicable, the date of discharge;
- 3. The admitting diagnosis or presenting symptoms;
- 4. Documentation of general consent and, if applicable, informed consent;
- 5. If applicable, the name and contact information of the resident's representative and:
  - a. The document signed by the resident consenting for the resident's representative to act on the resident's behalf; or
  - b. If the resident's representative:
    - i. Has a health care power of attorney established under A.R.S. § 36-3221 or a mental health care power of attorney executed under A.R.S. § 36-3282, a copy of the health care power of attorney or mental health care power of attorney; or
    - ii. Is a legal guardian, a copy of the court order establishing guardianship;
- 6. The medical history and physical examination required in R9-10-407(6);

7. A copy of the resident's living will or other health care directive, if applicable;
8. The name and telephone number of the resident's attending physician;
9. Orders;
10. Care plans;
11. Behavioral care plans, if the resident is receiving behavioral care;
12. Documentation of nursing care institution services provided to the resident;
13. Progress notes;
14. If applicable, documentation of any actions taken to control the resident's sudden, intense, or out-of-control behavior to prevent harm to the resident or another individual;
15. If applicable, documentation that evacuation from the nursing care institution would cause harm to the resident;
16. The disposition of the resident after discharge;
17. The discharge plan;
18. The discharge summary;
19. Transfer documentation;
20. If applicable:
  - a. A laboratory report,
  - b. A radiologic report,
  - c. A diagnostic report, and
  - d. A consultation report;
21. Documentation of freedom from infectious tuberculosis required in R9-10-407(7);
22. Documentation of a medication administered to the resident that includes:
  - a. The date and time of administration;
  - b. The name, strength, dosage, and route of administration;
  - c. The type of vaccine, if applicable;
  - d. For a medication administered for pain on a PRN basis:
    - i. An evaluation of the resident's pain before administering the medication, and
    - ii. The effect of the medication administered;
  - e. For a psychotropic medication administered on a PRN basis:
    - i. An evaluation of the resident's symptoms before administering the psychotropic medication, and
    - ii. The effect of the psychotropic medication administered;
  - f. The identification, signature, and professional designation of the individual administering the medication; and
  - g. Any adverse reaction a resident has to the medication;
23. If the resident has been assessed for receiving nutrition and feeding assistance from a nutrition and feeding assistant, documentation of the assessment and the determination of eligibility; and
24. If applicable, a copy of written notices, including follow-up instructions, provided to the resident or the resident's representative.

#### Historical Note

Adopted effective January 28, 1980 (Supp. 80-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-411 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 19 A.A.R. 3334, effective October 1, 2013 (Supp. 13-4). Amended by exempt rulemaking at 20

A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-412. Nursing Services

- A.** An administrator shall ensure that:
1. Nursing services are provided 24 hours a day in a nursing care institution;
  2. A director of nursing is appointed who:
    - a. Is a registered nurse,
    - b. Works full-time at the nursing care institution, and
    - c. Is responsible for the direction of nursing services;
  3. The director of nursing or an individual designated by the administrator participates in the quality management program; and
  4. If the daily census of the nursing care institution is less than 60, the director of nursing may provide direct care to residents on a regular basis.
- B.** A director of nursing shall ensure that:
1. A method is established and documented that identifies the types and numbers of nursing personnel that are necessary to provide nursing services to residents based on the residents' comprehensive assessments, orders for physical health services and behavioral health services, and care plans and the nursing care institution's scope of services;
  2. Sufficient nursing personnel, as determined by the method in subsection (B)(1), are on the nursing care institution premises to meet the needs of a resident for nursing services;
  3. At least one nurse is present on the nursing care institution's premises and responsible for providing direct care to not more than 64 residents;
  4. Documentation of nursing personnel present on the nursing care institution's premises each day is maintained and includes:
    - a. The date,
    - b. The number of residents,
    - c. The name and license or certification title of each nursing personnel member who worked that day, and
    - d. The actual number of hours each nursing personnel member worked that day;
  5. The documentation of nursing personnel required in subsection (B)(4) is maintained for at least 12 months after the date of the documentation;
  6. As soon as possible but not more than 24 hours after one of the following events occur, a nurse notifies a resident's attending physician and, if applicable, the resident's representative, if the resident:
    - a. Is injured,
    - b. Is involved in an incident that may require medical services, or
    - c. Has a significant change in condition; and
  7. An unnecessary drug is not administered to a resident.

#### Historical Note

Adopted effective January 28, 1980 (Supp. 80-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-412 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 19 A.A.R. 3334, effective October 1, 2013 (Supp. 13-4). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-413. Medical Services

- A.** An administrator shall appoint a medical director.

**B.** A medical director shall ensure that:

1. A resident has an attending physician;
2. An attending physician is available 24 hours a day;
3. An attending physician designates a physician who is available when the attending physician is not available;
4. A physical examination is performed on a resident at least once every 12 months after the date of admission by an individual listed in R9-10-407(6);
5. As required in A.R.S. § 36-406, vaccinations for influenza and pneumonia are available to each resident at least once every 12 months unless:
  - a. The attending physician provides documentation that the vaccination is medically contraindicated;
  - b. The resident or the resident's representative refuses the vaccination or vaccinations and documentation is maintained in the resident's medical record that the resident or the resident's representative has been informed of the risks and benefits of a vaccination refused; or
  - c. The resident or the resident's representative provides documentation that the resident received a pneumonia vaccination within the last five years or the current recommendation from the U.S. Department of Health and Human Services, Center for Disease Control and Prevention; and
6. If any of the following services are not provided by the nursing care institution and needed by a resident, the resident is assisted in obtaining, at the resident's expense:
  - a. Vision services;
  - b. Hearing services;
  - c. Dental services;
  - d. Clinical laboratory services from a laboratory that holds a certificate of accreditation or certificate of compliance issued by the United States Department of Health and Human Services under the 1988 amendments to the Clinical Laboratories Improvement Act of 1967;
  - e. Psychosocial services;
  - f. Physical therapy;
  - g. Speech therapy;
  - h. Occupational therapy;
  - i. Behavioral health services; and
  - j. Services for an individual who has a developmental disability, as defined in A.R.S. Title 36, Chapter 5.1, Article 1.

**Historical Note**

Adopted effective January 28, 1980 (Supp. 80-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-413 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-414. Comprehensive Assessment; Care Plan****A.** A director of nursing shall ensure that:

1. A comprehensive assessment of a resident:
  - a. Is conducted or coordinated by a registered nurse in collaboration with an interdisciplinary team;
  - b. Is completed for the resident within 14 calendar days after the resident's admission to a nursing care institution;
  - c. Is updated:
    - i. No later than 12 months after the date of the resident's last comprehensive assessment, and

- ii. When the resident experiences a significant change;
- d. Includes the following information for the resident:
    - i. Identifying information;
    - ii. An evaluation of the resident's hearing, speech, and vision;
    - iii. An evaluation of the resident's ability to understand and recall information;
    - iv. An evaluation of the resident's mental status;
    - v. Whether the resident's mental status or behaviors:
      - (1) Put the resident at risk for physical illness or injury,
      - (2) Significantly interfere with the resident's care,
      - (3) Significantly interfere with the resident's ability to participate in activities or social interactions,
      - (4) Put other residents or personnel members at significant risk for physical injury,
      - (5) Significantly intrude on another resident's privacy, or
      - (6) Significantly disrupt care for another resident;
    - vi. Preferences for customary routine and activities;
    - vii. An evaluation of the resident's ability to perform activities of daily living;
    - viii. Need for a mobility device;
    - ix. An evaluation of the resident's ability to control the resident's bladder and bowels;
    - x. Any diagnosis that impacts nursing care institution services that the resident may require;
    - xi. Any medical conditions that impact the resident's functional status, quality of life, or need for nursing care institution services;
    - xii. An evaluation of the resident's ability to maintain adequate nutrition and hydration;
    - xiii. An evaluation of the resident's oral and dental status;
    - xiv. An evaluation of the condition of the resident's skin;
    - xv. Identification of any medication or treatment administered to the resident during a seven-day calendar period that includes the time the comprehensive assessment was conducted;
    - xvi. Identification of any treatment or medication ordered for the resident;
    - xvii. Whether any restraints have been used for the resident during a seven-day calendar period that includes the time the comprehensive assessment was conducted;
    - xviii. A description of the resident or resident's representative's participation in the comprehensive assessment;
    - xix. The name and title of the interdisciplinary team members who participated in the resident's comprehensive assessment;
    - xx. Potential for rehabilitation; and
    - xxi. Potential for discharge; and
  - e. Is signed and dated by:
    - i. The registered nurse who conducts or coordinates the comprehensive assessment or review; and
    - ii. If a behavioral health professional is required to review according to subsection (A)(2), the

- behavioral health professional who reviewed the comprehensive assessment or review;
2. If any of the conditions in (A)(1)(d)(v) are answered in the affirmative during the comprehensive assessment or review, a behavioral health professional reviews a resident's comprehensive assessment or review and care plan to ensure that the resident's needs for behavioral health services are being met;
  3. A new comprehensive assessment is not required for a resident who is hospitalized and readmitted to a nursing care institution unless a physician, an individual designated by the physician, or a registered nurse determines the resident has a significant change in condition; and
  4. A resident's comprehensive assessment is reviewed by a registered nurse at least once every three months after the date of the current comprehensive assessment and if there is a significant change in the resident's condition.
- B.** An administrator shall ensure that a care plan for a resident:
1. Is developed, documented, and implemented for the resident within seven calendar days after completing the resident's comprehensive assessment required in subsection (A)(1);
  2. Is reviewed and revised based on any change to the resident's comprehensive assessment; and
  3. Ensures that a resident is provided nursing care institution services that:
    - a. Address any medical condition or behavioral health issue identified in the resident's comprehensive assessment, and
    - b. Assist the resident in maintaining the resident's highest practicable well-being according to the resident's comprehensive assessment.

#### Historical Note

Adopted effective January 28, 1980 (Supp. 80-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-414 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 3334, effective October 1, 2013 (Supp. 13-4). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-415. Behavioral Health Services

Except for behavioral care, if a nursing care institution is authorized to provide behavioral health services, an administrator shall ensure that:

1. The behavioral health services are provided:
  - a. Under the direction of a behavioral health professional licensed or certified to provide the type of behavioral health services in the nursing care institution's scope of services, and
  - b. In compliance with the requirements:
    - i. For behavioral health paraprofessionals and behavioral health technicians, in R9-10-115; and
    - ii. For an assessment, in R9-10-1011(B); and
2. Except for a psychotropic drug used as a chemical restraint or administered according to an order from a court of competent jurisdiction, informed consent is obtained from a resident or the resident's representative for a psychotropic drug and documented in the resident's medical record before the psychotropic drug is administered to the resident.

#### Historical Note

Adopted effective January 28, 1980 (Supp. 80-1). Section

repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-415 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 19 A.A.R. 3334, effective October 1, 2013 (Supp. 13-4). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-416. Clinical Laboratory Services

If clinical laboratory services are authorized to be provided on a nursing care institution's premises, an administrator shall ensure that:

1. Clinical laboratory services and pathology services are provided through a laboratory that holds a certificate of accreditation, certificate of compliance, or certificate of waiver issued by the United States Department of Health and Human Services under the 1988 amendments to the Clinical Laboratories Improvement Act of 1967;
2. A copy of the certificate of accreditation, certificate of compliance, or certificate of waiver in subsection (1) is provided to the Department for review upon the Department's request;
3. The nursing care institution:
  - a. Is able to provide the clinical laboratory services delineated in the nursing care institution's scope of services when needed by the residents,
  - b. Obtains specimens for the clinical laboratory services delineated in the nursing care institution's scope of services without transporting the residents from the nursing care institution's premises, and
  - c. Has the examination of the specimens performed by a clinical laboratory;
4. Clinical laboratory and pathology test results are:
  - a. Available to the ordering physician:
    - i. Within 24 hours after the test is complete with results if the test is performed at a laboratory on the nursing care institution's premises, or
    - ii. Within 24 hours after the test result is received if the test is performed at a laboratory outside of the nursing care institution's premises; and
  - b. Documented in a resident's medical record;
5. If a test result is obtained that indicates a resident may have an emergency medical condition, as established in policies and procedures, personnel notify:
  - a. The ordering physician,
  - b. A registered nurse in the resident's assigned unit,
  - c. The nursing care institution's administrator, or
  - d. The director of nursing;
6. If a clinical laboratory report is completed on a resident, a copy of the report is included in the resident's medical record;
7. If the nursing care institution provides blood or blood products, policies and procedures are established, documented, and implemented for:
  - a. Procuring, storing, transfusing, and disposing of blood or blood products;
  - b. Blood typing, antibody detection, and blood compatibility testing; and
  - c. Investigating transfusion adverse reactions that specify a process for review through the quality management program; and
8. Expired laboratory supplies are discarded according to policies and procedures

#### Historical Note

Adopted effective January 28, 1980 (Supp. 80-1). Section

repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-416 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 19 A.A.R. 3334, effective October 1, 2013 (Supp. 13-4). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### **R9-10-417. Dialysis Services**

If dialysis services are authorized to be provided on a nursing care institution's premises, an administrator shall ensure that the dialysis services are provided in compliance with the requirements in R9-10-1018.

##### **Historical Note**

Adopted effective January 28, 1980 (Supp. 80-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-417 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### **R9-10-418. Radiology Services and Diagnostic Imaging Services**

If radiology services or diagnostic imaging services are authorized to be provided on a nursing care institution's premises, an administrator shall ensure that:

1. Radiology services and diagnostic imaging services are provided in compliance with A.R.S. Title 30, Chapter 4 and 12 A.A.C. 1;
2. A copy of a certificate documenting compliance with subsection (1) is maintained by the nursing care institution;
3. When needed by a resident, radiology services and diagnostic imaging services delineated in the nursing care institution's scope of services are provided on the nursing care institution's premises;
4. Radiology services and diagnostic imaging services are provided:
  - a. Under the direction of a physician; and
  - b. According to an order that includes:
    - i. The resident's name,
    - ii. The name of the ordering individual,
    - iii. The radiological or diagnostic imaging procedure ordered, and
    - iv. The reason for the procedure;
5. A medical director, attending physician, or radiologist interprets the radiologic or diagnostic image;
6. A radiologic or diagnostic imaging report is prepared that includes:
  - a. The resident's name;
  - b. The date of the procedure;
  - c. A medical director, attending physician, or radiologist's interpretation of the image;
  - d. The type and amount of radiopharmaceutical used, if applicable; and
  - e. The resident's adverse reaction to the radiopharmaceutical, if any; and
7. A radiologic or diagnostic imaging report is included in the resident's medical record.

##### **Historical Note**

Adopted effective January 28, 1980 (Supp. 80-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-418 made by exempt rulemaking at 19 A.A.R. 2015, effective

October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 19 A.A.R. 3334, effective October 1, 2013 (Supp. 13-4). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### **R9-10-419. Respiratory Care Services**

If respiratory care services are provided on a nursing care institution's premises, an administrator shall ensure that:

1. Respiratory care services are provided under the direction of a medical director or attending physician;
2. Respiratory care services are provided according to an order that includes:
  - a. The resident's name;
  - b. The name and signature of the ordering individual;
  - c. The type, frequency, and, if applicable, duration of treatment;
  - d. The type and dosage of medication and diluent; and
  - e. The oxygen concentration or oxygen liter flow and method of administration;
3. Respiratory care services provided to a resident are documented in the resident's medical record and include:
  - a. The date and time of administration;
  - b. The type of respiratory care services provided;
  - c. The effect of the respiratory care services;
  - d. The resident's adverse reaction to the respiratory care services, if any; and
  - e. The authentication of the individual providing the respiratory care services; and
4. Any area or unit that performs blood gases or clinical laboratory tests complies with the requirements in R9-10-416

##### **Historical Note**

Adopted effective January 28, 1980 (Supp. 80-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-419 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 19 A.A.R. 3334, effective October 1, 2013 (Supp. 13-4). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### **R9-10-420. Rehabilitation Services**

If rehabilitation services are provided on a nursing care institution's premises, an administrator shall ensure that:

1. Rehabilitation services are provided:
  - a. Under the direction of an individual qualified according to policies and procedures,
  - b. By an individual licensed to provide the rehabilitation services, and
  - c. According to an order; and
2. The medical record of a resident receiving rehabilitation services includes:
  - a. An order for rehabilitation services that includes the name of the ordering individual and a referring diagnosis,
  - b. A documented care plan that is developed in coordination with the ordering individual and the individual providing the rehabilitation services,
  - c. The rehabilitation services provided,
  - d. The resident's response to the rehabilitation services, and
  - e. The authentication of the individual providing the rehabilitation services.



**Historical Note**

Adopted effective January 28, 1980 (Supp. 80-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-420 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-421. Medication Services**

**A.** An administrator shall ensure that policies and procedures for medication services:

1. Include:
  - a. A process for providing information to a resident about medication prescribed for the resident including:
    - i. The prescribed medication's anticipated results,
    - ii. The prescribed medication's potential adverse reactions,
    - iii. The prescribed medication's potential side effects, and
    - iv. Potential adverse reactions that could result from not taking the medication as prescribed;
  - b. Procedures for preventing, responding to, and reporting:
    - i. A medication error,
    - ii. An adverse response to a medication, or
    - iii. A medication overdose;
  - c. Procedures to ensure that a pharmacist reviews a resident's medications at least once every three months and provides documentation to the resident's attending physician and the director of nursing indicating potential medication problems such as incompatible or duplicative medications;
  - d. Procedures for documenting medication services; and
  - e. Procedures for assisting a resident in obtaining medication; and
2. Specify a process for review through the quality management program of:
  - a. A medication administration error, and
  - b. An adverse reaction to a medication.

**B.** An administrator shall ensure that:

1. Policies and procedures for medication administration:
  - a. Are reviewed and approved by the director of nursing;
  - b. Specify the individuals who may:
    - i. Order medication, and
    - ii. Administer medication;
  - c. Ensure that medication is administered to a resident only as prescribed; and
  - d. Cover the documentation of a resident's refusal to take prescribed medication in the resident's medical record;
2. Verbal orders for medication services are taken by a nurse, unless otherwise provided by law;
3. A medication administered to a resident:
  - a. Is administered in compliance with an order, and
  - b. Is documented in the resident's medical record; and
4. If a psychotropic medication is administered to a resident, the psychotropic medication:
  - a. Is only administered to a resident for a diagnosed medical condition; and
  - b. Unless clinically contraindicated or otherwise ordered by an attending physician or the attending physician's designee, is gradually reduced in dosage while the resident is simultaneously provided with

interventions such as behavior and environment modification in an effort to discontinue the psychotropic medication, unless a dose reduction is attempted and the resident displays behavior justifying the need for the psychotropic medication, and the attending physician documents the necessity for the continued use and dosage.

**C.** An administrator shall ensure that:

1. A current drug reference guide is available for use by personnel members; and
2. If pharmaceutical services are provided:
  - a. The pharmaceutical services are provided under the direction of a pharmacist;
  - b. The pharmaceutical services comply with ARS Title 36, Chapter 27; A.R.S. Title 32, Chapter 18; and 4 A.A.C. 23; and
  - c. A copy of the pharmacy license is provided to the Department upon request.

**D.** When medication is stored at a nursing care institution, an administrator shall ensure that:

1. Medication is stored in a separate locked room, closet, or self-contained unit used only for medication storage;
2. Medication is stored according to the instructions on the medication container; and
3. Policies and procedures are established, documented, and implemented to protect the health and safety of a resident for:
  - a. Receiving, storing, inventorying, tracking, dispensing, and discarding medication including expired medication;
  - b. Discarding or returning prepackaged and sample medication to the manufacturer if the manufacturer requests the discard or return of the medication;
  - c. A medication recall and notification of residents who received recalled medication; and
  - d. Storing, inventorying, and dispensing controlled substances.

**E.** An administrator shall ensure that a personnel member immediately reports a medication error or a resident's adverse reaction to a medication to the medical practitioner who ordered the medication and the nursing care institution's director of nursing.

**Historical Note**

Adopted effective January 28, 1980 (Supp. 80-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-421 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 19 A.A.R. 3334, effective October 1, 2013 (Supp. 13-4). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-422. Infection Control**

An administrator shall ensure that:

1. An infection control program is established, under the direction of an individual qualified according to policies and procedures, to prevent the development and transmission of infections and communicable diseases including:
  - a. A method to identify and document infections occurring at the nursing care institution;
  - b. Analysis of the types, causes, and spread of infections and communicable diseases at the nursing care institution;

- c. The development of corrective measures to minimize or prevent the spread of infections and communicable diseases at the nursing care institution; and
- d. Documentation of infection control activities including:
  - i. The collection and analysis of infection control data,
  - ii. The actions taken related to infections and communicable diseases, and
  - iii. Reports of communicable diseases to the governing authority and state and county health departments;
- 2. Infection control documentation is maintained for at least 12 months after the date of the documentation;
- 3. Policies and procedures are established, documented, and implemented that cover:
  - a. Handling and disposal of biohazardous medical waste;
  - b. Sterilization, disinfection, and storage of medical equipment and supplies;
  - c. Using personal protective equipment such as aprons, gloves, gowns, masks, or face protection when applicable;
  - d. Cleaning of an individual's hands when the individual's hands are visibly soiled and before and after providing a service to a resident;
  - e. Training of personnel members, employees, and volunteers in infection control practices; and
  - f. Work restrictions for a personnel member with a communicable disease or infected skin lesion;
- 4. Biohazardous medical waste is identified, stored, and disposed of according to 18 A.A.C. 13, Article 14 and policies and procedures;
- 5. Soiled linen and clothing are:
  - a. Collected in a manner to minimize or prevent contamination;
  - b. Bagged at the site of use; and
  - c. Maintained separate from clean linen and clothing and away from food storage, kitchen, or dining areas; and
- 6. A personnel member, an employee, or a volunteer washes hands or uses a hand disinfection product after a resident contact and after handling soiled linen, soiled clothing, or potentially infectious material.
- b. The nursing care institution is able to store, refrigerate, and reheat food to meet the dietary needs of a resident;
- 4. A registered dietitian:
  - a. Reviews a food menu before the food menu is used to ensure that a resident's nutritional needs are being met,
  - b. Documents the review of a food menu, and
  - c. Is available for consultation regarding a resident's nutritional needs; and
- 5. If a registered dietitian is not employed full-time, an individual is designated as a director of food services who consults with a registered dietitian as often as necessary to ensure that the nutritional needs of a resident are met.
- B.** A registered dietitian or director of food services shall ensure that:
  - 1. Food is prepared:
    - a. Using methods that conserve nutritional value, flavor, and appearance; and
    - b. In a form to meet the needs of a resident such as cut, chopped, ground, pureed, or thickened;
  - 2. A food menu:
    - a. Is prepared at least one week in advance,
    - b. Includes the foods to be served on each day,
    - c. Is conspicuously posted at least one day before the first meal on the food menu will be served,
    - d. Includes any food substitution no later than the morning of the day of meal service with a food substitution, and
    - e. Is maintained for at least 60 calendar days after the last day included in the food menu;
  - 3. Meals and snacks for each day are planned and served using the applicable guidelines in <http://www.health.gov/dietaryguidelines/2010.asp>;
  - 4. A resident is provided:
    - a. A diet that meets the resident's nutritional needs as specified in the resident's comprehensive assessment and care plan;
    - b. Three meals a day with not more than 14 hours between the evening meal and breakfast except as provided in subsection (B)(4)(d);
    - c. The option to have a daily evening snack identified in subsection (B)(4)(d)(ii) or other snack; and
    - d. The option to extend the time span between the evening meal and breakfast from 14 hours to 16 hours if:
      - i. A resident group agrees; and
      - ii. The resident is offered an evening snack that includes meat, fish, eggs, cheese, or other protein, and a serving from either the fruit and vegetable food group or the bread and cereal food group;
  - 5. A resident is provided with food substitutions of similar nutritional value if:
    - a. The resident refuses to eat the food served, or
    - b. The resident requests a substitution;
  - 6. Recommendations and preferences are requested from a resident or the resident's representative for meal planning;
  - 7. A resident requiring assistance to eat is provided with assistance that recognizes the resident's nutritional, physical, and social needs, including the use of adaptive eating equipment or utensils;
  - 8. Tableware, utensils, equipment, and food-contact surfaces are clean and in good repair;
  - 9. A resident eats meals in a dining area unless the resident chooses to eat in the resident's room or is confined to the

#### Historical Note

Adopted effective January 28, 1980 (Supp. 80-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-422 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-423. Food Services

##### A. An administrator shall ensure that:

- 1. The nursing care institution has a license or permit as a food establishment under 9 A.A.C. 8, Article 1;
- 2. A copy of the nursing care institution's food establishment license or permit is maintained;
- 3. If a nursing care institution contracts with a food establishment, as established in 9 A.A.C. 8, Article 1, to prepare and deliver food to the nursing care institution:
  - a. A copy of the contracted food establishment's license or permit under 9 A.A.C. 8, Article 1 is maintained by the nursing care institution; and

resident's room for medical reasons documented in the resident's medical record; and

10. Water is available and accessible to residents.

C. If a nursing care institution has nutrition and feeding assistants, an administrator shall ensure that:

1. A nutrition and feeding assistant:
  - a. Is at least 16 years of age;
  - b. If applicable, complies with the fingerprint clearance card requirements in A.R.S. § 36-411;
  - c. Completes a nutrition and feeding assistant training course within 12 months before initially providing nutrition and feeding assistance;
  - d. Provides nutrition and feeding assistance where nursing personnel are present;
  - e. Immediately reports an emergency to a nurse or, if a nurse is not present in the common area, to nursing personnel; and
  - f. If the nutrition and feeding assistant observes a change in a resident's physical condition or behavior, reports the change to a nurse or, if a nurse is not present in the common area, to nursing personnel;
2. A resident is not eligible to receive nutrition and feeding assistance from a nutrition and feeding assistant if the resident:
  - a. Has difficulty swallowing,
  - b. Has had recurrent lung aspirations,
  - c. Requires enteral feedings,
  - d. Requires parenteral feedings, or
  - e. Has any other eating or drinking difficulty that may cause the resident's health or safety to be compromised if the resident receives nutrition and feeding assistance from a nutrition and feeding assistant;
3. Only an eligible resident receives nutrition and feeding assistance from a nutrition and feeding assistant;
4. A nurse determines if a resident is eligible to receive nutrition and feeding assistance from a nutrition and feeding assistant, based on:
  - a. The resident's comprehensive assessment,
  - b. The resident's care plan, and
  - c. An assessment conducted by the nurse when making the determination;
5. A method is implemented that identifies eligible residents that ensures only eligible residents receive nutrition and feeding assistance from a nutrition and feeding assistant;
6. When a nutrition and feeding assistant initially provides nutrition and feeding assistance and at least once every three months, a nurse observes the nutrition and feeding assistant while the nutrition and feeding assistant is providing nutrition and feeding assistance to ensure that the nutrition and feeding assistant is providing nutrition and feeding assistance appropriately;
7. A nurse documents the nurse's observations required in subsection (C)(6); and
8. A nutrition and feeding assistant is provided additional training:
  - a. According to policies and procedures, and
  - b. If a nurse identifies a need for additional training based on the nurse's observation in subsection (C)(6).

#### Historical Note

Adopted effective January 28, 1980 (Supp. 80-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-423 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 19 A.A.R. 3334, effective October 1, 2013

(Supp. 13-4). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-424. Emergency and Safety Standards

A. An administrator shall ensure that:

1. A disaster plan is developed, documented, maintained in a location accessible to personnel members and other employees, and, if necessary, implemented that includes:
  - a. When, how, and where residents will be relocated, including:
    - i. Instructions for the evacuation or transfer of residents,
    - ii. Assigned responsibilities for each employee and personnel member, and
    - iii. A plan for continuing to provide services to meet a resident's needs;
  - b. How a resident's medical record will be available to individuals providing services to the resident during a disaster;
  - c. A plan for back-up power and water supply;
  - d. A plan to ensure a resident's medications will be available to administer to the resident during a disaster;
  - e. A plan to ensure a resident is provided nursing services and other services required by the resident during a disaster; and
  - f. A plan for obtaining food and water for individuals present in the nursing care institution or the nursing care institution's relocation site during a disaster;
2. The disaster plan required in subsection (A)(1) is reviewed at least once every 12 months;
3. Documentation of a disaster plan review required in subsection (A)(2) is created, is maintained for at least 12 months after the date of the disaster plan review, and includes:
  - a. The date and time of the disaster plan review;
  - b. The name of each personnel member, employee, or volunteer participating in the disaster plan review;
  - c. A critique of the disaster plan review; and
  - d. If applicable, recommendations for improvement;
4. A disaster drill for employees is conducted on each shift at least once every three months and documented;
5. An evacuation drill for employees and residents:
  - a. Is conducted at least once every six months; and
  - b. Includes all individuals on the premises except for:
    - i. A resident whose medical record contains documentation that evacuation from the nursing care institution would cause harm to the resident, and
    - ii. Sufficient personnel members to ensure the health and safety of residents not evacuated according to subsection (A)(5)(b)(i);
6. Documentation of each evacuation drill is created, is maintained for at least 12 months after the date of the drill, and includes:
  - a. The date and time of the evacuation drill;
  - b. The amount of time taken for employees and residents to evacuate to a designated area;
  - c. If applicable:
    - i. An identification of residents needing assistance for evacuation, and
    - ii. An identification of residents who were not evacuated;
  - d. Any problems encountered in conducting the evacuation drill; and

- e. Recommendations for improvement, if applicable; and
- 7. An evacuation path is conspicuously posted on each hallway of each floor of the nursing care institution.
- B.** An administrator shall ensure that, if applicable, a sign is placed at the entrance to a room or area indicating that oxygen is in use.
- C.** An administrator shall:
  1. Obtain a fire inspection conducted according to the time-frame established by the local fire department or the State Fire Marshal,
  2. Make any repairs or corrections stated on the fire inspection report, and
  3. Maintain documentation of a current fire inspection.

#### Historical Note

Adopted effective January 28, 1980 (Supp. 80-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-424 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 19 A.A.R. 3334, effective October 1, 2013 (Supp. 13-4). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-425. Environmental Standards

- A.** An administrator shall ensure that:
  1. A nursing care institution's premises and equipment are:
    - a. Cleaned and disinfected according to policies and procedures or manufacturer's instructions to prevent, minimize, and control illness and infection; and
    - b. Free from a condition or situation that may cause a resident or an individual to suffer physical injury;
  2. A pest control program is implemented and documented;
  3. Equipment used to provide direct care is:
    - a. Maintained in working order;
    - b. Tested and calibrated according to the manufacturer's recommendations or, if there are no manufacturer's recommendations, as specified in policies and procedures; and
    - c. Used according to the manufacturer's recommendations;
  4. Documentation of equipment testing, calibration, and repair is maintained for at least 12 months after the date of the testing, calibration, or repair;
  5. Garbage and refuse are:
    - a. In areas used for food storage, food preparation, or food service, stored in a covered container lined with a plastic bag;
    - b. In areas not used for food storage, food preparation, or food service, stored:
      - i. According to the requirements in subsection (5)(a), or
      - ii. In a paper-lined or plastic-lined container that is cleaned and sanitized as often as necessary to ensure that the container is clean; and
    - c. Removed from the premises at least once a week;
  6. Heating and cooling systems maintain the nursing care institution at a temperature between 70° F and 84° F;
  7. Common areas:
    - a. Are lighted to assure the safety of residents, and
    - b. Have lighting sufficient to allow personnel members to monitor resident activity;
  8. The supply of hot and cold water is sufficient to meet the personal hygiene needs of residents and the cleaning and sanitation requirements in this Article;

- 9. Linens are clean before use, without holes and stains, and not in need of repair;
- 10. Oxygen containers are secured in an upright position;
- 11. Poisonous or toxic materials stored by the nursing care institution are maintained in labeled containers in a locked area separate from food preparation and storage, dining areas, and medications and are inaccessible to residents;
- 12. Combustible or flammable liquids stored by the nursing care institution are stored in the original labeled containers or safety containers in a locked area inaccessible to residents;
- 13. If pets or animals are allowed in the nursing care institution, pets or animals are:
  - a. Controlled to prevent endangering the residents and to maintain sanitation;
  - b. Licensed consistent with local ordinances; and
  - c. For a dog or cat, vaccinated against rabies;
- 14. If a water source that is not regulated under 18 A.A.C. 4 by the Arizona Department of Environmental Quality is used:
  - a. The water source is tested at least once every 12 months for total coliform bacteria and fecal coliform or *E. coli* bacteria;
  - b. If necessary, corrective action is taken to ensure the water is safe to drink; and
  - c. Documentation of testing is retained for at least 12 months after the date of the test; and
- 15. If a non-municipal sewage system is used, the sewage system is in working order and is maintained according to all applicable state laws and rules.

- B.** An administrator shall ensure that:

- 1. Smoking tobacco products is not permitted within a nursing care institution, and
- 2. Smoking tobacco products may be permitted outside a nursing care institution if:
  - a. Signs designating smoking areas are conspicuously posted, and
  - b. Smoking is prohibited in areas where combustible materials are stored or in use.
- C.** If a swimming pool is located on the premises, an administrator shall ensure that:
  1. At least one personnel member with cardiopulmonary resuscitation training that meets the requirements in R9-10-403(C)(1)(e) is present in the pool area when a resident is in the pool area, and
  2. At least two personnel members are present in the pool area when two or more residents are in the pool area.

#### Historical Note

Adopted effective January 28, 1980 (Supp. 80-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-425 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 19 A.A.R. 3334, effective October 1, 2013 (Supp. 13-4). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-426. Physical Plant Standards

- A.** An administrator shall ensure that:

- 1. A nursing care institution complies with:
  - a. The applicable physical plant health and safety codes and standards, incorporated by reference in A.A.C. R9-1-412, that were in effect on the date the nursing care institution submitted architectural plans

and specifications to the Department for approval according to R9-10-104; and

- b. The requirements for Existing Health Care Occupancies in National Fire Protection Association 101, Life Safety Code, incorporated by reference in A.A.C. R9-1-412;
2. The premises and equipment are sufficient to accommodate:
  - a. The services stated in the nursing care institution's scope of services, and
  - b. An individual accepted as a resident by the nursing care institution;
3. A nursing care institution is ventilated by windows or mechanical ventilation, or a combination of both;
4. The corridors are equipped with handrails on each side that are firmly attached to the walls and are not in need of repair;
5. No more than two individuals reside in a resident room unless:
  - a. The nursing care institution was operating before October 31, 1982; and
  - b. The resident room has not undergone a modification as defined in A.R.S. § 36-401;
6. A resident has a separate bed, a nurse call system, and furniture to meet the resident's needs in a resident room or suite of rooms;
7. A resident room has:
  - a. A window to the outside with window coverings for controlling light and visual privacy, and the location of the window permits a resident to see outside from a sitting position;
  - b. A closet with clothing racks and shelves accessible to the resident; and
  - c. If the resident room contains more than one bed, a curtain or similar type of separation between the beds for privacy; and
8. A resident room or a suite of rooms:
  - a. Is accessible without passing through another resident's room; and
  - b. Does not open into any area where food is prepared, served, or stored.
- B. If a swimming pool is located on the premises, an administrator shall ensure that:
  1. The swimming pool is enclosed by a wall or fence that:
    - a. Is at least five feet in height as measured on the exterior of the wall or fence;
    - b. Has no vertical openings greater than four inches across;
    - c. Has no horizontal openings, except as described in subsection (B)(1)(e);
    - d. Is not chain-link;
    - e. Does not have a space between the ground and the bottom fence rail that exceeds four inches in height; and
    - f. Has a self-closing, self-latching gate that:
      - i. Opens away from the swimming pool,
      - ii. Has a latch located at least 54 inches from the ground, and
      - iii. Is locked when the swimming pool is not in use; and
  2. A life preserver or shepherd's crook is available and accessible in the pool area.
- C. An administrator shall ensure that a spa that is not enclosed by a wall or fence as described in subsection (B)(1) is covered and locked when not in use.

#### Historical Note

Adopted effective January 28, 1980 (Supp. 80-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-426 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-427. Quality Rating

- A. As required in A.R.S. § 36-425.02(A), the Department shall issue a quality rating to each licensed nursing care institution based on the results of a compliance survey.
- B. The following quality ratings are established:
  1. A quality rating of "A" for excellent is issued if the nursing care institution achieves a score of 90 to 100 points,
  2. A quality rating of "B" is issued if the nursing care institution achieves a score of 80 to 89 points,
  3. A quality rating of "C" is issued if the nursing care institution achieves a score of 70 to 79 points, and
  4. A quality rating of "D" is issued if the nursing care institution achieves a score of 69 or fewer points.
- C. The quality rating is determined by the total number of points awarded based on the following criteria:
  1. Nursing Services:
    - a. 15 points: The nursing care institution is implementing a system that ensures residents are provided nursing services to maintain the resident's highest practicable physical, mental, and psychosocial well-being according to the resident's comprehensive assessment and care plan.
    - b. 5 points: The nursing care institution ensures that each resident is free from medication errors that resulted in actual harm.
    - c. 5 points: The nursing care institution ensures the resident's representative is notified and the resident's attending physician is consulted if a resident has a significant change in condition or if the resident is in an incident that requires medical services.
  2. Resident Rights:
    - a. 10 points: The nursing care institution is implementing a system that ensures a resident's privacy needs are met.
    - b. 10 points: The nursing care institution ensures that a resident is free from physical and chemical restraints for purposes other than to treat the resident's medical condition.
    - c. 5 points: The nursing care institution ensures that a resident or the resident's representative is allowed to participate in the planning of, or decisions concerning treatment including the right to refuse treatment and to formulate a health care directive.
  3. Administration:
    - a. 10 points: The nursing care institution has no repeat deficiencies that resulted in actual harm or immediate jeopardy to residents that were cited during the last survey or other survey or complaint investigation conducted between the last survey and the current survey.
    - b. 5 points: The nursing care institution is implementing a system to prevent abuse of a resident and misappropriation of resident property, investigate each allegation of abuse of a resident and misappropriation of resident's property, and report each allegation of abuse of a resident and misappropriation of resident's

- property to the Department and as required by A.R.S. § 46-454.
- c. 5 points: The nursing care institution is implementing a quality management program that addresses nursing care institution services provided to residents, resident complaints, and resident concerns, and documents actions taken for response, resolution, or correction of issues about nursing care institution services provided to residents, resident complaints, and resident concerns.
  - d. 1 point: The nursing care institution is implementing a system to provide social services and a program of ongoing recreational activities to meet the resident's needs based on the resident's comprehensive assessment.
  - e. 1 point: The nursing care institution is implementing a system to ensure that records documenting freedom from infectious pulmonary tuberculosis are maintained for each personnel member, volunteer, and resident.
  - f. 2 points: The nursing care institution is implementing a system to ensure that a resident is free from unnecessary drugs.
  - g. 1 point: The nursing care institution is implementing a system to ensure a personnel member attends in-service education according to policies and procedures.
4. Environment and Infection Control:
    - a. 5 points: The nursing care institution environment is free from a condition or situation within the nursing care institution's control that may cause a resident injury.
    - b. 1 point: The nursing care institution establishes and maintains a pest control program.
    - c. 1 point: The nursing care institution develops a written disaster plan that includes procedures for protecting the health and safety of residents.
    - d. 1 point: The nursing care institution ensures orientation to the disaster plan for each personnel member is completed within the first scheduled week of employment.
    - e. 1 point: The nursing care institution maintains a clean and sanitary environment.
    - f. 5 points: The nursing care institution is implementing a system to prevent and control infection.
    - g. 1 point: An employee cleans the employee's hands after each direct resident contact or when hand cleaning is indicated to prevent the spread of infection.
  5. Food Services:
    - a. 1 point: The nursing care institution complies with 9 A.A.C. 8, Article 1, for food preparation, storage and handling as evidenced by a current food establishment license.
    - b. 3 points: The nursing care institution provides each resident with food that meets the resident's needs as specified in the resident's comprehensive assessment and care plan.
    - c. 2 points: The nursing care institution obtains input from each resident or the resident's representative and implements recommendations for meal planning and food choices consistent with the resident's dietary needs.
    - d. 2 points: The nursing care institution provides assistance to a resident who needs help in eating so that the resident's nutritional, physical, and social needs are met.
    - e. 1 point: The nursing care institution prepares menus at least one week in advance, conspicuously posts each menu, and adheres to each planned menu unless an uncontrollable situation such as food spoilage or non-delivery of a specified food requires substitution.
    - f. 1 point: The nursing care institution provides food substitution of similar nutritive value for residents who refuse the food served or who request a substitution.
  - D. A nursing care institution's quality rating remains in effect until a survey is conducted by the Department for the next renewal period except as provided in subsection (E).
  - E. If the Department issues a provisional license, the current quality rating is terminated. A provisional licensee may submit an application for a substantial compliance survey. If the Department determines that, as a result of a substantial compliance survey, the nursing care institution is in substantial compliance, the Department shall issue a new quality rating according to subsection (C).
  - F. The issuance of a quality rating does not preclude the Department from seeking a civil penalty as provided in A.R.S. § 36-431.01, or suspension or revocation of a license as provided in A.R.S. § 36-427.

**Historical Note**

Adopted effective January 28, 1980 (Supp. 80-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2). New Section R9-10-427 made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 19 A.A.R. 3334, effective October 1, 2013 (Supp. 13-4). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-428. Repealed****Historical Note**

Adopted effective January 28, 1980 (Supp. 80-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2).

**R9-10-429. Repealed****Historical Note**

Adopted effective January 28, 1980 (Supp. 80-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2).

**R9-10-430. Repealed****Historical Note**

Adopted effective January 28, 1980 (Supp. 80-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2).

**R9-10-431. Repealed****Historical Note**

Adopted effective January 28, 1980 (Supp. 80-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2).

**R9-10-432. Repealed****Historical Note**

Adopted effective January 28, 1980 (Supp. 80-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2).

**R9-10-433. Repealed****Historical Note**

Adopted effective January 28, 1980 (Supp. 80-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2).

**R9-10-434. Repealed****Historical Note**

Adopted effective January 28, 1980 (Supp. 80-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2).

**R9-10-435. Repealed****Historical Note**

Adopted effective January 28, 1980 (Supp. 80-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2).

**R9-10-436. Repealed****Historical Note**

Adopted effective January 28, 1980 (Supp. 80-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2).

**R9-10-437. Repealed****Historical Note**

Adopted effective January 28, 1980 (Supp. 80-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2).

**R9-10-438. Repealed****Historical Note**

Adopted effective January 28, 1980 (Supp. 80-1). Section repealed by final rulemaking at 8 A.A.R. 2785, effective October 1, 2002 (Supp. 02-2).

**R9-10-439. Repealed****Historical Note**

Adopted effective January 28, 1980 (Supp. 80-1).  
Repealed effective October 30, 1989 (Supp. 89-4).

**ARTICLE 5. RECOVERY CARE CENTERS****R9-10-501. Definitions**

In addition to the definitions in A.R.S. § 36-401 and R9-10-101, the following applies in this Article unless otherwise specified:

“Recovery care services” has the same meaning as in A.R.S. § 36-448.51.

**Historical Note**

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Emergency expired. Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Section repealed, new Section adopted effective April 4, 1994 (Supp. 94-2). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws

2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-502. Administration****A. A governing authority shall:**

1. Consist of one or more individuals responsible for the organization, operation, and administration of a recovery care center;
2. Establish in writing:
  - a. A recovery care center’s scope of services, and
  - b. Qualifications for an administrator;
3. Designate an administrator, in writing, who has the qualifications established in subsection (A)(2)(b);
4. Grant, deny, suspend, or revoke the clinical privileges of a medical staff member according to medical staff bylaws;
5. Adopt a quality management program according to R9-10-503;
6. Review and evaluate the effectiveness of the quality management program at least once every 12 months;
7. Designate, in writing, an acting administrator who has the qualifications established in subsection (A)(2)(b) if the administrator is:
  - a. Expected not to be present on a recovery care center’s premises for more than 30 calendar days, or
  - b. Not present on a recovery care center’s premises for more than 30 calendar days; and
8. Except as provided in subsection (A)(7), notify the Department according to A.R.S. § 36-425(I) when there is a change in the administrator and identify the name and qualifications of the new administrator.

**B. An administrator:**

1. Is directly accountable to the governing authority of a recovery care center for the daily operation of the recovery care center and all services provided by or at the recovery care center;
2. Has the authority and responsibility to manage a recovery care center; and
3. Except as provided in subsection (A)(7), designates, in writing, an individual who is present on the recovery care center’s premises and accountable for the recovery care center when the administrator is not present on the recovery care center premises.

**C. An administrator shall ensure that:**

1. Policies and procedures are established, documented, and implemented to protect the health and safety of a patient that:
  - a. Cover job descriptions, duties, and qualifications including required skills, knowledge, education, and experience for personnel members, employees, volunteers, and students;
  - b. Cover orientation and in-service education for personnel members, employees, volunteers, and students;
  - c. Include how a personnel member may submit a complaint relating to patient care;
  - d. Cover the requirements in A.R.S. Title 36, Chapter 4, Article 11;
  - e. Cover cardiopulmonary resuscitation training required in R9-10-505(G) including:
    - i. The method and content of cardiopulmonary resuscitation training,
    - ii. The qualifications for an individual to provide cardiopulmonary resuscitation training,
    - iii. The time-frame for renewal of cardiopulmonary resuscitation training, and

- iv. The documentation that verifies an individual has received cardiopulmonary resuscitation training;
  - f. Cover first aid training;
  - g. Include a method to identify a patient to ensure the patient receives services as ordered;
  - h. Cover patient rights including assisting a patient who does not speak English or who has a disability to become aware of patient rights;
  - i. Cover specific steps for:
    - i. A patient to file a complaint, and
    - ii. The recovery care center to respond to a patient's complaint;
  - j. Cover health care directives;
  - k. Cover medical records, including electronic medical records;
  - l. Cover a quality management program, including incident reports and supporting documentation;
  - m. Cover contracted services;
  - n. Cover tissue and organ procurement and transplant; and
  - o. Cover when an individual may visit a patient in a recovery care center;
2. Policies and procedures for recovery care services are established, documented, and implemented to protect the health and safety of a patient that:
    - a. Cover patient screening, admission, transfer, discharge planning, and discharge;
    - b. Cover the provision of recovery care services;
    - c. Include when general consent and informed consent are required;
    - d. Cover prescribing a controlled substance to minimize substance abuse by a patient;
    - e. Cover dispensing, administering, and disposing of medications;
    - f. Cover how personnel members will respond to a patient's sudden, intense, or out-of-control behavior to prevent harm to the patient or another individual;
    - g. Cover infection control; and
    - h. Cover environmental services that affect patient care;
  3. Policies and procedures are reviewed at least once every three years and updated as needed;
  4. Policies and procedures are available to personnel members, employees, volunteers, and students; and
  5. Unless otherwise stated:
    - a. Documentation required by this Article is provided to the Department within two hours after a Department request; and
    - b. When documentation or information is required by this Chapter to be submitted on behalf of a recovery care center, the documentation or information is provided to the unit in the Department that is responsible for licensing and monitoring the recovery care center.

#### Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. §

41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Section repealed, new Section adopted effective April 4, 1994 (Supp. 94-2). Section repealed; Section amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-503. Quality Management

1. A plan is established, documented, and implemented for an ongoing quality management program that, at a minimum, includes:
  - a. A method to identify, document, and evaluate incidents;
  - b. A method to collect data to evaluate services provided to patients;
  - c. A method to evaluate the data collected to identify a concern about the delivery of services related to patient care;
  - d. A method to make changes or take action as a result of the identification of a concern about the delivery of services related to patient care; and
  - e. The frequency of submitting a documented report required in subsection (2) to the governing authority;
2. A documented report is submitted to the governing authority that includes:
  - a. An identification of each concern about the delivery of services related to patient care, and
  - b. Any change made or action taken as a result of the identification of a concern about the delivery of services related to patient care; and
3. The report required in subsection (2) and the supporting documentation for the report are maintained for at least 12 months after the date the report is submitted to the governing authority.

#### Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Section repealed, new Section adopted effective April 4, 1994 (Supp. 94-2). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-504. Contracted Services

An administrator shall ensure that:

1. Contracted services are provided according to the requirements in this Article, and
2. Documentation of current contracted services is maintained that includes a description of the contracted services provided.



**Historical Note**

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Section repealed, new Section adopted effective April 4, 1994 (Supp. 94-2). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-505. Personnel****A.** An administrator shall ensure that:

1. The qualifications, skills, and knowledge required for each type of personnel member:
  - a. Are based on:
    - i. The type of physical health services or behavioral health services expected to be provided by the personnel member according to the established job description, and
    - ii. The acuity of the patients receiving physical health services or behavioral health services from the personnel member according to the established job description; and
  - b. Include:
    - i. The specific skills and knowledge necessary for the personnel member to provide the expected physical health services and behavioral health services listed in the established job description,
    - ii. The type and duration of education that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected physical health services or behavioral health services listed in the established job description, and
    - iii. The type and duration of experience that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected physical health services or behavioral health services listed in the established job description;
2. A personnel member's skills and knowledge are verified and documented:
  - a. Before the personnel member provides physical health services or behavioral health services, and
  - b. According to policies and procedures; and
3. Sufficient personnel members are present on a recovery care center's premises with the qualifications, skills, and knowledge necessary to:
  - a. Provide the services in the recovery care center's scope of services,
  - b. Meet the needs of a patient, and
  - c. Ensure the health and safety of a patient.

**B.** An administrator shall ensure that an individual who is a baccalaureate social worker, master social worker, associate marriage and family therapist, associate counselor, or associate

substance abuse counselor is under direct supervision as defined in 4 A.A.C. 6, Article 1.

- C.** An administrator shall ensure that a personnel member, or an employee or a volunteer who has or is expected to have direct interaction with a patient, provides evidence of freedom from infectious tuberculosis:
  1. On or before the date the individual begins providing services at or on behalf of the recovery care center, and
  2. As specified in R9-10-113.
- D.** An administrator shall ensure that a personnel record is maintained for each personnel member, employee, volunteer, or student that includes:
  1. The individual's name, date of birth, and contact telephone number;
  2. The individual's starting date of employment or volunteer service and, if applicable, the ending date; and
  3. Documentation of:
    - a. The individual's qualifications, including skills and knowledge applicable to the employee's job duties;
    - b. The individual's education and experience applicable to the employee's job duties;
    - c. The individual's completed orientation and in-service education as required by policies and procedures;
    - d. The individual's license or certification, if the individual is required to be licensed or certified in this Article or policies and procedures;
    - e. The individual's compliance with the requirements in A.R.S. § 36-411;
    - f. Cardiopulmonary resuscitation training, if required for the individual, according to R9-10-502(C)(1)(e);
    - g. First aid training, if the individual is required to have according to this Article and policies and procedures; and
    - h. Evidence of freedom from infectious tuberculosis, if required for the individual according to subsection (C).
- E.** An administrator shall ensure that personnel records are:
  1. Maintained:
    - a. Throughout the individual's period of providing services in or for the recovery care center, and
    - b. For at least 24 months after the last date the individual provided services in or for the recovery care center; and
  2. For a personnel member who has not provided physical health services or behavioral health services at or for the recovery care center during the previous 12 months, provided to the Department within 72 hours after the Department's request.
- F.** An administrator shall ensure that:
  1. A plan to provide orientation specific to the duties of a personnel member, an employee, a volunteer, and a student is developed, documented, and implemented;
  2. A personnel member completes orientation before providing behavioral health services or physical health services;
  3. An individual's orientation is documented, to include:
    - a. The individual's name,
    - b. The date of the orientation, and
    - c. The subject or topics covered in the orientation;
  4. A director of nursing develops, documents, and implements a plan to provide in-service education specific to the duties of a personnel member;
  5. A personnel member's in-service education is documented, to include:
    - a. The personnel member's name,

- b. The date of the training, and
- c. The subject or topics covered in the training; and
- 6. A work schedule of each personnel member is developed and maintained at the recovery care center for at least 12 months from the date of the work schedule.
- G.** An administrator shall ensure that a nursing personnel member:
  - 1. Is 18 years of age or older,
  - 2. Is certified in cardiopulmonary resuscitation within the first month of employment,
  - 3. Maintains current certification in cardiopulmonary resuscitation, and
  - 4. Attends additional orientation that includes patient care and infection control policies and procedures.

#### Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Section repealed, new Section adopted effective April 4, 1994 (Supp. 94-2). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-506. Medical Staff

- A.** A governing authority shall require that:
  - 1. The organized medical staff is directly accountable to the governing authority for the quality of care provided by a medical staff member to a patient in a recovery care center;
  - 2. The medical staff bylaws and medical staff regulations are approved according to the medical staff bylaws and governing authority requirements;
  - 3. A medical staff member complies with medical staff bylaws and medical staff regulations;
  - 4. The medical staff includes at least two physicians who have clinical privileges to admit patients to the recovery care center;
  - 5. A medical staff member is available to direct patient care;
  - 6. Medical staff bylaws or medical staff regulations are established, documented, and implemented for the process of:
    - a. Conducting peer review according to A.R.S. Title 36, Chapter 4, Article 5;
    - b. Appointing members to the medical staff, subject to approval by the governing authority;
    - c. Establishing committees, including identifying the purpose and organization of each committee;
    - d. Appointing one or more medical staff members to a committee;
    - e. Requiring that each patient has a medical staff member who coordinates the patient's care;
    - f. Defining the responsibilities of a medical staff member to provide medical services to the medical staff member's patient;

- g. Defining a medical staff member's responsibilities for the transfer of a patient;
- h. Specifying requirements for oral, telephone, and electronic orders, including which orders require identification of the time of the order;
- i. Establishing a time-frame for a medical staff member to complete a patient's medical record; and
- j. Establishing criteria for granting, denying, revoking, and suspending clinical privileges; and
- 7. The organized medical staff reviews the medical staff bylaws and the medical staff regulations at least once every three years and updates the bylaws and regulations as needed.
- B.** An administrator shall ensure that:
  - 1. A medical staff member provides evidence of freedom from infectious tuberculosis as specified in R9-10-113 before providing services at the recovery care center and at least once every 12 months thereafter;
  - 2. A record for each medical staff member is established and maintained that includes:
    - a. A completed application for clinical privileges,
    - b. The dates and lengths of appointment and reappointment of clinical privileges,
    - c. The specific clinical privileges granted to the medical staff member including revision or revocation dates for each clinical privilege, and
    - d. A verification of current Arizona health care professional active license according to A.R.S. Title 32; and
  - 3. Except for documentation of peer review conducted according to A.R.S. § 36-445, a record under subsection (B)(2) is provided to the Department for review:
    - a. For a current medical staff member, within 2 hours after the Department's request, or
    - b. Within 72 hours after the time of the Department's request if the individual is no longer a current medical staff member.

#### Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted effective October 30, 1989 (Supp. 89-4). Section repealed, new Section adopted effective April 4, 1994 (Supp. 94-2). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-507. Admission

- A.** An administrator shall ensure that a physician only admits patients to the recovery care center who require recovery care services, as defined in A.R.S. § 36-448.51.
- B.** An administrator shall ensure that the following documents are in a patient's medical record at the time the patient is admitted to the recovery care center:
  - 1. A medical history and physical examination performed or approved by a member of the recovery care center's med-

- ical staff within 30 calendar days before the patient's admission to the recovery care center,
2. A discharge summary from the referring health care institution or physician,
  3. Physician orders, and
  4. Documentation concerning health care directives.

#### Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Section repealed, new Section adopted effective April 4, 1994 (Supp. 94-2). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-508. Discharge

- A.** For a patient, an administrator shall ensure that discharge planning:
1. Identifies the specific needs of the patient after discharge, if applicable;
  2. If a discharge date has been determined, identifies the anticipated discharge date;
  3. Includes the participation of the patient or the patient's representative;
  4. Is completed before discharge occurs;
  5. Provides the patient or the patient's representative with written information identifying classes or subclasses of health care institutions and the level of care that the health care institutions provide that may meet the patient's assessed and anticipated needs after discharge, if applicable; and
  6. Is documented in the patient's medical record.
- B.** For a patient discharge or a transfer of the patient, an administrator shall ensure that:
1. A discharge summary is developed that includes:
    - a. A description of the patient's medical condition and the medical services provided to the patient, and
    - b. The signature of the medical practitioner coordinating the patient's medical services;
  2. A discharge order for the patient is received from a medical practitioner coordinating the patient's medical services before discharge, unless the patient leaves the recovery care center against a medical staff member's advice;
  3. Discharge instructions are developed and documented; and
  4. The patient or the patient's representative is provided with a copy of the discharge instructions.

#### Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp.

89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Section repealed, new Section adopted effective April 4, 1994 (Supp. 94-2). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-509. Transfer

Except for a transfer of a patient due to an emergency, an administrator shall ensure that:

1. A personnel member coordinates the transfer and the services provided to the patient;
2. According to policies and procedures:
  - a. An evaluation of the patient is conducted before the transfer;
  - b. Information from the patient's medical record, including orders that are in effect at the time of the transfer, is provided to a receiving health care institution; and
  - c. A personnel member explains risks and benefits of the transfer to the patient or the patient's representative; and
3. Documentation in the patient's medical record includes:
  - a. Communication with an individual at a receiving health care institution;
  - b. The date and time of the transfer;
  - c. The mode of transportation; and
  - d. If applicable, the name of the personnel member accompanying the patient during a transfer.

#### Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Section repealed, new Section adopted effective April 4, 1994 (Supp. 94-2). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-510. Patient Rights

- A.** An administrator shall ensure:
1. The requirements in subsection (B) and the patient rights in subsection (C) are conspicuously posted on the premises;
  2. At the time of admission, a patient or the patient's representative receives a written copy of the requirements in subsection (B) and the patient rights in subsection (C); and
  3. Policies and procedures include:

- a. How and when a patient or the patient's representative is informed of the patient rights in subsection (C), and
  - b. Where patient rights are posted as required in subsection (A)(1).
- B.** An administrator shall ensure that:
  - 1. A patient is treated with dignity, respect, and consideration;
  - 2. A patient is not subjected to:
    - a. Abuse;
    - b. Neglect;
    - c. Exploitation;
    - d. Coercion;
    - e. Manipulation;
    - f. Sexual abuse;
    - g. Sexual assault;
    - h. Seclusion;
    - i. Restraint;
    - j. Retaliation for submitting a complaint to the Department or another entity; or
    - k. Misappropriation of personal and private property by a recovery care center's medical staff, personnel members, employees, volunteers, or students; and
  - 3. A patient or the patient's representative:
    - a. Except in an emergency, either consents to or refuses treatment;
    - b. May refuse or withdraw consent for treatment before treatment is initiated;
    - c. Except in an emergency, is informed of proposed treatment alternatives, associated risks, and possible complications;
    - d. Is informed of the following:
      - i. The recovery care center's policy on health care directives, and
      - ii. The patient complaint process;
    - e. Consents to photographs of the patient before the patient is photographed, except that a patient may be photographed when admitted to a recovery care center for identification and administrative purposes; and
    - f. Except as otherwise permitted by law, provides written consent to the release of information in the patient's:
      - i. Medical record, or
      - ii. Financial records.
- C.** A patient has the following rights:
  - 1. Not to be discriminated against based on race, national origin, religion, gender, sexual orientation, age, disability, marital status, or diagnosis;
  - 2. To receive treatment that supports and respects the patient's individuality, choices, strengths, and abilities;
  - 3. To receive privacy in treatment and care for personal needs;
  - 4. To have access to a telephone;
  - 5. To be advised of the recovery care center's policy regarding health care directives;
  - 6. To associate and communicate privately with individuals of the patient's choice;
  - 7. To review, upon written request, the patient's own medical record according to A.R.S. §§ 12-2293, 12-2294, and 12-2294.01;
  - 8. To receive a referral to another health care institution if the health care institution is not authorized or not able to provide physical health services or behavioral health services needed by the patient;

- 9. To participate or have the patient's representative participate in the development of, or decisions concerning treatment;
- 10. To participate or refuse to participate in research or experimental treatment; and
- 11. To receive assistance from a family member, the patient's representative, or other individual in understanding, protecting, or exercising the patient's rights.

#### Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Section repealed, new Section adopted effective April 4, 1994 (Supp. 94-2). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-511. Medical Records

- A.** An administrator shall ensure that:
  - 1. A patient's medical record is established and maintained for each patient according to A.R.S. Title 12, Chapter 13, Article 7.1;
  - 2. An entry in a patient's medical record is:
    - a. Recorded only by an individual authorized by policies and procedures to make the entry;
    - b. Dated, legible, and authenticated; and
    - c. Not changed to make the initial entry illegible;
  - 3. An order is:
    - a. Dated when the order is entered in the patient's medical record and includes the time of the order;
    - b. Authenticated by a medical staff according to policies and procedures; and
    - c. If the order is a verbal order, authenticated by the medical staff issuing the order;
  - 4. If a rubber-stamp signature or an electronic signature is used to authenticate an order, the individual whose signature the rubber-stamp signature or electronic signature represents is accountable for the use of the rubber-stamp signature or electronic signature;
  - 5. A patient's medical record is available to an individual:
    - a. Authorized according by policies and procedures to access the patient's medical record;
    - b. If the individual is not authorized according to policies and procedures, with the written consent of the patient or the patient's representative; or
    - c. As permitted by law;
  - 6. Policies and procedures that include the maximum timeframe to retrieve an onsite or off-site patient's medical record at the request of a medical staff or authorized personnel member; and
  - 7. A patient's medical record is protected from loss, damage, or unauthorized use.
- B.** If a recovery care center maintains patients' medical records electronically, an administrator shall ensure that:

1. Safeguards exist to prevent unauthorized access, and
  2. The date and time of an entry in a patient's medical record is recorded by the computer's internal clock.
- C.** An administrator shall ensure that a patient's medical record contains:
1. Patient information that includes:
    - a. The patient's name,
    - b. The patient's address,
    - c. The patient's date of birth, and
    - d. Any known allergies;
  2. The date of admission and, if applicable, the date of discharge;
  3. The admitting diagnosis;
  4. A discharge summary from the referring health care institution or physician;
  5. If applicable, documented general consent and informed consent by the patient or the patient's representative;
  6. The medical history and physical examination required in R9-10-507(B)(1);
  7. A copy of the patient's health care directive, if applicable;
  8. The name and telephone number of the patient's medical practitioner;
  9. If applicable, the name and contact information of the patient's representative and:
    - a. If the patient is 18 years of age or older or an emancipated minor, the document signed by the patient consenting for the patient's representative to act on the patient's behalf; or
    - b. If the patient's representative:
      - i. Is a legal guardian, a copy of the court order establishing guardianship; or
      - ii. Has a health care power of attorney established under A.R.S. § 36-3221 or a mental health care power of attorney executed under A.R.S. § 36-3282, a copy of the health care power of attorney or mental health care power of attorney;
  10. Orders;
  11. Nursing assessment;
  12. Treatment plans;
  13. Progress notes;
  14. Documentation of recovery care center services provided to a patient;
  15. The disposition of the patient after discharge;
  16. The discharge plan;
  17. A discharge summary, if applicable;
  18. Transfer documentation from the referring health care institution or physician;
  19. If applicable:
    - a. A laboratory report,
    - b. A radiologic report,
    - c. A diagnostic report, and
    - d. A consultation report;
  20. If applicable, documentation of any actions taken to control the patient's sudden, intense, or out-of-control behavior to prevent harm to the patient or another individual;
  21. If applicable, documentation that evacuation from the recovery care center would cause harm to the patient; and
  22. Documentation of a medication administered to the patient that includes:
    - a. The date and time of administration;
    - b. The name, strength, dosage, and route of administration;
    - c. For a medication administered for pain on a PRN basis:
      - i. An assessment of the patient's pain before administering the medication, and
      - ii. The effect of the medication administered;
    - d. For a psychotropic medication administered on a PRN basis:
      - i. An assessment of the patient's behavior before administering the psychotropic medication, and
      - ii. The effect of the psychotropic medication administered;
    - e. The signature of the individual administering or observing the patient self-administer the medication; and
    - f. Any adverse reaction a patient has to the medication.
- D.** An administrator shall ensure that a patient's medical record is completed within 30 calendar days after the patient's discharge.

#### Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Section repealed, new Section adopted effective April 4, 1994 (Supp. 94-2). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-512. Nursing Services

- A.** An administrator shall appoint a registered nurse as the director of nursing who has the authority and responsibility to manage nursing services at a recovery care center.
- B.** A director of nursing shall:
1. Ensure that policies and procedures are developed, documented, and implemented to protect the health and safety of a patient that cover nursing assessments;
  2. Designate, in writing, a registered nurse to manage nursing services when the director of nursing is not present on a recovery care center's premises;
  3. Ensure that a recovery care center is staffed with nursing personnel according to the number of patients and their health care needs;
  4. Ensure that a patient receives medical services, nursing services, and health-related services based on the patient's nursing assessment and the physician's orders; and
  5. Ensure that medications are administered by a nurse licensed according to A.R.S. Title 32, Chapter 15 or as otherwise provided by law.
- C.** An administrator shall ensure that a registered nurse completes a nursing assessment of each patient, which addresses patient care needs, when the patient is admitted to the recovery care center.
- D.** An administrator shall ensure that a licensed nurse provides a patient with written discharge instructions, based on the patient's health care needs and physician's instructions, before the patient is discharged from the recovery care center.

#### Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days

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### **R9-10-513. Medication Services**

#### **A.** An administrator shall ensure that policies and procedures for medication services:

1. Include:
  - a. A process for providing information to a patient about medication prescribed for the patient including:
    - i. The prescribed medication's anticipated results,
    - ii. The prescribed medication's potential adverse reactions,
    - iii. The prescribed medication's potential side effects, and
    - iv. Potential adverse reactions that could result from not taking the medication as prescribed;
  - b. Procedures for preventing, responding to, and reporting:
    - i. A medication error,
    - ii. An adverse reaction to a medication, or
    - iii. A medication overdose;
  - c. Procedures for documenting medication administration; and
  - d. Procedures to ensure that a patient's medication regimen and method of administration is reviewed by a medical practitioner to ensure the medication regimen meets the patient's needs; and
2. Specify a process for review through the quality management program of:
  - a. A medication administration error, and
  - b. An adverse reaction to a medication.

#### **B.** An administrator shall ensure that:

1. Policies and procedures for medication administration:
  - a. Are reviewed and approved by a medical practitioner;
  - b. Specify the individuals who may:
    - i. Order medication, and
    - ii. Administer medication;
  - c. Ensure that medication is administered to a patient only as prescribed; and
  - d. Cover the documentation of a patient's refusal to take prescribed medication is documented in the patient's medical record;
2. Verbal orders for medication services are taken by a nurse, unless otherwise provided by law;
3. A medication administered to a patient:
  - a. Is administered in compliance with an order, and
  - b. Is documented in the patient's medical record.

#### **C.** An administrator shall ensure that:

1. A current drug reference guide is available for use by personnel members;

2. A current toxicology reference guide is available for use by personnel members; and
3. If pharmaceutical services are provided on the premises:
  - a. A committee, composed of at least one physician, one pharmacist, and other personnel members as determined by policies and procedures, is established to:
    - i. Develop a drug formulary,
    - ii. Update the drug formulary at least every 12 months,
    - iii. Develop medication usage and medication substitution policies and procedures, and
    - iv. Specify which medications and medication classifications are required to be stopped automatically after a specific time period unless the ordering medical staff member specifically orders otherwise;
  - b. The pharmaceutical services are provided under the direction of a pharmacist;
  - c. The pharmaceutical services comply with ARS Title 36, Chapter 27; A.R.S. Title 32, Chapter 18; and 4 A.A.C. 23; and
  - d. A copy of the pharmacy license is provided to the Department upon request.
- D.** When medication is stored at a recovery care center, an administrator shall ensure that:
  1. Medication is stored in a separate locked room, closet, or self-contained unit used only for medication storage;
  2. Medication is stored according to the instructions on the medication container; and
  3. Policies and procedures are established, documented, and implemented to protect the health and safety of a patient for:
    - a. Receiving, storing, inventorying, tracking, dispensing, and discarding medication, including expired medication;
    - b. Discarding or returning prepackaged and sample medication to the manufacturer if the manufacturer requests the discard or return of the medication;
    - c. A medication recall and notification of patients who received recalled medication; and
    - d. Storing, inventorying, and dispensing controlled substances.
- E.** An administrator shall ensure that a personnel member immediately reports a medication error or a patient's adverse reaction to a medication to the medical practitioner who ordered the medication and, if applicable, the recovery care center's director of nursing.

#### **Historical Note**

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted effective October 30, 1989 (Supp. 89-4). Section repealed, new Section adopted effective April 4, 1994 (Supp. 94-2). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, §

13; effective July 1, 2014 (Supp. 14-2).

#### **R9-10-514. Ancillary Services**

An administrator shall ensure that:

1. Laboratory services are provided on the premises, or are available through contract, with a laboratory that holds a certificate of accreditation or certificate of compliance issued by the U.S. Department of Health and Human Services under the 1988 amendments to the Clinical Laboratories Improvement Act of 1967; and
2. Pharmaceutical services are provided on the premises, or are available through contract, by a pharmacy licensed according to A.R.S. Title 32, Chapter 18.

##### **Historical Note**

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Section repealed, new Section adopted effective April 4, 1994 (Supp. 94-2). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2).

#### **R9-10-515. Food Services**

**A.** An administrator shall ensure that:

1. The recovery care center has a license or permit as a food establishment under 9 A.A.C. 8, Article 1;
2. A copy of the recovery care center's food establishment license or permit is maintained; and
3. If a recovery care center contracts with a food establishment, as established in 9 A.A.C. 8, Article 1, to prepare and deliver food to the recovery care center:
  - a. A copy of the contracted food establishment's license or permit under 9 A.A.C. 8, Article 1 is maintained by the recovery care center; and
  - b. The recovery care center is able to store, refrigerate, and reheat food to meet the dietary needs of a patient.

**B.** An administrator shall:

1. Designate a food service manager who is responsible for food service in the recovery care center; and
2. Ensure that a current therapeutic diet reference manual is available to the food service manager.

**C.** A food service manager shall ensure that:

1. Food is prepared:
  - a. Using methods that conserve nutritional value, flavor, and appearance; and
  - b. In a form to meet the needs of a patient such as cut, chopped, ground, pureed, or thickened;
2. A food menu:
  - a. Is prepared at least one week in advance,
  - b. Includes the foods to be served each day,
  - c. Is conspicuously posted at least one day before the first meal on the food menu will be served,
  - d. Includes any food substitution no later than the morning of the day of meal service with a food substitution, and
  - e. Is maintained for at least 60 calendar days after the last day included in the food menu;

3. Meals and snacks provided by the recovery care center are served according to posted menus;
4. Meals and snacks for each day are planned using the applicable guidelines in <http://www.health.gov/dietaryguidelines/2010.asp>;
5. A patient is provided:
  - a. A diet that meets the patient's nutritional needs and, if applicable, the orders of the patient's physician;
  - b. Three meals a day with not more than 14 hours between the evening meal and breakfast except as provided in subsection (C)(5)(d);
  - c. The option to have a daily evening snack identified in subsection (C)(5)(d)(ii) or other snack; and
  - d. The option to extend the time span between the evening meal and breakfast from 14 hours to 16 hours if:
    - i. A patient agrees; and
    - ii. The patient is offered an evening snack that includes meat, fish, eggs, cheese, or other protein, and a serving from either the fruit and vegetable food group or the bread and cereal food group;
6. A patient requiring assistance to eat is provided with assistance that recognizes the patient's nutritional, physical, and social needs, including the use of adaptive eating equipment or utensils; and
7. Water is available and accessible to a patient.

##### **Historical Note**

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Section repealed effective April 4, 1994 (Supp. 94-2). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### **R9-10-516. Emergency and Safety Standards**

**A.** An administrator shall ensure that policies and procedures for providing emergency treatment are established, documented, and implemented that protect the health and safety of patients and include:

1. Basic life support procedures, including the administration of oxygen and cardiopulmonary resuscitation; and
2. Transfer arrangements for patients who require care not provided by the recovery care center.

**B.** An administrator shall ensure that emergency treatment is provided to a patient admitted to the recovery care center according to policies and procedures.

**C.** An administrator shall ensure that:

1. A disaster plan is developed, documented, maintained in a location accessible to personnel members and other employees, and, if necessary, implemented that includes:
  - a. When, how, and where patients will be relocated, including:

- i. Instructions for the evacuation or transfer of patients;
    - ii. Assigned responsibilities for each employee and personnel member; and
    - iii. A plan for providing continuing services to meet patient's needs;
  - b. How each patient's medical record will be available to individuals providing services to the patient during a disaster;
  - c. A plan to ensure each patient's medication will be available to administer to the patient during a disaster; and
  - d. A plan for obtaining food and water for individuals present in the recovery care center or the recovery care center's relocation site during a disaster;
2. The disaster plan required in subsection (C)(1) is reviewed at least once every 12 months;
  3. Documentation of a disaster plan review required in subsection (C)(2) is created, is maintained for at least 12 months after the date of the disaster plan review, and includes:
    - a. The date and time of the disaster plan review;
    - b. The name of each personnel member, employee, or volunteer participating in the disaster plan review;
    - c. A critique of the disaster plan review; and
    - d. If applicable, recommendations for improvement;
  4. A disaster drill for employees is conducted on each shift at least once every three months and documented;
  5. An evacuation drill for employees and patients:
    - a. Is conducted at least once every six months;
    - b. Includes all individuals on the premises except for:
      - i. A patient whose medical record contains documentation that evacuation from the recovery care center would cause harm to the patient, and
      - ii. Sufficient personnel members to ensure the health and safety of patients not evacuated according to subsection (C)(5)(b)(i);
  6. Documentation of each evacuation drill is created, is maintained for at least 12 months after the date of the evacuation drill, and includes:
    - a. The date and time of the evacuation drill;
    - b. The amount of time taken for employees and patients to evacuate to a designated area;
    - c. If applicable:
      - i. An identification of patients needing assistance for evacuation, and
      - ii. An identification of patients who were not evacuated;
    - d. Any problems encountered in conducting the evacuation drill; and
    - e. Recommendations for improvement, if applicable; and
  7. An evacuation path is conspicuously posted on each hallway of each floor of the recovery care center.
- D.** An administrator shall:
1. Obtain a fire inspection conducted according to the time-frame established by the local fire department or the State Fire Marshal,
  2. Make any repairs or corrections stated on the inspection report, and
  3. Maintain documentation of a current fire inspection.

#### Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without

change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Section repealed effective April 4, 1994 (Supp. 94-2). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-517. Environmental Standards

- A.** An administrator shall ensure the recovery care center's infection control policies and procedures include:
1. Development and implementation of a written plan for preventing, detecting, reporting, and controlling communicable diseases and infection;
  2. Handling and disposal of biohazardous medical waste; and
  3. Sterilization, disinfection, and storage of medical equipment and supplies.
- B.** An administrator shall ensure that:
1. A recovery care center's premises and equipment are:
    - a. Cleaned and disinfected according to policies and procedures or manufacturer's instructions to prevent, minimize, and control illness or infection; and
    - b. Free from a condition or situation that may cause a patient or an individual to suffer physical injury;
  2. A pest control program is implemented and documented;
  3. Equipment used to provide recovery care services is:
    - a. Maintained in working order;
    - b. Tested and calibrated according to the manufacturer's recommendations or, if there are no manufacturer's recommendations, as specified in policies and procedures; and
    - c. Used according to the manufacturer's recommendations;
  4. Documentation of equipment testing, calibration, and repair is maintained for at least 12 months after the date of the testing, calibration, or repair;
  5. Biohazardous medical waste is identified, stored, and disposed of according to 18 A.A.C. 13, Article 14 and policies and procedures;
  6. Soiled linen and clothing are:
    - a. Collected in a manner to minimize or prevent contamination;
    - b. Bagged at the site of use; and
    - c. Maintained separate from clean linen and clothing and away from food storage, kitchen, or dining areas;
  7. Garbage and refuse are:
    - a. Stored in covered containers lined with plastic bags, and
    - b. Removed from the premises at least once a week;
  8. Heating and cooling systems maintain the recovery care center at a temperature between 70° F and 84° F;
  9. Common areas:
    - a. Are lighted to assure the safety of patients, and
    - b. Have lighting sufficient to allow personnel members to monitor patient activity;



10. The supply of hot and cold water is sufficient to meet the personal hygiene needs of patients and the cleaning and sanitation requirements in this Article;
  11. Oxygen containers are secured in an upright position;
  12. Poisonous or toxic materials stored by the recovery care center are maintained in labeled containers in a locked area separate from food preparation and storage, dining areas, and medications and are inaccessible to patients;
  13. Combustible or flammable liquids and hazardous materials stored by the recovery care center are stored in the original labeled containers or safety containers in a locked area inaccessible to patients;
  14. If pets or animals are allowed in the recovery care center, pets or animals are:
    - a. Controlled to prevent endangering the patients and to maintain sanitation; and
    - b. Licensed consistent with local ordinances;
  15. If a water source that is not regulated under 18 A.A.C. 4 by the Arizona Department of Environmental Quality is used:
    - a. The water source is tested at least once every 12 months for total coliform bacteria and fecal coliform or *E. coli* bacteria;
    - b. If necessary, corrective action is taken to ensure the water is safe to drink; and
    - c. Documentation of testing is retained for at least 12 months after the date of the test; and
  16. If a non-municipal sewage system is used, the sewage system is in working order and is maintained according to applicable state laws and rules.
- C.** An administrator shall ensure that:
1. Smoking tobacco products is not permitted within a recovery care center; and
  2. Smoking tobacco products may be permitted outside a recovery care center if:
    - a. Signs designating smoking areas are conspicuously posted, and
    - b. Smoking is prohibited in areas where combustible materials are stored or in use.

**Historical Note**

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted effective October 30, 1989 (Supp. 89-4). Section repealed effective April 4, 1994 (Supp. 94-2). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-518. Physical Plant Standards**

- A.** An administrator shall ensure that recovery care center's patient rooms and service areas comply with the applicable physical plant health and safety codes and standards, incorporated by reference in A.A.C. R9-1-412(A)(2)(b), in effect on the date the recovery care center submitted architectural plans

and specifications to the Department for approval, according to R9-10-104.

- B.** An administrator shall ensure that the premises and equipment are sufficient to accommodate:
1. The services stated in the recovery care center's scope of services; and
  2. An individual accepted as a patient by the recovery care center.
- C.** An administrator shall ensure that the recovery care center does not allow more than two beds per room.

**Historical Note**

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted effective October 30, 1989 (Supp. 89-4). Section repealed effective April 4, 1994 (Supp. 94-2). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**ARTICLE 6. HOSPICES****R9-10-601. Definitions**

In addition to the definitions in A.R.S. § 36-401 and R9-10-101, the following apply in this Article unless otherwise specified:

1. "Medical social services" means assistance, other than medical services or nursing services, provided by a personnel member to a patient to assist the patient to cope with concerns about the patient's illness, finances, or personal issues and may include problem-solving, interventions, and identification of resources to address the patient's or the patient's family's concerns.
2. "Palliative care" means medical services or nursing services provided to a patient that is not curative and is designed for pain control or symptom management.

**Historical Note**

New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-602. Supplemental Application Requirements**

In addition to the license application requirements in A.R.S. § 36-422 and R9-10-105, an applicant for an initial license as a hospice service agency or hospice inpatient facility shall include on the application:

1. For an application as a hospice service agency:
  - a. The hours of operation for the hospice's administrative office, and
  - b. The geographic region to be served by the hospice service agency; and
2. For an application as a hospice inpatient facility, the requested licensed capacity.

**Historical Note**

New Section made by exempt rulemaking at 19 A.A.R.

2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### **R9-10-603. Administration**

##### **A. A governing authority shall:**

1. Consist of one or more individuals responsible for the organization, operation, and administration of the hospice;
2. Establish, in writing:
  - a. A hospice's scope of services, and
  - b. Qualifications for an administrator;
3. Designate, in writing, an administrator who has the qualifications established in subsection (A)(2)(b);
4. Adopt a quality management plan according to R9-10-604;
5. Review and evaluate the effectiveness of the quality management program at least once every 12 months;
6. Designate, in writing, an acting administrator who has the qualifications established in subsection (A)(2)(b), if the administrator is:
  - a. Expected not to be present:
    - i. At a hospice service agency's administrative office for more than 30 calendar days, or
    - ii. On a hospice inpatient facility's premises for more than 30 calendar days; or
  - b. Not present:
    - i. At a hospice service agency's administrative office for more than 30 calendar days, or
    - ii. On a hospice inpatient facility's premises for more than 30 calendar days; and
7. Except as provided in subsection (A)(6), notify the Department according to A.R.S. § 36-425(I) when there is a change in the administrator and identify the name and qualifications of the new administrator.

##### **B. An administrator:**

1. Is directly accountable to the governing authority of a hospice for the daily operation of the hospice and all services provided by or through the hospice;
2. Has the authority and responsibility to manage the hospice;
3. Except as provided in subsection (A)(6), designates, in writing, an individual who is present on the hospice's premises and accountable for the:
  - a. Hospice service agency when the administrator is not present at the hospice service agency's administrative office, or
  - b. Inpatient hospice facility when the administrator is not on hospice inpatient facility's premises; and
4. Designates a personnel member to provide direction for volunteers.

##### **C. An administrator shall ensure that:**

1. Policies and procedures are established, documented, and implemented to protect the health and safety of a patient that:
  - a. Cover job descriptions, duties, and qualifications, including required skills, knowledge, education, and experience for personnel members, employees, volunteers, and students;
  - b. Cover orientation and in-service education for personnel members, employees, volunteers, and students;
  - c. Include how a personnel member may submit a complaint relating to patient care;
  - d. Cover the requirements in A.R.S. Title 36, Chapter 4, Article 11;

- e. Include a method to identify a patient to ensure the patient receives hospice services as ordered;
- f. Cover patient rights, including assisting a patient who does not speak English or who has a disability to become aware of patient rights;
- g. Cover specific steps for:
  - i. A patient to file a complaint, and
  - ii. The hospice service agency or hospice inpatient facility to respond to a patient's complaint;
- h. Cover health care directives;
- i. Cover medical records, including electronic medical records;
- j. Cover a quality management program, including incident reports and supporting documentation; and
- k. Cover contracted services;
2. Policies and procedures for hospice services are established, documented, and implemented to protect the health and safety of a patient that:
  - a. Cover patient screening, admission, transfer, discharge planning, and discharge;
  - b. Cover the provision of hospice services;
  - c. Include when general consent and informed consent are required;
  - d. Cover how personnel members will respond to a patient's sudden, intense, or out-of-control behavior to prevent harm to the patient or another individual;
  - e. Cover dispensing, administering, and disposing of medication;
  - f. Cover infection control; and
  - g. Cover telemedicine, if applicable;
3. For a hospice inpatient facility, policies and procedures are established, documented, and implemented to protect the health and safety of a patient that:
  - a. Cover visitation of a patient, including:
    - i. Allowing visitation by individuals 24 hours a day, and
    - ii. Allowing a visitor to bring a pet to visit the patient;
  - b. Cover the use and display of a patient's personal belongings; and
  - c. Cover environmental services that affect patient care;
4. Policies and procedures are reviewed at least once every three years and updated as needed;
5. Policies and procedures are available to personnel members, employees, volunteers, and students; and
6. Unless otherwise stated:
  - a. Documentation required by this Article is provided to the Department within two hours after a Department request; and
  - b. When documentation or information is required by this Chapter to be submitted on behalf of a hospice, the documentation or information is provided to the unit in the Department that is responsible for licensing and monitoring the hospice.

##### **D. An administrator shall designate, in writing, a:**

1. Physician as the medical director who has the authority and responsibility for providing direction for the medical services provided by the hospice, and
2. Registered nurse as the director of nursing who has the authority and responsibility for managing nursing services provided by the hospice.

##### **E. An administrator shall ensure that the following are conspicuously posted:**

1. The current Department-issued license;
2. The current telephone number of the Department; and

3. The location at which the following are available for review:
  - a. A copy of the most recent Department inspection report;
  - b. A list of the services provided by the hospice; and
  - c. A written copy of rates and charges, as required in A.R.S. § 36-436.03.

**Historical Note**

New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-604. Quality Management**

An administrator shall ensure that:

1. A plan is established, documented, and implemented for an ongoing quality management program that, at a minimum, includes:
  - a. A method to identify, document, and evaluate incidents;
  - b. A method to collect data to evaluate services provided to patients;
  - c. A method to evaluate the data collected to identify a concern about the delivery of services related to patient care;
  - d. A method to make changes or take action as a result of the identification of a concern about the delivery of services related to patient care; and
  - e. The frequency of submitting a documented report required in subsection (2) to the governing authority;
2. A documented report is submitted to the governing authority that includes:
  - a. An identification of each concern about the delivery of services related to patient care, and
  - b. Any change made or action taken as a result of the identification of a concern about the delivery of services related to patient care; and
3. The report required in subsection (2) and the supporting documentation for the report are maintained for at least 12 months after the date the report is submitted to the governing authority.

**Historical Note**

New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-605. Contracted Services**

An administrator shall ensure that:

1. Contracted services are provided according to the requirements in this Article, and
2. Documentation of current contracted services is maintained that includes a description of the contracted services provided.

**Historical Note**

New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-606. Personnel**

A. An administrator shall ensure that:

1. The qualifications, skills, and knowledge required for each type of personnel member:
  - a. Are based on:
    - i. The type of physical health services expected to be provided by the personnel member according to the established job description, and
    - ii. The acuity of the patients receiving physical health services from the personnel member according to the established job description; and
  - b. Include:
    - i. The specific skills and knowledge necessary for the personnel member to provide the expected physical health services listed in the established job description,
    - ii. The type and duration of education that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected physical health services listed in the established job description, and
    - iii. The type and duration of experience that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected physical health services listed in the established job description;
2. A personnel member's skills and knowledge are verified and documented:
  - a. Before the personnel member provides physical health services, and
  - b. According to policies and procedures;
3. Sufficient personnel members are available and, for a hospice inpatient facility, present on the hospice inpatient facility's premises, with the qualifications, skills, and knowledge necessary to:
  - a. Provide the services in the hospice's scope of services,
  - b. Meet the needs of a patient, and
  - c. Ensure the health and safety of a patient;
4. Orientation occurs within the first week of providing hospice services and includes:
  - a. Informing personnel about Department rules for licensing and regulating hospices and where the rules may be obtained,
  - b. Reviewing the process by which a personnel member may submit a complaint about patient care to a hospice, and
  - c. Providing the information required by hospice policies and procedures;
5. Personnel receive in-service education according to criteria established in hospice policies and procedures;
6. In-service education documentation for a personnel member includes:
  - a. The subject matter,
  - b. The date of the in-service education, and
  - c. The signature of each individual who participated in the in-service education; and
7. A personnel member, or an employee or a volunteer who has or is expected to have direct interaction with a patient, provides evidence of freedom from infectious tuberculosis:
  - a. On or before the date the individual begins providing services at or on behalf of the hospice service facility or hospice inpatient facility, and
  - b. As specified in R9-10-113.

- B.** An administrator shall ensure that record is maintained for each personnel member, employee, volunteer, or student that includes:
1. The individual's name, date of birth, and contact telephone number;
  2. The individual's starting date of employment or volunteer service and, if applicable, the ending date; and
  3. Documentation of:
    - a. The individual's qualifications, including skills and knowledge applicable to the individual's job duties;
    - b. The individual's education and experience applicable to the individual's job duties;
    - c. The individual's completed orientation and in-service education as required by policies and procedures;
    - d. The individual's license or certification, if the individual is required to be licensed or certified in this Article or policies and procedures; and
    - e. Evidence of freedom from infectious tuberculosis, if required for the individual according to subsection (A)(7).
- C.** An administrator shall ensure that personnel records are:
1. Maintained:
    - a. Throughout the individual's period of providing services in or for the hospice, and
    - b. For at least 24 months after the last date the individual provided services in or for the hospice; and
  2. For a personnel member who has not provided physical health services at or for the hospice during the previous 12 months, provided to the Department within 72 hours after the Department's request.

#### Historical Note

New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-607. Admission

- A.** Before admitting an individual as a patient, an administrator shall obtain:
1. The name of the individual's physician;
  2. Documentation that the individual has a diagnosis by a physician that indicates that the individual has a specific, progressive, normally irreversible disease that is likely to cause the individual's death in six months or less; and
  3. Documentation from the individual or the individual's representative acknowledging that:
    - a. Hospice services include palliative care and supportive care and are not curative, and
    - b. The individual or individual's representative has received a list of services to be provided by the hospice.
- B.** At the time of admission, a physician or registered nurse shall:
1. Assess a patient's medical, social, nutritional, and psychological needs; and
  2. As applicable, obtain informed consent or general consent.
- C.** Before or at the time of admission, a personnel member qualified according to policies and procedures shall assess the social and psychological needs of a patient's family, if applicable.

#### Historical Note

New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to

Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-608. Care Plan

- A.** An administrator shall ensure that a care plan is developed for each patient:
1. Based on the:
    - a. Assessment of the:
      - i. Patient; and
      - ii. Patient's family, if applicable;
    - b. Hospice service agency's or inpatient hospice facility's scope of service;
  2. With participation from a:
    - a. Physician,
    - b. Registered nurse, and
    - c. Another personnel member as designated in R9-10-612(A)(4); and
  3. That includes:
    - a. The patient's diagnosis;
    - b. The patient's health care directives;
    - c. The patient's cognitive awareness of self, location, and time;
    - d. The patient's functional abilities and limitations;
    - e. Goals for pain control and symptom management;
    - f. The type, duration, and frequency of services to be provided to the patient and, if applicable, the patient's family;
    - g. Treatments the patient is receiving from a health care institution or health care professional other than the hospice, if applicable;
    - h. Medications ordered for the patient;
    - i. Any known allergies;
    - j. Nutritional requirements and preferences; and
    - k. Specific measures to improve the patient's safety and protect the patient against injury.
- B.** An administrator shall ensure that:
1. A request for participation in a patient's care plan is made to the patient or patient's representative;
  2. An opportunity for participation in the patient's care plan is provided to the patient, patient's representative, or patient's family; and
  3. The request in subsection (B)(1) and the opportunity in subsection (B)(2) are documented in the patient's medical record.
- C.** An administrator shall ensure that:
1. Hospice services are provided to a patient and, if applicable, the patient's family according to the patient's care plan;
  2. A patient's care plan is reviewed and updated:
    - a. Whenever there is a change in the patient's condition that indicates a need for a change in the type, duration, or frequency of the services being provided;
    - b. If the patient's physician orders a change in the care plan; and
    - c. At least every 30 calendar days; and
  3. A patient's physician authenticates the care plan with a signature within 14 calendar days after the care plan is initially developed and whenever the care plan is reviewed or updated.

#### Historical Note

New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). R9-10-608 renumbered to R9-10-609; new Section R9-10-608 renumbered from R9-10-611 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-609. Transfer**

Except for a transfer of a patient due to an emergency, an administrator shall ensure that:

1. A personnel member coordinates the transfer and the services provided to the patient;
2. According to policies and procedures:
  - a. An evaluation of the patient is conducted before the transfer;
  - b. Information from the patient's medical record, including orders that are in effect at the time of the transfer, is provided to a receiving health care institution; and
  - c. A personnel member explains risks and benefits of the transfer to the patient or the patient's representative; and
3. Documentation in the patient's medical record includes:
  - a. Communication with an individual at a receiving health care institution;
  - b. The date and time of the transfer;
  - c. The mode of transportation; and
  - d. If applicable, the name of the personnel member accompanying the patient during a transfer.

**Historical Note**

New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). R9-10-609 renumbered to R9-10-610; new Section R9-10-609 renumbered from R9-10-608 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-610. Patient Rights**

**A.** An administrator shall ensure that:

1. The requirements in subsection (B) and the patient rights in subsection (C) are conspicuously posted on the premises;
2. At the time of admission, a patient or the patient's representative receives a written copy of the requirements in subsection (B) and the patient rights in subsection (C); and
3. Policies and procedures include:
  - a. How and when a patient or the patient's representative is informed of patient rights in subsection (C), and
  - b. Where patient rights are posted as required in subsection (A)(1).

**B.** An administrator shall ensure that:

1. A patient is treated with dignity, respect, and consideration;
2. A patient is not subjected to:
  - a. Abuse;
  - b. Neglect;
  - c. Exploitation;
  - d. Coercion;
  - e. Manipulation;
  - f. Sexual abuse;
  - g. Sexual assault;
  - h. Seclusion;
  - i. Restraint;
  - j. Retaliation for submitting a complaint to the Department or another entity; or
  - k. Misappropriation of personal and private property by the hospice's personnel members, employees, volunteers, or students; and
3. A patient or the patient's representative:
  - a. Except in an emergency, either consents to or refuses treatment;

- b. May refuse or withdraw consent for treatment before treatment is initiated;
- c. Except in an emergency, is informed of proposed treatment alternatives, associated risks, and possible complications;
- d. Consents to photographs of the patient before the patient is photographed, except that a patient may be photographed when admitted to a hospice for identification and administrative purposes;
- e. Except as otherwise permitted by law, provides written consent to the release of information in the patient's:
  - i. Medical record; or
  - ii. Financial records;
- f. Is informed of:
  - i. The components of hospice services provided by the hospice;
  - ii. The rates and charges for the components of hospice services before the components are initiated and before a change in rates, charges, or services;
  - iii. The hospice's policy on health care directives; and
  - iv. The patient complaint process; and
- g. Is informed that a written copy of rates and charges, as required in A.R.S. § 36-436.03, may be requested.

**C.** A patient has the following rights:

1. Not to be discriminated against based on race, national origin, religion, gender, sexual orientation, age, disability, marital status, or diagnosis;
2. To receive treatment that supports and respects the patient's individuality, choices, strengths, and abilities;
3. To receive privacy in treatment and care for personal needs;
4. To review, upon written request, the patient's own medical record according to A.R.S. §§ 12-2293, 12-2294, and 12-2294.01;
5. To receive a referral to another health care institution if the hospice inpatient facility is not authorized or not able to provide physical health services needed by the patient;
6. To participate or have the patient's representative participate in the development of, or decisions concerning, treatment;
7. To participate or refuse to participate in research or experimental treatment; and
8. To receive assistance from a family member, the patient's representative, or other individual in understanding, protecting, or exercising the patient's rights.

**Historical Note**

New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). R9-10-610 renumbered to R9-10-611; new Section R9-10-610 renumbered from R9-10-609 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-611. Medical Records**

**A.** An administrator shall ensure that:

1. A patient's medical record is established and maintained for each patient according to A.R.S. Title 12, Chapter 13, Article 7.1;
2. An entry in a patient's medical record is:
  - a. Recorded only by a personnel member authorized by policies and procedures to make the entry;
  - b. Dated, legible, and authenticated; and
  - c. Not changed to make the initial entry illegible;

3. An order is:
    - a. Dated when the order is entered in the patient's medical record and includes the time of the order;
    - b. Authenticated by a medical practitioner according to policies and procedures; and
    - c. If the order is a verbal order, authenticated by the medical practitioner issuing the order;
  4. If a rubber-stamp signature or an electronic signature is used to authenticate an order, the individual whose signature the rubber-stamp signature or electronic signature represents is accountable for the use of the rubber-stamp signature or electronic signature;
  5. A patient's medical record is available to an individual:
    - a. Authorized according to policies and procedures to access the patient's medical record;
    - b. If the individual is not authorized according to policies and procedures, with the written consent of a patient or the patient's representative; or
    - c. As permitted by law; and
  6. A patient's medical record is protected from loss, damage, or unauthorized use.
- B.** If a hospice maintains patients' medical records electronically, an administrator shall ensure that:
1. Safeguards exist to prevent unauthorized access, and
  2. The date and time of an entry in a patient's medical record is recorded by the computer's internal clock.
- C.** An administrator shall ensure that a patient's medical record contains:
1. Patient information that includes:
    - a. The patient's name,
    - b. The patient's address,
    - c. The patient's telephone number,
    - d. The patient's date of birth, and
    - e. Any known allergy;
  2. The admission date and, if applicable, the date that the patient stopped receiving services from the hospice;
  3. The name and telephone number of the patient's physician;
  4. If applicable, the name and contact information of the patient's representative and:
    - a. If the patient is 18 years of age or older or an emancipated minor, the document signed by the patient consenting for the patient's representative to act on the patient's behalf; or
    - b. If the patient's representative:
      - i. Is a legal guardian, a copy of the court order establishing guardianship; or
      - ii. Has a health care power of attorney established under A.R.S. § 36-3221 or a mental health care power of attorney executed under A.R.S. § 36-3282, a copy of the health care power of attorney or mental health care power of attorney;
  5. The admitting diagnosis;
  6. If applicable, documented general consent and informed consent, by the patient or the patient's representative;
  7. Documentation of medical history;
  8. A copy of the patient's living will, health care power of attorney, or other health care directive, if applicable;
  9. Orders;
  10. The assessment required in R9-10-607(B)(1);
  11. Care plans;
  12. Progress notes for each patient contact, including:
    - a. The date of the patient contact,
    - b. The services provided,
    - c. A description of the patient's condition, and
    - d. Instructions given to the patient or patient's representative;
  13. Documentation of hospice services provided to the patient;
  14. If applicable, documentation of any actions taken to control the patient's sudden, intense, or out-of-control behavior to prevent harm to the patient or another individual;
  15. Documentation of coordination of patient care;
  16. Documentation of contacts with the patient's physician by a personnel member;
  17. The discharge summary, if applicable;
  18. If applicable, transfer documentation from a sending health care institution; and
  19. Documentation of a medication administered to the patient that includes:
    - a. The date and time of administration;
    - b. The name, strength, dosage, and route of administration;
    - c. For a medication administered for pain, when initially administered or when administered on a PRN basis:
      - i. An assessment of the patient's pain before administering the medication, and
      - ii. The effect of the medication administered;
    - d. For a psychotropic medication, when initially administered or when administered on a PRN basis:
      - i. An assessment of the patient's behavior before administering the psychotropic medication, and
      - ii. The effect of the psychotropic medication administered;
    - e. The identification, signature, and professional designation of the individual administering the medication; and
    - f. Any adverse reaction a patient has to the medication.

#### Historical Note

Adopted effective November 6, 1978 (Supp. 78-6). Section R9-10-611 repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). R9-10-611 renumbered to R9-10-608; new Section R9-10-611 renumbered from R9-10-610 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-612. Hospice Services

- A.** An administrator shall ensure that the following are included in the hospice services provided by the hospice:
1. Medical services;
  2. Nursing services;
  3. Nutritional services, including menu planning and the designation of the kind and amount of food appropriate for a patient;
  4. Medical social services, provided as follows:
    - a. By a personnel member qualified according to policies and procedures to coordinate medical social services; and
    - b. If a personnel member provides medical social services that require a license under A.R.S. Title 32, Chapter 33, Article 5, by a personnel member who is licensed under A.R.S. Title 32, Chapter 33, Article 5;

5. Bereavement counseling for a patient's family for at least one year after the death of the patient; and
  6. Spiritual counseling services, consistent with a patient's customs, religious preferences, cultural background, and ethnicity.
- B.** In addition to the services specified in subsection (A), an administrator of a hospice service agency shall ensure that the following are included in the hospice services provided by the hospice:
1. Home health aide services;
  2. Respite care services; and
  3. Supportive services, as defined in A.R.S. § 36-151.
- C.** An administrator shall ensure that the medical director provides direction for medical services provided by or through the hospice.
- D.** A medical director shall ensure that:
1. A patient's need for medical services is met, according to the patient's care plan and the hospice's scope of services; and
  2. If a patient is receiving medical services not provided by or through the hospice, hospice services are coordinated with the physician providing medical services to the patient.
- E.** A director of nursing shall ensure that:
1. A registered nurse or practical nurse provides nursing services according to the hospice's policies and procedures;
  2. A sufficient number of nurses are available to provide the nursing services identified in each patient's care plan;
  3. The care plan for a patient is implemented;
  4. A personnel member is only assigned to provide services the personnel member can competently perform;
  5. A registered nurse:
    - a. Assigns tasks in writing to a home health aide who is providing home health aide service to a patient,
    - b. Provides direction for the home health aide services provided to a patient, and
    - c. Verifies the competency of the home health aide in performing assigned tasks;
  6. A registered dietitian or a personnel member under the direction of a registered dietitian plans menus for a patient;
  7. A patient's condition and the services provided to the patient are documented in the patient's medical record after each patient contact;
  8. A patient's physician is immediately informed of a change in the patient's condition that requires medical services; and
  9. The implementation of a patient's care plan is coordinated among the personnel members providing hospice services to the patient.
- Historical Note**
- Adopted effective November 6, 1978 (Supp. 78-6). Section R9-10-612 repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).
- R9-10-613. Medication Services**
- A.** An administrator shall ensure that policies and procedures for medication services:
1. Include:
    - a. A process for providing information to a patient about medication prescribed for the patient including:
      - i. The prescribed medication's anticipated results,
      - ii. The prescribed medication's potential adverse reactions,
      - iii. The prescribed medication's potential side effects, and
      - iv. Potential adverse reactions that could result from not taking the medication as prescribed;
    - b. Procedures for preventing, responding to, and reporting:
      - i. A medication error,
      - ii. An adverse reaction to a medication, or
      - iii. A medication overdose;
    - c. Procedures to ensure that a patient's medication regimen and method of administration is reviewed by a medical practitioner to ensure the medication regimen meets the patient's needs;
    - d. Procedures for:
      - i. Documenting medication administration; and
      - ii. Monitoring a patient who self-administers medication;
    - e. Procedures for assisting a patient in obtaining medication; and
    - f. If applicable, procedures for providing medication administration off the premises; and
  2. Specify a process for review through the quality management program of:
    - a. A medication administration error, and
    - b. An adverse reaction to a medication.
- B.** If a hospice provides medication administration, an administrator shall ensure that:
1. Policies and procedures for medication administration:
    - a. Are reviewed and approved by a medical practitioner;
    - b. Specify the individuals who may:
      - i. Order medication, and
      - ii. Administer medication;
    - c. Ensure that medication is administered to a patient only as prescribed; and
    - d. Cover the documentation of a patient's refusal to take prescribed medication in the patient's medical record;
  2. Verbal orders for medication services are taken by a nurse, unless otherwise provided by law; and
  3. A medication administered to a patient:
    - a. Is administered in compliance with an order, and
    - b. Is documented in the patient's medical record.
- C.** An administrator shall ensure that:
1. A current drug reference guide is available for use by personnel members;
  2. A current toxicology reference guide is available for use by personnel members;
  3. If pharmaceutical services are provided on the premises:
    - a. A committee, composed of at least one physician, one pharmacist, and other personnel members as determined by the hospice's policies and procedures is established to:
      - i. Develop a drug formulary,
      - ii. Update the drug formulary at least every 12 months,
      - iii. Develop medication usage and medication substitution policies and procedures, and
      - iv. Specify which medications and medication classifications are required to be stopped auto-

- b. The pharmaceutical services are provided under the direction of a pharmacist;
  - c. The pharmaceutical services comply with ARS Title 36, Chapter 27; A.R.S. Title 32, Chapter 18; and 4 A.A.C. 23; and
  - d. A copy of the pharmacy license is provided to the Department upon request.
- D.** When medication is stored at a hospice inpatient facility, an administrator shall ensure that:
- 1. Medication is stored in a separate locked room, closet, or self-contained unit used only for medication storage;
  - 2. Medication is stored according to the instructions on the medication container; and
  - 3. Policies and procedures are established, documented, and implemented to protect the health and safety of a patient for:
    - a. Receiving, storing, inventorying, tracking, dispensing, and discarding medication including expired medication;
    - b. Discarding or returning prepackaged and sample medication to the manufacturer if the manufacturer requests the discard or return of the medication;
    - c. A medication recall and notification of patients who received recalled medication; and
    - d. Storing, inventorying, and dispensing controlled substances.
- E.** An administrator shall ensure that a personnel member immediately reports a medication error or a patient's adverse reaction to a medication to the medical practitioner who ordered the medication and, if applicable, the hospice's director of nursing.

### Historical Note

Adopted effective November 6, 1978 (Supp. 78-6). Section R9-10-613 repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-614. Infection Control**

An administrator shall ensure that:

1. An infection control program is established, under the direction of an individual qualified according to policies and procedures, to prevent the development and transmission of infections and communicable diseases including:
  - a. A method to identify and document infections;
  - b. Analysis of the types, causes, and spread of infections and communicable diseases;
  - c. The development of corrective measures to minimize or prevent the spread of infections and communicable diseases; and
  - d. Documenting infection control activities including:
    - i. The collection and analysis of infection control data,
    - ii. The actions taken relating to infections and communicable diseases, and
    - iii. Reports of communicable diseases to the governing authority and state and county health departments;

2. Infection control documents are maintained for at least 12 months after the date of the documents;
3. Policies and procedures are established, documented, and implemented to protect the health and safety of a patient that cover:
  - a. Handling and disposal of biohazardous medical waste;
  - b. Sterilization and disinfection of medical equipment and supplies;
  - c. Use of personal protective equipment such as aprons, gloves, gowns, masks, or face protection when applicable;
  - d. Cleaning of an individual's hands when the individual's hands are visibly soiled and before and after providing a service to a patient;
  - e. Training of personnel members in infection control practices; and
  - f. Work restrictions for a personnel member with a communicable disease or infected skin lesion;
4. Biohazardous medical waste is identified, stored, and disposed of according to 18 A.A.C. 13, Article 14 and policies and procedures; and
5. A personnel member washes hands or use a hand disinfection product after each patient contact and after handling soiled linen, soiled clothing, or potentially infectious material.

## Historical Note

Adopted effective November 6, 1978 (Supp. 78-6). Section R9-10-614 repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-615. Food Services for a Hospice Inpatient Facility**

- A.** An administrator of a hospice inpatient facility shall ensure that:
1. Meals and snacks provided by the hospice inpatient facility are served according to a patient's dietary needs and preferences;
  2. Meals and snacks for each day are planned using:
    - a. The applicable guidelines in <http://www.health.gov/dietaryguidelines/2010.asp>, and
    - b. Preferences for meals and snacks obtained from patients;
  3. A patient requiring assistance to eat is provided with assistance that recognizes the patient's nutritional, physical, and social needs, including the use of adaptive eating equipment or utensils; and
  4. Water is available and accessible to patients at all times, unless otherwise stated in a patient's care plan.
- B.** An administrator of a hospice inpatient facility shall ensure that food is obtained, prepared, served, and stored as follows:
1. Food is free from spoilage, filth, or other contamination and is safe for human consumption;
  2. Food is protected from potential contamination;
  3. Food is prepared:
    - a. Using methods that conserve nutritional value, flavor, and appearance; and
    - b. In a form to meet the needs of a patient, such as cut, chopped, ground, pureed, or thickened;
  4. Potentially hazardous food is maintained as follows:



- a. Foods requiring refrigeration are maintained at 41° F or below;
  - b. Foods requiring cooking are cooked to heat all parts of the food to a temperature of at least 145° F for 15 seconds, except that:
    - i. Ground beef and ground meats are cooked to heat all parts of the food to at least 155° F;
    - ii. Poultry, poultry stuffing, stuffed meats, and stuffing that contains meat are cooked to heat all parts of the food to at least 165° F;
    - iii. Pork and any food containing pork are cooked to heat all parts of the food to at least 155° F;
    - iv. Raw shell eggs for immediate consumption are cooked to at least 145° F for 15 seconds and any food containing raw shell eggs is cooked to heat all parts of the food to at least 155 °F;
    - v. Roast beef and beef steak are cooked to an internal temperature of at least 155° F; and
    - vi. Leftovers are reheated to a temperature of at least 165° F;
  - 5. A refrigerator contains a thermometer, accurate to plus or minus 3° F, at the warmest part of the refrigerator;
  - 6. Frozen foods are stored at a temperature of 0° F or below; and
  - 7. Tableware, utensils, equipment, and food-contact surfaces are clean and in good repair.
- C. An administrator shall ensure that:**
- 1. For a hospice inpatient facility with a licensed capacity of more than 20 beds, the hospice inpatient facility:
    - a. Has a license or permit as a food establishment under 9 A.A.C. 8, Article 1, and
    - b. Maintains a copy of the hospice inpatient facility's food establishment license or permit;
  - 2. If the hospice inpatient facility contracts with food establishment, as defined in 9 A.A.C. 8, Article 1, to prepare and deliver food to the hospice inpatient facility a copy of the contracted food establishment's license or permit under 9 A.A.C. 8, Article 1 is maintained by the hospice inpatient facility; and
  - 3. Food is stored, refrigerated, and reheated to meet the dietary needs of a patient.

#### Historical Note

Adopted effective November 6, 1978 (Supp. 78-6). Section R9-10-615 repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-616. Emergency and Safety Standards for a Hospice Inpatient Facility

- A.** An administrator of a hospice inpatient facility shall ensure that:
- 1. A disaster plan is developed, documented, maintained in a location accessible to personnel members and other employees, and, if necessary, implemented that includes:
    - a. When, how, and where patients will be relocated, including:
      - i. Instructions for the evacuation or transfer of patients,
      - ii. Assigned responsibilities for each employee and personnel member, and

- iii. A plan for providing continuing services to meet patient's needs;
  - b. How each patient's medical record will be available to individuals providing services to the patient during a disaster;
  - c. A plan to ensure each patient's medication will be available to administer to the patient during a disaster; and
  - d. A plan for obtaining food and water for individuals present in the hospice inpatient facility or the hospice inpatient facility's relocation site during a disaster;
- 2. The disaster plan required in subsection (A)(1) is reviewed at least once every 12 months;
  - 3. Documentation of a disaster plan review required in subsection (A)(2) is created, is maintained for at least 12 months after the date of the disaster plan review, and includes:
    - a. The date and time of the disaster plan review;
    - b. The name of each personnel member, employee, or volunteer participating in the disaster plan review;
    - c. A critique of the disaster plan review; and
    - d. If applicable, recommendations for improvement;
  - 4. A disaster drill for employees is conducted on each shift at least once every three months and documented; and
  - 5. An evacuation path is conspicuously posted on each hallway of each floor of the hospice inpatient facility.
- B.** An administrator shall:
- 1. Obtain a fire inspection conducted according to the time-frame established by the local fire department or the State Fire Marshal,
  - 2. Make any repairs or corrections stated on the fire inspection report, and
  - 3. Maintain documentation of a current fire inspection.

#### Historical Note

Adopted effective November 6, 1978 (Supp. 78-6). Section R9-10-616 repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-617. Environmental Standards for a Hospice Inpatient Facility

- A.** An administrator of a hospice inpatient facility shall ensure that:
- 1. Policies and procedures are established, documented, and implemented to protect the health and safety of a patient that cover:
    - a. Cleaning and storing of soiled linens and clothing,
    - b. Housekeeping procedures that ensure a clean environment, and
    - c. Isolation of a patient who may spread an infection;
  - 2. The premises and equipment are:
    - a. Cleaned and disinfected according to policies and procedures or manufacturer's instructions to prevent, minimize, and control illness or infection; and
    - b. Free from a condition or situation that may cause a patient or other individual to suffer physical injury or illness;
  - 3. A pest control program is implemented and documented;
  - 4. Equipment used at the hospice inpatient facility is:

- a. Maintained in working order;
  - b. Tested and calibrated according to the manufacturer's recommendations or, if there are no manufacturer's recommendations, as specified in the hospice inpatient facility's policies and procedures; and
  - c. Used according to the manufacturer's recommendations;
- 4. Documentation of equipment testing, calibration, and repair is maintained for at least 12 months after the date of the testing, calibration, or repair;
- 5. Garbage and refuse are:
  - a. Stored in covered containers lined with plastic bags, and
  - b. Removed from the premises at least once a week;
- 6. Soiled linen and clothing are:
  - a. Collected in a manner to minimize or prevent contamination;
  - b. Bagged at the site of use; and
  - c. Maintained separate from clean linen and clothing and away from food storage, kitchen, or dining areas;
- 7. Heating and cooling systems maintain the hospice inpatient facility at a temperature between 70° F and 84° F at all times;
- 8. Common areas:
  - a. Are lighted to assure the safety of patients, and
  - b. Have lighting sufficient to allow personnel members to monitor patient activity;
- 9. The supply of hot and cold water is sufficient to meet the personal hygiene needs of patients and the cleaning and sanitation requirements in this Article;
- 10. Oxygen containers are secured in an upright position;
- 11. Poisonous or toxic materials stored by the hospice inpatient facility are maintained in labeled containers in a locked area separate from food preparation and storage, dining areas, and medications and are inaccessible to patients;
- 12. Except for medical supplies needed by a patient, combustible or flammable liquids and hazardous materials are stored by the hospice inpatient facility in the original labeled containers or safety containers in a locked area inaccessible to patients;
- 13. If pets or animals are allowed in the hospice inpatient facility, pets or animals are:
  - a. Controlled to prevent endangering the patients and to maintain sanitation, and
  - b. Licensed consistent with local ordinances;
- 14. If a water source that is not regulated under 18 A.A.C. 4 by the Arizona Department of Environmental Quality is used:
  - a. The water source is tested at least once every 12 months for total coliform bacteria and fecal coliform or *E. coli* bacteria;
  - b. If necessary, corrective action is taken to ensure the water is safe to drink, and
  - c. Documentation of testing is retained for at least 12 months after the date of the test; and
- 15. If a non-municipal sewage system is used, the sewage system is in working order and is maintained according to all applicable state laws and rules.
- B.** An administrator of a hospice inpatient facility shall ensure that a patient is allowed to use and display personal belongings.

#### Historical Note

Adopted effective November 6, 1978 (Supp. 78-6). Section R9-10-617 repealed effective November 1, 1998,

under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### **R9-10-618. Physical Plant Standards for a Hospice Inpatient Facility**

- A.** An administrator shall ensure that a hospice inpatient facility complies with applicable requirements for Health Care Occupancies in National Fire Protection Association 101, Life Safety Code, incorporated by reference in A.A.C. R9-1-412.
- B.** An administrator of a hospice inpatient facility shall ensure that the premises and equipment are sufficient to accommodate:
  - 1. The services stated in the hospice inpatient facility's scope of services, and
  - 2. An individual accepted as a patient by the hospice inpatient facility.
- C.** An administrator of a hospice inpatient facility shall ensure that a patient's sleeping area:
  - 1. Is shared by no more than four patients;
  - 2. Measures at least 80 square feet of floor space per patient, not including a closet;
  - 3. Has walls from floor to ceiling;
  - 4. Contains a door that opens into a hallway, common area, or outdoors;
  - 5. Is at or above ground level;
  - 6. Is vented to the outside of the hospice inpatient facility;
  - 7. Has a working thermometer for measuring the temperature in the sleeping area;
  - 8. For each patient, has a:
    - a. Bed,
    - b. Bedside table,
    - c. Bedside chair,
    - d. Reading light,
    - e. Privacy screen or curtain, and
    - f. Closet or drawer space;
  - 9. Is equipped with a bell, intercom, or other mechanical means for a patient to alert a personnel member;
  - 10. Is no farther than 20 feet from a room containing a toilet and a sink;
  - 11. Is not used as a passageway to another sleeping area, a toilet room, or a bathing room;
  - 12. Contains one of the following to provide sunlight:
    - a. A window to the outside of the hospice inpatient facility, or
    - b. A transparent or translucent door to the outside of the hospice inpatient facility; and
  - 13. Has coverings for windows and for transparent or translucent doors that provide patient privacy.
- D.** An administrator of a hospice inpatient facility shall ensure that there is:
  - 1. For every six patients, a toilet room that contains:
    - a. At least one working toilet that flushes and has a seat;
    - b. At least one working sink with running water;
    - c. Soap for hand washing;
    - d. Paper towels or a mechanical air hand dryer;
    - e. Grab bars attached to a wall that an individual may hold onto to assist the individual in becoming or remaining erect;
    - f. A mirror;
    - g. Lighting;

- h. Space for a personnel member to assist a patient;
  - i. A bell, intercom, or other mechanical means for a patient to alert a personnel member; and
  - j. An operable window to the outside of the hospice inpatient facility or other means of ventilation;
2. For every 12 patients, at least one working bathtub or shower accessible to a wheeled shower chair, with a slip-resistant surface, located in a toilet room or in a separate bathing room;
  3. For a patient occupying a sleeping area with one or more other patients, a separate room in which the patient can meet privately with family members;
  4. Space in a lockable closet, drawer, or cabinet for a patient to store the patient's private or valuable items;
  5. A room other than a sleeping area that can be used for social activities;
  6. Sleeping accommodations for family members;
  7. A designated toilet room, other than a patient toilet room, for personnel and visitors that:
    - a. Provides privacy; and
    - b. Contains:
      - i. A working sink with running water,
      - ii. A working toilet that flushes and has a seat,
      - iii. Toilet tissue,
      - iv. Soap for hand washing,
      - v. Paper towels or a mechanical air hand dryer,
      - vi. Lighting, and
      - vii. A window that opens or another means of ventilation;
  8. If the hospice inpatient facility has a kitchen with a stove or oven, a mechanism to vent the stove or oven to the outside of the hospice inpatient facility; and
  9. Space designated for administrative responsibilities that is separate from sleeping areas, toilet rooms, bathing rooms, and drug storage areas.

**Historical Note**

Adopted effective November 6, 1978 (Supp. 78-6). Section R9-10-618 repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-619. Repealed****Historical Note**

Adopted effective November 6, 1978 (Supp. 78-6). Section R9-10-619 repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4).

**R9-10-620. Repealed****Historical Note**

Adopted effective November 6, 1978 (Supp. 78-6). Section R9-10-620 repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4).

**R9-10-621. Repealed****Historical Note**

Adopted effective November 6, 1978 (Supp. 78-6). Correction, subsection (H), after "... 105° F" added "nor more than 110° F" as certified effective November 6, 1978 (Supp. 87-2). Section R9-10-621 repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4).

**R9-10-622. Repealed****Historical Note**

Adopted effective November 6, 1978 (Supp. 78-6). Section R9-10-622 repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4).

**R9-10-623. Repealed****Historical Note**

Adopted effective November 6, 1978 (Supp. 78-6). Section R9-10-623 repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4).

**R9-10-624. Repealed****Historical Note**

Adopted effective November 6, 1978 (Supp. 78-6). Section R9-10-624 repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4).

**ARTICLE 7. BEHAVIORAL HEALTH RESIDENTIAL FACILITIES****R9-10-701. Definitions**

In addition to the definitions in A.R.S. § 36-401 and R9-10-101, the following applies in this Article unless otherwise specified:

"Emergency safety response" means physically holding a resident to manage the resident's sudden, intense, or out-of-control behavior to prevent harm to the resident or another individual.

**Historical Note**

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted without changes effective October 30, 1989 (Supp. 89-4). Section R9-10-701 repealed, new Section R9-10-701 adopted effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998

(Supp. 98-4). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### **R9-10-702. Supplemental Application Requirements**

- A.** In addition to the license application requirements in A.R.S. § 36-422 and R9-10-105, an applicant for an initial license as a behavioral health residential facility shall include on the application:
1. Whether the applicant is requesting authorization to provide:
    - a. Behavioral health services to individuals under 18 years of age, including the licensed capacity requested;
    - b. Behavioral health services to individuals 18 years of age and older, including the licensed capacity requested; or
    - c. Respite services;
  2. Whether the applicant is requesting authorization to provide an outdoor behavioral health care program, including:
    - a. The requested licensed capacity for providing the outdoor behavioral health care program to individuals 12 to 17 years of age, and
    - b. The requested licensed capacity for providing the outdoor behavioral health care program to individuals 18 to 24 years of age;
  3. Whether the applicant is requesting authorization to provide:
    - a. Residential services to individuals 18 years of age or older whose behavioral health issue limits the individuals' ability to function independently, or
    - b. Personal care services;
  4. For a behavioral health residential facility requesting authorization to provide respite services, the requested number of individuals the behavioral health residential facility plans to admit for respite services who do not stay overnight in the behavioral health residential facility; and
  5. For an outdoor behavioral health care program, a copy of the outdoor behavioral health care program's current accreditation report.
- B.** In addition to the renewal license application requirements in A.R.S. § 36-422 and R9-10-107, an administrator of an outdoor behavioral health care program shall submit with a renewal application, a copy of the outdoor behavioral health care program's current accreditation report.

#### **Historical Note**

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Section R9-10-702 repealed, new Section R9-10-702 adopted effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998

(Supp. 98-4). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### **R9-10-703. Administration**

- A.** A governing authority shall:
1. Consist of one or more individuals responsible for the organization, operation, and administration of a behavioral health residential facility;
  2. Establish, in writing:
    - a. A behavioral health residential facility's scope of services, and
    - b. Qualifications for an administrator;
  3. Designate, in writing, an administrator who has the qualifications established in subsection (A)(2)(b);
  4. Adopt a quality management program according to R9-10-704;
  5. Review and evaluate the effectiveness of the quality management program at least once every 12 months;
  6. Designate, in writing, an acting administrator who has the qualifications established in subsection (A)(2)(b), if the administrator is:
    - a. Expected not to be present on the behavioral health residential facility's premises for more than 30 calendar days, or
    - b. Not present on the behavioral health residential facility's premises for more than 30 calendar days; and
  7. Except as provided in subsection (A)(6), notify the Department according to A.R.S. § 36-425(I) when there is a change in the administrator and identify the name and qualifications of the new administrator.
- B.** An administrator:
1. Is directly accountable to the governing authority of a behavioral health residential facility for the daily operation of the behavioral health residential facility and all services provided by or at the behavioral health residential facility;
  2. Has the authority and responsibility to manage the behavioral health residential facility; and
  3. Except as provided in subsection (A)(6), designates, in writing, an individual who is present on the behavioral health residential facility's premises and accountable for the behavioral health residential facility when the administrator is not present on the behavioral health residential facility's premises.
- C.** An administrator shall ensure that:
1. Policies and procedures are established, documented, and implemented to protect the health and safety of a resident that:
    - a. Cover job descriptions, duties, and qualifications, including required skills, knowledge, education, and experience for personnel members, employees, volunteers, and students;
    - b. Cover orientation and in-service education for personnel members, employees, volunteers, and students;
    - c. Include how a personnel member may submit a complaint relating to services provided to a resident;
    - d. Cover the requirements in A.R.S. Title 36, Chapter 4, Article 11;
    - e. Cover cardiopulmonary resuscitation training including:
      - i. The method and content of cardiopulmonary resuscitation training, which includes a demon-



ing services from a behavioral health residential facility's employee or personnel member, the administrator shall:

1. If applicable, take immediate action to stop the suspected abuse, neglect, or exploitation;
  2. Report the suspected abuse, neglect, or exploitation of the resident:
    - a. For a resident 18 years of age or older, according to A.R.S. § 46-454; or
    - b. For a resident under 18 years of age, according to A.R.S. § 13-3620;
  3. Document:
    - a. The suspected abuse, neglect, or exploitation;
    - b. Any action taken according to subsection (H)(1); and
    - c. The report in subsection (H)(2);
  4. Maintain the documentation in subsection (H)(3) for at least 12 months after the date of the report in subsection (H)(2);
  5. Initiate an investigation of the suspected abuse, neglect, or exploitation and document the following information within five working days after the report required in (H)(2):
    - a. The dates, times, and description of the suspected abuse, neglect, or exploitation;
    - b. A description of any injury to the resident related to the suspected abuse or neglect and any change to the resident's physical, cognitive, functional, or emotional condition;
    - c. The names of witnesses to the suspected abuse, neglect, or exploitation; and
    - d. The actions taken by the administrator to prevent the suspected abuse, neglect, or exploitation from occurring in the future; and
- I.** An administrator shall:
1. Establish and document requirements regarding residents, personnel members, employees, and other individuals entering and exiting the premises;
  2. Establish and document guidelines for meeting the needs of an individual residing at a behavioral health residential facility with a resident, such as a child accompanying a parent in treatment, if applicable;
  3. If children under the age of 12, who are not admitted to a behavioral health residential facility, are residing at the behavioral health residential facility and being cared for by employees or personnel members, ensure that:
    - a. An employee or personnel member caring for children has current cardiopulmonary resuscitation and first aid training specific to the ages of children being cared for; and
    - b. The staff-to-children ratios in A.A.C. R9-5-404(A) are maintained, based on the age of the youngest child in the group;
  4. Establish and document the process for responding to a resident's need for immediate and unscheduled behavioral health services or physical health services;
  5. Establish and document the criteria for determining when a resident's absence is unauthorized, including criteria for a resident who:
    - a. Was admitted under A.R.S. Title 36, Chapter 5, Articles 1, 2, or 3;
    - b. Is absent against medical advice; or
    - c. Is under the age of 18;
6. If a resident's absence is unauthorized as determined according to the criteria in subsection (I)(5), within an hour after determining that the resident's absence is unauthorized, notify:
    - a. For a resident who is under 18 years of age, the resident's parent or legal guardian; and
    - b. For a resident who is under a court's jurisdiction, the appropriate court;
  7. Maintain a written log of unauthorized absences for at least 12 months after the date of a resident's absence that includes the:
    - a. Name of a resident absent without authorization,
    - b. Name of the individual to whom the report required in subsection (I)(6) was submitted, and
    - c. Date of the report;
  8. Document the notification in subsection (I)(6) and the written log required in subsection (I)(7); and
  9. Evaluate and take action related to unauthorized absences under the quality management program in R9-10-704.
- J.** An administrator shall ensure that the following information or documents are conspicuously posted on the premises and are available upon request to a personnel member, employee, resident, or a resident's representative:
1. The behavioral health residential facility's current license,
  2. The location at which inspection reports required in R9-10-720(C) are available for review or can be made available for review, and
  3. The calendar days and times when a resident may accept visitors or make telephone calls.
- K.** An administrator shall ensure that:
1. Labor performed by a resident for the behavioral health residential facility is consistent with A.R.S. § 36-510;
  2. A resident who is a child is only released to the child's custodial parent, guardian, or custodian or as authorized in writing by the child's custodial parent, guardian, or custodian;
  3. The administrator obtains documentation of the identity of the parent, guardian, custodian, or family member authorized to act on behalf of a resident who is a child; and
  4. A resident, who is an incapacitated person according to A.R.S. § 14-5101 or who is gravely disabled, is assisted in obtaining a resident's representative to act on the resident's behalf.
- L.** If an administrator determines that a resident is incapable of handling the resident's financial affairs, the administrator shall:
1. Notify the resident's representative or contact a public fiduciary or a trust officer to take responsibility of the resident's financial affairs, and
  2. Maintain documentation of the notification required in subsection (L)(1)(a) in the resident's medical record for at least 12 months after the date of the notification.
- M.** If an administrator manages a resident's money through a personal funds account, the administrator shall ensure that:
1. Policies and procedure are established, developed, and implemented for:
    - a. Using resident's funds in a personal funds account,
    - b. Protecting resident's funds in a personal funds account,
    - c. Investigating a complaint about the use of resident's funds in a personal funds account and ensuring that the complaint is investigated by an individual who does not manage the personal funds account,

- d. Processing each deposit into and withdrawal from a personal funds account, and
- e. Maintaining a record for each deposit into and withdrawal from a personal funds account; and
2. The personal funds account is only initiated after receiving a written request that:
  - a. Is provided:
    - i. Voluntarily by the resident,
    - ii. By the resident's representative, or
    - iii. By a court of competent jurisdiction;
  - b. May be withdrawn at any time; and
  - c. Is maintained in the resident's record.

#### Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Section R9-10-703 repealed, new Section R9-10-703 adopted effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-704. Quality Management

An administrator shall ensure that:

1. A plan is established, documented, and implemented for an ongoing quality management program that, at a minimum, includes:
  - a. A method to identify, document, and evaluate incidents;
  - b. A method to collect data to evaluate services provided to residents;
  - c. A method to evaluate the data collected to identify a concern about the delivery of services related to resident care;
  - d. A method to make changes or take action as a result of the identification of a concern about the delivery of services related to resident care; and
  - e. The frequency of submitting a documented report required in subsection (2) to the governing authority;
2. A documented report is submitted to the governing authority that includes:
  - a. An identification of each concern about the delivery of services related to resident care, and
  - b. Any change made or action taken as a result of the identification of a concern about the delivery of services related to resident care; and
3. The report required in subsection (2) and the supporting documentation for the report are maintained for at least 12 months after the date the report is submitted to the governing authority.

#### Historical Note

Adopted as an emergency effective October 26, 1988,

pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Section R9-10-704 repealed, new Section R9-10-704 adopted effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2).

#### R9-10-705. Contracted Services

An administrator shall ensure that:

1. Contracted services are provided according to the requirements in this Article, and
2. Documentation of current contracted services is maintained that includes a description of the contracted services provided.

#### Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Section R9-10-705 repealed, new Section R9-10-705 adopted effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-706. Personnel

A. An administrator shall ensure that:

1. A personnel member is:
  - a. At least 21 years old, or
  - b. Licensed or certified under A.R.S. Title 32 and providing services within the personnel member's scope of practice;
2. An employee is at least 18 years old;
3. A student is at least 18 years old; and
4. A volunteer is at least 21 years old.

B. An administrator shall ensure that:

1. The qualifications, skills, and knowledge required for each type of personnel member:
  - a. Are based on:
    - i. The type of behavioral health services or physical health services expected to be provided by

- the personnel member according to the established job description, and
  - ii. The acuity of the residents receiving behavioral health services or physical health services from the personnel member according to the established job description; and
- b. Include:
  - i. The specific skills and knowledge necessary for the personnel member to provide the expected behavioral health services or physical health services listed in the established job description,
  - ii. The type and duration of education that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected behavioral health services or physical health services listed in the established job description, and
  - iii. The type and duration of experience that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected behavioral health services or physical health services listed in the established job description;
- 2. A personnel member's skills and knowledge are verified and documented:
  - a. Before the personnel member provides physical health services or behavioral health services, and
  - b. According to policies and procedures; and
- 3. Sufficient personnel members are present on a behavioral health residential facility's premises with the qualifications, experience, skills, and knowledge necessary to:
  - a. Provide the services in the behavioral health residential facility's scope of services,
  - b. Meet the needs of a resident, and
  - c. Ensure the health and safety of a resident.
- C. An administrator shall comply with the requirements for behavioral health technicians and behavioral health paraprofessionals in R9-10-115.
- D. An administrator shall ensure that an individual who is licensed under A.R.S. Title 32, Chapter 33 as a baccalaureate social worker, master social worker, associate marriage and family therapist, associate counselor, or associate substance abuse counselor is under direct supervision, as defined in A.A.C. R4-6-101.
- E. An administrator shall ensure that:
  - 1. A plan to provide orientation, specific to the duties of a personnel member, an employee, a volunteer, or a student, is developed, documented, and implemented;
  - 2. A personnel member completes orientation before providing behavioral health services or physical health services;
  - 3. An individual's orientation is documented, to include:
    - a. The individual's name,
    - b. The date of the orientation, and
    - c. The subject or topics covered in the orientation;
  - 4. A written plan is developed and implemented to provide in-service education specific to the duties of a personnel member; and
  - 5. A personnel member's in-service education is documented, to include:
    - a. The personnel member's name,
    - b. The date of the training, and
    - c. The subject or topics covered in the training.
- F. An administrator shall ensure that a personnel member, or an employee, a volunteer, or a student who has or is expected to have more than eight hours of direct interaction per week with residents, provides evidence of freedom from infectious tuberculosis:
  - 1. On or before the date the individual begins providing services at or on behalf of the behavioral health residential facility, and
  - 2. As specified in R9-10-113.
- G. An administrator shall ensure that a personnel record is maintained for each personnel member, employee, volunteer, or student that includes:
  - 1. The individual's name, date of birth, and contact telephone number;
  - 2. The individual's starting date of employment or volunteer service and, if applicable, the ending date; and
  - 3. Documentation of:
    - a. The individual's qualifications, including skills and knowledge applicable to the individual's job duties;
    - b. The individual's education and experience applicable to the individual's job duties;
    - c. The individual's completed orientation and in-service education as required by policies and procedures;
    - d. The individual's license or certification, if the individual is required to be licensed or certified in this Article or policies and procedures;
    - e. If the behavioral health residential facility is authorized to provide services to children, the individual's compliance with the fingerprinting requirements in A.R.S. § 36-425.03;
    - f. If the individual is a behavioral health technician, clinical oversight required in R9-10-115;
    - g. Cardiopulmonary resuscitation training, if required for the individual according to R9-10-703(C)(1)(e);
    - h. First aid training, if required for the individual according to this Article or policies and procedures; and
    - i. Evidence of freedom from infectious tuberculosis, if required for the individual according to subsection (F).
- H. An administrator shall ensure that personnel records are:
  - 1. Maintained:
    - a. Throughout an individual's period of providing services in or for the behavioral health residential facility, and
    - b. For at least 24 months after the last date the individual provided services in or for the behavioral health residential facility; and
  - 2. For a personnel member who has not provided physical health services or behavioral health services at or for the behavioral health residential facility during the previous 12 months, provided to the Department within 72 hours after the Department's request.
- I. An administrator shall ensure that the following personnel members have first-aid and cardiopulmonary resuscitation training specific to the populations served by the behavioral health residential facility:
  - 1. At least one personnel member who is present at the behavioral health residential facility during hours of operation of the behavioral health residential facility, and
  - 2. Each personnel member participating in an outing.
- J. An administrator shall ensure that:
  - 1. At least one personnel member is present and awake at the behavioral health residential facility when a resident is on the premises;
  - 2. In addition to the personnel member in subsection (J)(1), at least one personnel member is on-call and available to



- come to the behavioral health residential facility if needed;
3. There is a daily staffing schedule that:
    - a. Indicates the date, scheduled work hours, and name of each employee assigned to work, including on-call personnel members;
    - b. Includes documentation of the employees who work each calendar day and the hours worked by each employee; and
    - c. Is maintained for at least 12 months after the last date on the documentation;
  4. A behavioral health professional is present at the behavioral health residential facility or on-call;
  5. A registered nurse is present at the behavioral health residential facility or on-call; and
  6. If a resident requires services that the behavioral health residential facility is not authorized or not able to provide, a personnel member arranges for the resident to be transported to a hospital or another health care institution where the services can be provided.

#### Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Section R9-10-706 repealed, new Section R9-10-706 adopted effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-707. Admission; Assessment

##### A. An administrator shall ensure that:

1. A resident is admitted based upon the resident's presenting behavioral health issue and treatment needs and the behavioral health residential facility's scope of services;
2. A behavioral health professional, authorized by policies and procedures to accept a resident for admission, is available;
3. General consent is obtained from:
  - a. An adult resident or the resident's representative before or at the time of admission, or
  - b. A resident's representative, if the resident is not an adult;
4. The general consent obtained in subsection (A)(3) is documented in the resident's medical record;
5. Except as provided in subsection (E)(1)(a), a medical practitioner performs a medical history and physical examination or a registered nurse performs a nursing assessment on a resident within 30 calendar days before admission or within seven calendar days after admission and documents the medical history and physical examina-

- tion or nursing assessment in the resident's medical record within seven calendar days after admission;
6. If a medical practitioner performs a medical history and physical examination or a nurse performs a nursing assessment on a resident before admission, the medical practitioner enters an interval note or the nurse enters a progress note in the resident's medical record within seven calendar days after admission;
7. If a behavioral health assessment is conducted by a:
  - a. Behavioral health technician or registered nurse, within 24 hours a behavioral health professional, certified or licensed to provide the behavioral health services needed by the resident, reviews and signs the behavioral health assessment to ensure that the behavioral health assessment identifies the behavioral health services needed by the resident; or
  - b. Behavioral health paraprofessional, a behavioral health professional, certified or licensed to provide the behavioral health services needed by the resident, supervises the behavioral health paraprofessional during the completion of the assessment and signs the assessment to ensure that the assessment identifies the behavioral health services needed by the resident;
8. Except as provided in subsection (A)(9), a behavioral health assessment for a resident is completed before treatment for the resident is initiated;
9. If a behavioral health assessment that complies with the requirements in this Section is received from a behavioral health provider other than the behavioral health residential facility or if the behavioral health residential facility has a medical record for the resident that contains a behavioral health assessment that was completed within 12 months before the date of the resident's current admission:
  - a. The resident's assessment information is reviewed and updated if additional information that affects the resident's assessment is identified, and
  - b. The review and update of the resident's assessment information is documented in the resident's medical record within 48 hours after the review is completed;
10. A behavioral health assessment:
  - a. Documents a resident's:
    - i. Presenting issue;
    - ii. Substance abuse history;
    - iii. Co-occurring disorder;
    - iv. Legal history, including:
      - (1) Custody,
      - (2) Guardianship, and
      - (3) Pending litigation;
    - v. Criminal justice record;
    - vi. Family history;
    - vii. Behavioral health treatment history;
    - viii. Symptoms reported by the resident; and
    - ix. Referrals needed by the resident, if any;
  - b. Includes:
    - i. Recommendations for further assessment or examination of the resident's needs,
    - ii. The physical health services or ancillary services that will be provided to the resident until the resident's treatment plan is completed, and
    - iii. The signature and date signed of the personnel member conducting the behavioral health assessment; and
  - c. Is documented in resident's medical record;

11. A resident is referred to a medical practitioner if a determination is made that the resident requires immediate physical health services or the resident's behavioral health issue may be related to the resident's medical condition; and
  12. Except as provided in subsection (E)(1)(d), a resident provides evidence of freedom from infectious tuberculosis:
    - a. Before or within seven calendar days after the resident's admission, and
    - b. As specified in R9-10-113.
- B.** An administrator shall ensure that:
1. A request for participation in a resident's behavioral health assessment is made to the resident or the resident's representative,
  2. An opportunity for participation in the resident's behavioral health assessment is provided to the resident or the resident's representative, and
  3. The request in subsection (B)(1) and the opportunity in subsection (B)(2) are documented in the resident's medical record.
- C.** An administrator shall ensure that a resident's behavioral health assessment information is documented in the medical record within 48 hours after completing the behavioral health assessment.
- D.** If information in subsection (A)(10) is obtained about a resident after the resident's behavioral health assessment is completed, an interval note, including the information, is documented in the resident's medical record within 48 hours after the information is obtained.
- E.** If a behavioral health residential facility is authorized to provide respite services, an administrator shall ensure that:
1. Upon admission of a resident for respite services:
    - a. A medical history and physical examination of the resident:
      - i. Is performed; or
      - ii. Dated within the previous 12 months, is available in the resident's medical record from a previous admission to the behavioral health residential facility;
    - b. A treatment plan that meets the requirements in R9-10-708:
      - i. Is developed; or
      - ii. Dated within the previous 12 months, is available in the resident's medical record from a previous admission to the behavioral health residential facility;
    - c. If a treatment plan, dated within the previous 12 months, is available, the treatment plan is reviewed, updated, and documented in the resident's medical record; and
    - d. If the resident is not expected to be present in the behavioral health residential facility for more than seven days, the resident is not required to comply with the requirements in subsection (A)(12);
  2. The common area required in R9-10-722(B)(1)(b) provides at least 25 square feet for each resident, including residents who do not stay overnight; and
  3. In addition to the requirements in R9-10-722(B)(3), toilets and hand washing sinks are available to residents, including residents who do not stay overnight, as follows:
    - a. There is at least one working toilet that flushes and has a seat and one sink with running water for every 10 residents,
    - b. There are at least two working toilets that flush and have seats and two sinks with running water if there are 11 to 25 residents, and
    - c. There is at least one additional working toilet that flushes and has a seat and one additional sink with running water for each additional 20 residents.

#### Historical Note

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#### R9-10-708. Treatment Plan

- A.** An administrator shall ensure that a treatment plan is developed and implemented for each resident that:
1. Is based on the medical history and physical examination or nursing assessment required in R9-10-707(A)(5) or (E)(1) and the behavioral health assessment required in R9-10-707(A)(8) or (9) and on-going changes to the behavioral health assessment of the resident;
  2. Is completed:
    - a. By a behavioral health professional or a behavioral health technician under the clinical oversight of a behavioral health professional, and
    - b. Before the resident receives physical health services or behavioral health services or within 48 hours after the assessment is completed;
  3. Is documented in the resident's medical record within 48 hours after the resident first receives physical health services or behavioral health services;
  4. Includes:
    - a. The resident's presenting issue;
    - b. The physical health services or behavioral health services to be provided to the resident;
    - c. The signature of the resident or the resident's representative, and date signed, or documentation of the refusal to sign;
    - d. The date when the resident's treatment plan will be reviewed;
    - e. If a discharge date has been determined, the treatment needed after discharge; and
    - f. The signature of the personnel member who developed the treatment plan and the date signed;
  5. If the treatment plan was completed by a behavioral health technician, is reviewed and signed by a behavioral health professional within 24 hours after the completion of the treatment plan to ensure that the treatment plan is

- complete and accurate and meets the resident's treatment needs; and
- 6. Is reviewed and updated on an on-going basis:
  - a. According to the review date specified in the treatment plan,
  - b. When a treatment goal is accomplished or changed,
  - c. When additional information that affects the resident's behavioral health assessment is identified, and
  - d. When a resident has a significant change in condition or experiences an event that affects treatment.

**B.** An administrator shall ensure that:

- 1. A request for participation in developing a resident's treatment plan is made to the resident or the resident's representative,
- 2. An opportunity for participation in developing the resident's treatment plan is provided to the resident or the resident's representative, and
- 3. The request in subsection (B)(1) and the opportunity in subsection (B)(2) are documented in the resident's medical record.

**Historical Note**

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Section R9-10-708 repealed, new Section R9-10-708 adopted effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-709. Discharge**

- A.** An administrator shall ensure that a discharge plan for a resident is:
  - 1. Developed that:
    - a. Identifies any specific needs of the resident after discharge,
    - b. Is completed before discharge occurs, and
    - c. Includes a description of the level of care that may meet the resident's assessed and anticipated needs after discharge;
  - 2. Documented in the resident's medical record within 48 hours after the discharge plan is completed; and
  - 3. Provided to the resident or the resident's representative before the discharge occurs.
- B.** An administrator shall ensure that:
  - 1. A request for participation in developing a resident's discharge plan is made to the resident or the resident's representative,
  - 2. An opportunity for participation in developing the resident's discharge plan is provided to the resident or the resident's representative, and

- 3. The request in subsection (B)(1) and the opportunity in subsection (B)(2) are documented in the resident's medical record.

- C.** An administrator shall ensure that a resident is discharged from a behavioral health residential facility when the resident's treatment needs are not consistent with the services that the behavioral health residential facility is authorized and able to provide.
- D.** An administrator shall ensure that there is a documented discharge order by a medical practitioner or behavioral health professional before a resident is discharged unless the resident leaves the behavioral health residential facility against a medical practitioner's or behavioral health professional's advice.
- E.** An administrator shall ensure that, at the time of discharge, a resident receives a referral for treatment or ancillary services that the resident may need after discharge, if applicable.
- F.** If a resident is discharged to any location other than a health care institution, an administrator shall ensure that:
  - 1. Discharge instructions are documented, and
  - 2. The resident or the resident's representative is provided with a copy of the discharge instructions.
- G.** An administrator shall ensure that a discharge summary for a resident:
  - 1. Is entered into the resident's medical record within 10 working days after a resident's discharge; and
  - 2. Includes:
    - a. The following information authenticated by a medical practitioner or behavioral health professional:
      - i. The resident's presenting issue and other physical health and behavioral health issues identified in the resident's treatment plan;
      - ii. A summary of the treatment provided to the resident;
      - iii. The resident's progress in meeting treatment goals, including treatment goals that were and were not achieved; and
      - iv. The name, dosage, and frequency of each medication ordered for the resident by a medical practitioner at the behavioral health residential facility at the time of the resident's discharge; and
    - b. A description of the disposition of the resident's possessions, funds, or medications brought to the behavioral health residential facility by the resident.
- H.** An administrator shall ensure that a resident who is dependent upon a prescribed medication is offered a written referral to detoxification services or opioid treatment before the resident is discharged from the behavioral health residential facility if a medical practitioner for the behavioral health residential facility will not be prescribing the medication for the resident at or after discharge.

**Historical Note**

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Section R9-10-709 repealed, new Section R9-10-709 adopted effective November 1, 1998, under an

exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### **R9-10-710. Transport; Transfer**

- A.** Except as provided in subsection (B), an administrator shall ensure that:
1. A personnel member coordinates the transport and the services provided to the resident;
  2. According to policies and procedures:
    - a. An evaluation of the resident is conducted before and after the transport;
    - b. Information from the resident's medical record is provided to a receiving health care institution, and
    - c. A personnel member explains risks and benefits of the transport to the resident or the resident's representative; and
  3. Documentation in the resident's medical record includes:
    - a. Communication with an individual at a receiving health care institution;
    - b. The date and time of the transport;
    - c. The mode of transportation; and
    - d. If applicable, the name of the personnel member accompanying the resident during a transport.
- B.** Subsection (A) does not apply to:
1. Transportation to a location other than a licensed health care institution,
  2. Transportation provided for a resident by the resident or the resident's representative,
  3. Transportation provided by an outside entity that was arranged for a resident by the resident or the resident's representative, or
  4. A transport to another licensed health care institution in an emergency.
- C.** Except for a transfer of a resident due to an emergency, an administrator shall ensure that:
1. A personnel member coordinates the transfer and the services provided to the resident;
  2. According to policies and procedures:
    - a. An evaluation of the resident is conducted before the transfer;
    - b. Information from the resident's medical record, including orders that are in effect at the time of the transfer, is provided to a receiving health care institution; and
    - c. A personnel member explains risks and benefits of the transfer to the resident or the resident's representative; and
  3. Documentation in the resident's medical record includes:
    - a. Communication with an individual at a receiving health care institution;
    - b. The date and time of the transfer;
    - c. The mode of transportation; and
    - d. If applicable, the name of the personnel member accompanying the resident during a transfer.

#### **Historical Note**

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp.

89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2).

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Section R9-10-710 repealed, new Section R9-10-710 adopted effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### **R9-10-711. Resident Rights**

- A.** An administrator shall ensure that:
1. The requirements in subsection (B) and the resident rights in subsection (E) are conspicuously posted on the premises;
  2. At the time of admission, a resident or the resident's representative receives a written copy of the requirements in subsection (B) and the resident rights in subsection (E); and
  3. Policies and procedures include:
    - a. How and when a resident or the resident's representative is informed of the resident rights in subsection (E), and
    - b. Where resident rights are posted as required in subsection (A)(1).
- B.** An administrator shall ensure that:
1. A resident is treated with dignity, respect, and consideration;
  2. A resident is not subjected to:
    - a. Abuse;
    - b. Neglect;
    - c. Exploitation;
    - d. Coercion;
    - e. Manipulation;
    - f. Sexual abuse;
    - g. Sexual assault;
    - h. Seclusion;
    - i. Restraint;
    - j. Retaliation for submitting a complaint to the Department or another entity;
    - k. Misappropriation of personal and private property by the behavioral health residential facility's personnel members, employees, volunteers, or students;
    - l. Discharge or transfer, or threat of discharge or transfer, for reasons unrelated to the resident's treatment needs, except as established in a fee agreement signed by the resident or the resident's representative; or
    - m. Treatment that involves the denial of:
      - i. Food,
      - ii. The opportunity to sleep, or
      - iii. The opportunity to use the toilet;
  3. Except as provided in subsection (C) or (D), and unless restricted by the resident's representative, is allowed to:
    - a. Associate with individuals of the resident's choice, receive visitors, and make telephone calls during the hours established by the behavioral health residential facility;

- b. Have privacy in correspondence, communication, visitation, financial affairs, and personal hygiene; and
    - c. Unless restricted by a court order, send and receive uncensored and unopened mail; and
  - 4. A resident or the resident's representative:
    - a. Except in an emergency, either consents to or refuses treatment;
    - b. May refuse or withdraw consent for treatment before treatment is initiated, unless the treatment is ordered by a court according to A.R.S. Title 36, Chapter 5 or A.R.S. 8-341.01; is necessary to save the resident's life or physical health; or is provided according to A.R.S. § 36-512;
    - c. Except in an emergency, is informed of proposed treatment alternatives, associated risks, and possible complications;
    - d. Is informed of the following:
      - i. The behavioral health residential facility's policy on health care directives, and
      - ii. The resident complaint process; and
    - e. Except as otherwise permitted by law, provides written consent to the release of information in the resident's:
      - i. Medical record, or
      - ii. Financial records.
- C. For a behavioral health residential facility with licensed capacity of less than 10 residents, if a behavioral health professional determines that a resident's treatment requires the behavioral health residential facility to restrict the resident's ability to participate in the activities in subsection (B)(3), the behavioral health professional shall:
  - 1. Document a specific treatment purpose in the resident's medical record that justifies restricting the resident from the activity,
  - 2. Inform the resident or resident's representative of the reason why the activity is being restricted, and
  - 3. Inform the resident or resident's representative of the resident's right to file a complaint and the procedure for filing a complaint.
- D. For a behavioral health residential facility with a licensed capacity of 10 or more residents, if a clinical director determines that a resident's treatment requires the behavioral health residential facility to restrict the resident's ability to participate in the activities in subsection (B)(3), the clinical director shall comply with the requirements in subsections (C)(1) through (3).
- E. A resident has the following rights:
  - 1. Not to be discriminated against based on race, national origin, religion, gender, sexual orientation, age, disability, marital status, or diagnosis;
  - 2. To receive treatment that:
    - a. Supports and respects the resident's individuality, choices, strengths, and abilities;
    - b. Supports the resident's personal liberty and only restricts the resident's personal liberty according to a court order, by the resident's or the resident's representative's general consent, or as permitted in this Chapter; and
    - c. Is provided in the least restrictive environment that meets the resident's treatment needs;
  - 3. To receive privacy in treatment and care for personal needs, including the right not to be fingerprinted, photographed, or recorded without consent, except:
    - a. A resident may be photographed when admitted to a behavioral health residential facility for identification and administrative purposes;
    - b. For a resident receiving treatment according to A.R.S. Title 36, Chapter 37; or
    - c. For video recordings used for security purposes that are maintained only on a temporary basis;
  - 4. Not to be prevented or impeded from exercising the resident's civil rights unless the resident has been adjudicated incompetent or a court of competent jurisdiction has found that the resident is not able to exercise a specific right or category of rights;
  - 5. To review, upon written request, the resident's own medical record according to A.R.S. §§ 12-2293, 12-2294, and 12-2294.01;
  - 6. To be provided locked storage space for the resident's belongings while the resident receives treatment;
  - 7. To have opportunities for social contact and daily social, recreational, or rehabilitative activities;
  - 8. To be informed of the requirements necessary for the resident's discharge or transfer to a less restrictive physical environment;
  - 9. To receive a referral to another health care institution if the behavioral health residential facility is not authorized or not able to provide physical health services or behavioral health services needed by the resident;
  - 10. To participate or have the resident's representative participate in the development of a treatment plan or decisions concerning treatment;
  - 11. To participate or refuse to participate in research or experimental treatment; and
  - 12. To receive assistance from a family member, the resident's representative, or other individual in understanding, protecting, or exercising the resident's rights.

#### Historical Note

Adopted effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-712. Medical Records

- A. An administrator shall ensure that:
  - 1. A medical record is established and maintained for each resident according to A.R.S. Title 12, Chapter 13, Article 7.1;
  - 2. An entry in a resident's medical record is:
    - a. Recorded only by a personnel member authorized by policies and procedures to make the entry;
    - b. Dated, legible, and authenticated; and
    - c. Not changed to make the initial entry illegible;
  - 3. An order is:
    - a. Dated when the order is entered in the resident's medical record and includes the time of the order;
    - b. Authenticated by a medical practitioner or behavioral health professional according to policies and procedures; and
    - c. If the order is a verbal order, authenticated by the medical practitioner or behavioral health professional issuing the order;
  - 4. If a rubber-stamp signature or an electronic signature is used to authenticate an order, the individual whose signa-

- ture the rubber-stamp signature or electronic signature represents is accountable for the use of the rubber-stamp signature or electronic signature;
5. A resident's medical record is available to an individual:
    - a. Authorized according to policies and procedures to access the resident's medical record;
    - b. If the individual is not authorized according to policies and procedures, with the written consent of the resident or the resident's representative; or
    - c. As permitted by law;
  6. Policies and procedures include the maximum time-frame to retrieve a resident's medical record at the request of a medical practitioner, behavioral health professional, or authorized personnel member; and
  7. A resident's medical record is protected from loss, damage, or unauthorized use.
- B.** If a behavioral health residential facility maintains residents' medical records electronically, an administrator shall ensure that:
1. Safeguards exist to prevent unauthorized access, and
  2. The date and time of an entry in a resident's medical record is recorded by the computer's internal clock.
- C.** An administrator shall ensure that a resident's medical record contains:
1. Resident information that includes:
    - a. The resident's name;
    - b. The resident's address;
    - c. The resident's date of birth; and
    - d. Any known allergies, including medication allergies;
  2. The name of the admitting medical practitioner or behavioral health professional;
  3. An admitting diagnosis or presenting behavioral health issues;
  4. The date of admission and, if applicable, date of discharge;
  5. If applicable, the name and contact information of the resident's representative and:
    - a. If the resident is 18 years of age or older or an emancipated minor, the document signed by the resident consenting for the resident's representative to act on the resident's behalf; or
    - b. If the resident's representative:
      - i. Has a health care power of attorney established under A.R.S. § 36-3221 or a mental health care power of attorney executed under A.R.S. § 36-3282, a copy of the health care power of attorney or mental health care power of attorney; or
      - ii. Is a legal guardian, a copy of the court order establishing guardianship;
  6. If applicable, documented general consent and informed consent for treatment by the resident or the resident's representative;
  7. Documentation of medical history and results of a physical examination;
  8. A copy of resident's health care directive, if applicable;
  9. Orders;
  10. Assessment;
  11. Treatment plans;
  12. Interval notes;
  13. Progress notes;
  14. Documentation of behavioral health services and physical health services provided to the resident;
  15. If applicable, documentation of the use of an emergency safety response;
  16. If applicable, documentation of time out required in R9-10-714(6);
  17. Except as allowed in R9-10-707(E)(1)(d), documentation of freedom from infectious tuberculosis required in R9-10-707(A)(12);
  18. The disposition of the resident after discharge;
  19. The discharge plan;
  20. The discharge summary, if applicable;
  21. If applicable:
    - a. Laboratory reports,
    - b. Radiologic reports,
    - c. Diagnostic reports, and
    - d. Consultation reports; and
  22. Documentation of medication administered to the resident that includes:
    - a. The date and time of administration;
    - b. The name, strength, dosage, and route of administration;
    - c. For a medication administered for pain, when administered initially or on a PRN basis:
      - i. An assessment of the resident's pain before administering the medication, and
      - ii. The effect of the medication administered;
    - d. For a psychotropic medication, when administered initially or on a PRN basis:
      - i. An assessment of the resident's behavior before administering the psychotropic medication, and
      - ii. The effect of the psychotropic medication administered;
    - e. The identification, signature, and professional designation of the individual administering or providing assistance in the self-administration of the medication; and
    - f. Any adverse reaction a resident has to the medication.

#### Historical Note

Adopted effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-713. Transportation; Resident Outings

- A.** An administrator of a behavioral health residential facility that uses a vehicle owned or leased by the behavioral health residential facility to provide transportation to a resident shall ensure that:
1. The vehicle:
    - a. Is safe and in good repair,
    - b. Contains a first aid kit,
    - c. Contains drinking water sufficient to meet the needs of each resident present in the vehicle, and
    - d. Contains a working heating and air conditioning system;
  2. Documentation of current vehicle insurance and a record of maintenance performed or a repair of the vehicle is maintained;
  3. A driver of the vehicle:
    - a. Is 21 years of age or older;
    - b. Has a valid driver license;
    - c. Operates the vehicle in a manner that does not endanger a resident in the vehicle;

- d. Does not leave in the vehicle an unattended:
  - i. Child,
  - ii. Resident who may be a threat to the health or safety of the resident or another individual, or
  - iii. Resident who is incapable of independent exit from the vehicle; and
- e. Ensures the safe and hazard-free loading and unloading of residents; and
- 4. Transportation safety is maintained as follows:
  - a. Each individual in the vehicle is sitting in a seat and wearing a working seat belt while the vehicle is in motion, and
  - b. Each seat in the vehicle is securely fastened to the vehicle and provides sufficient space for a resident's body.

**B. An administrator shall ensure that:**

- 1. An outing is consistent with the age, developmental level, physical ability, medical condition, and treatment needs of each resident participating in the outing;
- 2. At least two personnel members are present on an outing;
- 3. In addition to the personnel members required in subsection (B)(2), a sufficient number of personnel members are present to ensure each resident's health and safety on the outing;
- 4. Documentation is developed before an outing that includes:
  - a. The name of each resident participating in the outing;
  - b. A description of the outing;
  - c. The date of the outing;
  - d. The anticipated departure and return times;
  - e. The name, address, and, if available, telephone number of the outing destination; and
  - f. If applicable, the license plate number of each vehicle used to transport a resident;
- 5. The documentation described in subsection (B)(4) is updated to include the actual departure and return times and is maintained for at least 12 months after the date of the outing; and
- 6. Emergency information for each resident participating in the outing is maintained by a personnel member participating in the outing or in the vehicle used to provide transportation for the outing and includes:
  - a. The resident's name;
  - b. Medication information, including the name, dosage, route of administration, and directions for each medication needed by the resident during the anticipated duration of the outing;
  - c. The resident's allergies; and
  - d. The name and telephone number of a designated individual, to notify in case of an emergency, who is present on the behavioral health residential facility's premises.

**Historical Note**

Adopted effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-714. Resident Time Out**

An administrator shall ensure that a time out:

- 1. Is provided to a resident who voluntarily decides to go in a time out;
- 2. Takes place in an area that is unlocked, lighted, quiet, and private;
- 3. Is time-limited and does not exceed the amount of time as determined by the resident;
- 4. Does not result in a resident missing a meal if the resident is in time out at mealtime;
- 5. Includes monitoring of the resident by a personnel member at least once every 15 minutes to ensure the resident's health and safety and to discuss with the resident if the resident is ready to leave time out; and
- 6. Is documented in the resident's medical record, to include:
  - a. The date of the time out,
  - b. The reason for the time out,
  - c. The duration of the time out, and
  - d. The action planned and taken by the administrator to prevent the use of time out in the future.

**Historical Note**

Adopted effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-715. Physical Health Services**

An administrator of a behavioral health residential facility that provides personal care services shall ensure that:

- 1. Personnel members who provide personal care services have documentation of completion of a caregiver training program that complies with A.A.C. R4-33-702(A)(5);
- 2. Residents receive personal care services according to the requirements in R9-10-814(A), (C), (D), and (E); and
- 3. A resident who has a stage 3 or stage 4 pressure sore is not admitted to the behavioral health residential facility.

**Historical Note**

Adopted effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-716. Behavioral Health Services**

**A.** An administrator shall ensure that:

- 1. If a behavioral health residential facility is licensed to provide behavioral health services to individuals whose behavioral health issue limits the individuals' ability to function independently, a resident admitted to the behavioral health residential facility with limited ability to function independently, in addition to behavioral health services and personnel care services as indicated in the resident's treatment plan, receives continuous protective oversight;
- 2. A resident admitted to the behavioral health residential facility who needs behavioral health services to maintain or enhance the resident's ability to function independently, in addition to receiving behavioral health ser-

- vices, and, if indicated in the resident's treatment plan, personal care services, is provided an opportunity to participate in activities designed to maintain or enhance the resident's ability to function independently while caring for the resident's health, safety, or personal hygiene or performing homemaking functions;
3. Behavioral health services are provided to meet the needs of a resident and are consistent with a behavioral health residential facility's scope of services;
  4. Behavioral health services:
    - a. Listed in the behavioral health residential facility's scope of services are provided on the premises; and
    - b. When provided in a setting or activity with more than one resident participating, before a resident participates, the diagnoses, treatment needs, developmental levels, social skills, verbal skills, and personal histories, including any history of physical or sexual abuse, of the residents participating are reviewed to ensure that the:
      - i. Health and safety of each resident is protected, and
      - ii. Treatment needs of each resident participating are being met; and
  5. A resident does not:
    - a. Use or have access to any materials, furnishings, or equipment or participate in any activity or treatment that may present a threat to the resident's health or safety based on the resident's documented diagnosis, treatment needs, developmental levels, social skills, verbal skills, or personal history; or
    - b. Share any space, participate in any activity or treatment, or verbally or physically interact with any other resident that may present a threat to the resident's health or safety based on the other resident's documented diagnosis, treatment needs, developmental levels, social skills, verbal skills, and personal history.
- B.** An administrator shall ensure that counseling is:
1. Offered as described in the behavioral health residential facility's scope of services,
  2. Provided according to the frequency and number of hours identified in the resident's treatment plan, and
  3. Provided by a behavioral health professional or a behavioral health technician.
- C.** An administrator shall ensure that:
1. A personnel member providing counseling that addresses a specific type of behavioral health issue has the skills and knowledge necessary to provide the counseling that addresses the specific type of behavioral health issue; and
  2. Each counseling session is documented in a resident's medical record to include:
    - a. The date of the counseling session;
    - b. The amount of time spent in the counseling session;
    - c. Whether the counseling was individual counseling, family counseling, or group counseling;
    - d. The treatment goals addressed in the counseling session; and
    - e. The signature of the personnel member who provided the counseling and the date signed.
- D.** An administrator of a behavioral health residential facility authorized to provide behavioral health residential services to individuals under 18 years of age:
1. May continue to provide behavioral health services to a resident who is 18 years of age or older:
    - a. If the resident:
      - i. Was admitted to the behavioral health residential facility before the resident's 18th birthday;
      - ii. Is not 21 years of age or older; and
      - iii. Is:
        - (1) Attending classes or completing coursework to obtain a high school or a high school equivalency diploma, or
        - (2) Participating in a job training program; or
    - b. Through the last calendar day of the month of the resident's 18th birthday; and
2. Shall ensure that:
- a. A resident does not receive the following from other residents at the behavioral health residential facility:
    - i. Threats,
    - ii. Ridicule,
    - iii. Verbal harassment,
    - iv. Punishment, or
    - v. Abuse;
  - b. The interior of the behavioral health residential facility has furnishings and decorations appropriate to the ages of the residents receiving services at the behavioral health residential facility;
  - c. A resident older than three years of age does not sleep in a crib;
  - d. Clean and non-hazardous toys, educational materials, and physical activity equipment are available and accessible to residents on the premises in a quantity sufficient to meet each resident's needs and are appropriate to each resident's age, developmental level, and treatment needs; and
  - e. A resident's educational needs are met, including providing or arranging for transportation:
    - i. By establishing and providing an educational component, approved in writing by the Arizona Department of Education; or
    - ii. As arranged and documented by the administrator through the local school district.
- E.** An administrator shall ensure that:
1. An emergency safety response is:
    - a. Only used:
      - i. By a personnel member trained to use an emergency safety response,
      - ii. For the management of a resident's violent or self-destructive behavior, and
      - iii. When less restrictive interventions have been determined to be ineffective; and
    - b. Discontinued at the earliest possible time, but no longer than five minutes after the emergency safety response is initiated;
  2. Within 24 hours after an emergency safety response is used for a resident, the following information is entered into the resident medical record:
    - a. The date and time the emergency safety response was used;
    - b. The name of each personnel member who used an emergency safety response;
    - c. The specific emergency safety response used;
    - d. The personnel member or resident behavior, event, or environmental factor that caused the need for the emergency safety response; and
    - e. Any injury that resulted from the emergency safety response;
  3. Within 10 working days after an emergency safety response is used for a resident, the administrator or clinical director reviews the information in subsection (E)(2); and



4. After the review required in subsection (E)(3), the following information is entered into the resident's medical record:
    - a. Actions taken or planned actions to prevent the need for the use of an emergency safety response for the resident;
    - b. A determination of whether the resident is appropriately placed at the behavioral health residential facility; and
    - c. Whether the resident's treatment plan was reviewed or needs to be reviewed and amended to ensure that the resident's treatment plan is meeting the resident's treatment needs.
- F.** An administrator shall ensure that:
1. A personnel member whose job description includes the ability to use an emergency safety response:
    - a. Completes training in crisis intervention that includes:
      - i. Techniques to identify personnel member and resident behaviors, events, and environmental factors that may trigger the need for the use of an emergency safety response;
      - ii. The use of nonphysical intervention skills, such as de-escalation, mediation, conflict resolution, active listening, and verbal and observational methods; and
      - iii. The safe use of an emergency safety response including the ability to recognize and respond to signs of physical distress in a client who is receiving an emergency safety response; and
    - b. Completes training required in subsection (F)(1)(a):
      - i. Before providing behavioral health services; and
      - ii. At least once every 12 months after the date the personnel member completed the initial training;
  2. Documentation of the completed training in subsection (F)(1)(a) includes:
    - a. The name and credentials of the individual providing the training;
    - b. Date of the training; and
    - c. Verification of a personnel member's ability to use the training; and
  3. The materials used to provide the completed training in crisis intervention, including handbooks, electronic presentations, and skills verification worksheets, are maintained for at least 12 months after each personnel member who received training using the materials no longer provides services at the behavioral health residential facility.
- Historical Note**
- Adopted effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).
- R9-10-717. Outdoor Behavioral Health Care Programs**
- A.** An administrator of a behavioral health residential facility providing an outdoor behavioral health care program shall ensure that:
1. Behavioral health services are provided to a resident participating in the outdoor behavioral health care program consistent with the age, developmental level, physical ability, medical condition, and treatment needs of the resident;
  2. Continuous protective oversight is provided to a resident;
  3. Transportation is provided to a resident from the behavioral health residential facility's administrative office for the outdoor behavioral health care program to the location where the outdoor behavioral health care program is provided and from the location where the outdoor behavioral health care program is provided to the behavioral health residential facility's administrative office for the outdoor behavioral health care program; and
  4. Communication is available between the outdoor behavioral health care program personnel and:
    - a. A behavioral health professional,
    - b. A registered nurse,
    - c. An emergency medical response team, and
    - d. The behavioral health residential facility's administrative office for the outdoor behavioral health care program.
- B.** An administrator of a behavioral health residential facility providing an outdoor behavioral health care program shall ensure that:
1. Food is prepared:
    - a. Using methods that conserve nutritional value, flavor, and appearance; and
    - b. In a form to meet the needs of a resident such as cut, chopped, ground, pureed, or thickened;
  2. A food menu is prepared based on the number of calendar days scheduled for the behavioral health care program;
  3. Meals and snacks provided by the behavioral health care program are served according to menus;
  4. Meals and snacks for each day are planned using the applicable guidelines in <http://www.health.gov/dietaryguidelines/2010.asp>;
  5. A resident is provided:
    - a. A diet that meets the resident's nutritional needs as specified in the resident's assessment or treatment plan;
    - b. Three meals a day with not more than 14 hours between the evening meal and breakfast, except as provided in subsection (B)(5)(d);
    - c. The option to have a daily evening snack or other snack; and
    - d. The option to extend the time span between the evening meal and breakfast from 14 hours to 16 hours if the resident agrees;
  6. Water is available and accessible to residents unless otherwise stated in a resident's treatment plan;
  7. Food is free from spoilage, filth, or other contamination and is safe for human consumption;
  8. Food is protected from potential contamination; and
  9. Food being maintained in coolers containing ice is not in direct contact with ice or water if water may enter the food because of the nature of the food's packaging, wrapping, or container or the positioning of the food in the ice or water.
- C.** An administrator of a behavioral health residential facility providing an outdoor behavioral health care program shall ensure that:
1. The location and, if applicable, equipment used by the outdoor behavioral health care program are sufficient to accommodate the activities, treatment, and ancillary services required by the residents participating in the behavioral health care program;

2. The location and equipment are maintained in a condition that allows the location and equipment to be used for the original purpose of the location and equipment;
  3. Garbage and refuse are:
    - a. Stored in plastic bags in covered containers, and
    - b. Removed from the location used by the outdoor behavioral health care program at least once a week;
  4. Common areas:
    - a. Are lighted when in use to assure the safety of residents, and
    - b. Have sufficient lighting to allow personnel members to monitor resident activity;
  5. The supply of hot and cold water is sufficient to meet the personal hygiene needs of residents and the cleaning and sanitation requirements in this Article;
  6. Soiled clothing is stored in closed containers away from food storage, medications, and eating areas;
  7. Poisonous or toxic materials are maintained in labeled containers, secured, and separate from food preparation and storage, eating areas, and medications and inaccessible to residents;
  8. Combustible or flammable liquids and hazardous materials are stored in the original labeled containers or safety containers, secured, and inaccessible to residents;
  9. If a water source that is not regulated under 18 A.A.C. 4 by the Arizona Department of Environmental Quality is used:
    - a. The water source is tested at least once every 12 months for total coliform bacteria and fecal coliform or *E. coli* bacteria;
    - b. If necessary, corrective action is taken to ensure the water is safe to drink; and
    - c. Documentation of testing is retained for at least 12 months after the date of the test; and
  10. Smoking or the use of tobacco products may be permitted away from the residents.
- c. Procedures to ensure that a resident's medication regimen is reviewed by a medical practitioner to ensure the medication regimen meets the resident's needs;
  - d. Procedures for documenting, as applicable, medication administration and assistance in the self-administration of medication;
  - e. A process for monitoring a resident who self-administers medication;
  - f. Procedures for assisting a resident in obtaining medication; and
  - g. If applicable, procedures for providing medication administration or assistance in the self-administration of medication off the premises; and
2. Specify a process for review through the quality management program of:
    - a. A medication administration error, and
    - b. An adverse reaction to a medication.
- B.** If a behavioral health residential facility provides medication administration, an administrator shall ensure that:
1. Policies and procedures for medication administration:
    - a. Are reviewed and approved by a medical practitioner;
    - b. Specify the individuals who may:
      - i. Order medication, and
      - ii. Administer medication;
    - c. Ensure that medication is administered to a resident only as prescribed; and
    - d. Cover the documentation of a resident's refusal to take prescribed medication in the resident's medical record;
  2. Verbal orders for medication services are taken by a nurse, unless otherwise provided by law; and
  3. A medication administered to a resident:
    - a. Is administered in compliance with an order, and
    - b. Is documented in the resident's medical record.

- C.** If behavioral health residential facility provides assistance in the self-administration of medication, an administrator shall ensure that:
1. A resident's medication is stored by the behavioral health residential facility;
  2. The following assistance is provided to a resident:
    - a. A reminder when it is time to take the medication;
    - b. Opening the medication container for the resident;
    - c. Observing the resident while the resident removes the medication from the container;
    - d. Verifying that the medication is taken as ordered by the resident's medical practitioner by confirming that:
      - i. The resident taking the medication is the individual stated on the medication container label,
      - ii. The resident is taking the dosage of the medication stated on the medication container label or according to an order from a medical practitioner dated later than the date on the medication container label, and
      - iii. The resident is taking the medication at the time stated on the medication container label or according to an order from a medical practitioner dated later than the date on the medication container label; or
    - e. Observing the resident while the resident takes the medication;
  3. Policies and procedures for assistance in the self-administration of medication are reviewed and approved by a medical practitioner or registered nurse;

#### Historical Note

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#### R9-10-718. Medication Services

- A.** An administrator shall ensure that policies and procedures for medication services:
1. Include:
    - a. A process for providing information to a resident about medication prescribed for the resident including:
      - i. The prescribed medication's anticipated results,
      - ii. The prescribed medication's potential adverse reactions,
      - iii. The prescribed medication's potential side effects, and
      - iv. Potential adverse reactions that could result from not taking the medication as prescribed;
    - b. Procedures for preventing, responding to, and reporting:
      - i. A medication error,
      - ii. An adverse reaction to a medication, or
      - iii. A medication overdose;

4. Training for a personnel member, other than a medical practitioner or registered nurse, in assistance in the self-administration of medication:
    - a. Is provided by a medical practitioner or registered nurse or an individual trained by a medical practitioner or registered nurse; and
    - b. Includes:
      - i. A demonstration of the personnel member's skills and knowledge necessary to provide assistance in the self-administration of medication,
      - ii. Identification of medication errors and medical emergencies related to medication that require emergency medical intervention, and
      - iii. The process for notifying the appropriate entities when an emergency medical intervention is needed;
  5. A personnel member, other than a medical practitioner or registered nurse, completes the training in subsection (C)(4) before the personnel member provides assistance in the self-administration of medication; and
  6. Assistance in the self-administration of medication provided to a resident:
    - a. Is in compliance with an order, and
    - b. Is documented in the resident's medical record.
- D.** An administrator shall ensure that:
1. A current drug reference guide is available for use by personnel members;
  2. A current toxicology reference guide is available for use by personnel members; and
  3. If pharmaceutical services are provided on the premises:
    - a. A committee, composed of at least one physician, one pharmacist, and other personnel members as determined by policies and procedures, is established to:
      - i. Develop a drug formulary,
      - ii. Update the drug formulary at least once every 12 months,
      - iii. Develop medication usage and medication substitution policies and procedures, and
      - iv. Specify which medications and medication classifications are required to be stopped automatically after a specific time period unless the ordering medical practitioner specifically orders otherwise;
    - b. The pharmaceutical services are provided under the direction of a pharmacist;
    - c. The pharmaceutical services comply with A.R.S. Title 36, Chapter 27; A.R.S. Title 32, Chapter 18; and 4 A.A.C. 23; and
    - d. A copy of the pharmacy license is provided to the Department upon request.
- E.** When medication is stored at a behavioral health residential facility, an administrator shall ensure that:
1. Medication is stored in a separate locked room, closet, cabinet, or self-contained unit used only for medication storage;
  2. Medication is stored according to the instructions on the medication container; and
  3. Policies and procedures are established, documented, and implemented for:
    - a. Receiving, storing, inventorying, tracking, dispensing, and discarding medication, including expired medication;
    - b. Discarding or returning prepackaged and sample medication to the manufacturer if the manufacturer requests the discard or return of the medication;
    - c. A medication recall and notification of residents who received recalled medication; and
    - d. Storing, inventorying, and dispensing controlled substances.
- F.** An administrator shall ensure that a personnel member immediately reports a medication error or a resident's adverse reaction to a medication to the medical practitioner who ordered the medication and, if applicable, the behavioral health residential facility's clinical director.

#### Historical Note

Adopted effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-719. Food Services

- A.** Except for an outdoor behavioral health care program provided by a behavioral health residential facility, an administrator shall ensure that:
1. For a behavioral health residential facility that has a licensed capacity of more than 10 residents:
    - a. The behavioral health residential facility obtains a license or permit as a food establishment under 9 A.A.C. 8, Article 1; and
    - b. A copy of the behavioral health residential facility's food establishment license or permit is maintained;
  2. If a behavioral health residential facility contracts with food establishment, as established in 9 A.A.C. 8, Article 1, to prepare and deliver food to the behavioral health residential facility, a copy of the food establishment's license or permit under 9 A.A.C. 8, Article 1 is maintained by the behavioral health residential facility;
  3. Food is stored, refrigerated, and reheated to meet the dietary needs of a resident;
  4. A registered dietitian is employed full-time, part-time, or as a consultant; and
  5. If a registered dietitian is not employed full-time, an individual is designated as a director of food services who consults with a registered dietitian as often as necessary to meet the nutritional needs of the residents.
- B.** Except for an outdoor behavioral health care program provided by a behavioral health residential facility, a registered dietitian or director of food services shall ensure that:
1. Food is prepared:
    - a. Using methods that conserve nutritional value, flavor, and appearance; and
    - b. In a form to meet the needs of a resident, such as cut, chopped, ground, pureed, or thickened;
  2. A food menu:
    - a. Is prepared at least one week in advance,
    - b. Includes the foods to be served each day,
    - c. Is conspicuously posted at least one calendar day before the first meal on the food menu will be served,
    - d. Includes any food substitution no later than the morning of the day of meal service with a food substitution, and

- e. Is maintained for at least 60 calendar days after the last day included in the food menu;
- 3. Meals and snacks provided by the behavioral health residential facility are served according to posted menus;
- 4. Meals and snacks for each day are planned using the applicable guidelines in <http://www.health.gov/dietaryguidelines/2010.asp>;
- 5. A resident is provided:
  - a. A diet that meets the resident's nutritional needs as specified in the resident's assessment or treatment plan;
  - b. Three meals a day with not more than 14 hours between the evening meal and breakfast, except as provided in subsection (B)(5)(d);
  - c. The option to have a daily evening snack identified in subsection (B)(5)(d)(ii) or other snack; and
  - d. The option to extend the time span between the evening meal and breakfast from 14 hours to 16 hours if:
    - i. The resident agrees; and
    - ii. The resident is offered an evening snack that includes meat, fish, eggs, cheese, or other protein, and a serving from either the fruit and vegetable food group or the bread and cereal food group;
- 6. A resident requiring assistance to eat is provided with assistance that recognizes the resident's nutritional, physical, and social needs, including the use of adaptive eating equipment or utensils; and
- 7. Water is available and accessible to residents unless otherwise stated in a resident's treatment plan.
- C. Except for an outdoor behavioral health care program provided by a behavioral health residential facility, an administrator shall ensure that food is obtained, prepared, served, and stored as follows:
  - 1. Food is free from spoilage, filth, or other contamination and is safe for human consumption;
  - 2. Food is protected from potential contamination;
  - 3. Potentially hazardous food is maintained as follows:
    - a. Foods requiring refrigeration are maintained at 41° F or below; and
    - b. Foods requiring cooking are cooked to heat all parts of the food to a temperature of at least 145° F for 15 seconds, except that:
      - i. Ground beef and ground meats are cooked to heat all parts of the food to at least 155° F;
      - ii. Poultry, poultry stuffing, stuffed meats, and stuffing that contains meat are cooked to heat all parts of the food to at least 165° F;
      - iii. Pork and any food containing pork are cooked to heat all parts of the food to at least 155° F;
      - iv. Raw shell eggs for immediate consumption are cooked to at least 145° F for 15 seconds and any food containing raw shell eggs is cooked to heat all parts of the food to at least 155° F;
      - v. Roast beef and beef steak are cooked to an internal temperature of at least 155° F; and
      - vi. Leftovers are reheated to a temperature of at least 165° F;
  - 4. A refrigerator contains a thermometer, accurate to plus or minus 3° F, placed at the warmest part of the refrigerator;
  - 5. Frozen foods are stored at a temperature of 0° F or below; and
  - 6. Tableware, utensils, equipment, and food-contact surfaces are clean and in good repair.

**Historical Note**

Adopted effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-720. Emergency and Safety Standards**

- A. Except for an outdoor behavioral health care program provided by a behavioral health residential facility, an administrator shall ensure that a behavioral health residential facility has:
  - 1. A fire alarm system installed according to the National Fire Protection Association 72: National Fire Alarm and Signaling Code, incorporated by reference in A.A.C. R9-1-412, and a sprinkler system installed according to the National Fire Protection Association 13 Standard for the Installation of Sprinkler Systems, incorporated by reference in A.A.C. R9-1-412, that are in working order; or
  - 2. An alternative method to ensure resident's safety that is documented and approved by the local jurisdiction.
- B. Except for an outdoor behavioral health care program provided by a behavioral health residential facility, an administrator shall ensure that:
  - 1. A disaster plan is developed, documented, maintained in a location accessible to personnel members and other employees, and, if necessary, implemented that includes:
    - a. When, how, and where residents will be relocated;
    - b. How each resident's medical record will be available to individuals providing services to the resident during a disaster;
    - c. A plan to ensure each resident's medication will be available to administer to the resident during a disaster; and
    - d. A plan for obtaining food and water for individuals present in the behavioral health residential facility, under the care and supervision of personnel members, or in the behavioral health residential facility's relocation site during a disaster;
  - 2. The disaster plan required in subsection (B)(1) is reviewed at least once every 12 months;
  - 3. Documentation of a disaster plan review required in subsection (B)(2) is created, is maintained for at least 12 months after the date of the disaster plan review, and includes:
    - a. The date and time of the disaster plan review;
    - b. The name of each personnel member, employee, or volunteer participating in the disaster plan review;
    - c. A critique of the disaster plan review; and
    - d. If applicable, recommendations for improvement;
  - 4. A disaster drill for employees is conducted on each shift at least once every three months and documented;
  - 5. An evacuation drill for employees and residents on the premises is conducted at least once every six months on each shift;
  - 6. Documentation of each evacuation drill is created, is maintained for 12 months after the date of the evacuation drill, and includes:
    - a. The date and time of the evacuation drill;
    - b. The amount of time taken for all employees and residents to evacuate the behavioral health residential facility;
    - c. Names of employees participating in the evacuation drill;

- d. An identification of residents needing assistance for evacuation;
  - e. Any problems encountered in conducting the evacuation drill; and
  - f. Recommendations for improvement, if applicable; and
7. An evacuation path is conspicuously posted on each hallway of each floor of the behavioral health residential facility.
- C.** An administrator shall:
- 1. Obtain a fire inspection conducted according to the time-frame established by the local fire department or the State Fire Marshal,
  - 2. Make any repairs or corrections stated on the fire inspection report, and
  - 3. Maintain documentation of a current fire inspection.

#### Historical Note

Adopted effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-721. Environmental Standards

- A.** Except for an outdoor behavioral health care program provided by a behavioral health residential facility, an administrator shall ensure that:
- 1. The premises and equipment are:
    - a. Maintained in a condition that allows the premises and equipment to be used for the original purpose of the premises and equipment;
    - b. Cleaned and, if applicable, disinfected according to policies and procedures designed to prevent, minimize, and control illness or infection; and
    - c. Free from a condition or situation that may cause a resident or other individual to suffer physical injury;
  - 2. A pest control program is implemented and documented;
  - 3. Biohazardous medical waste is identified, stored, and disposed of according to 18 A.A.C. 13, Article 14 and policies and procedures;
  - 4. Equipment used at the behavioral health residential facility is:
    - a. Maintained in working order;
    - b. Tested and calibrated according to the manufacturer's recommendations or, if there are no manufacturer's recommendations, as specified in policies and procedures; and
    - c. Used according to the manufacturer's recommendations;
  - 5. Documentation of equipment testing, calibration, and repair is maintained for at least 12 months after the date of the testing, calibration, or repair;
  - 6. Garbage and refuse are:
    - a. Stored in covered containers lined with plastic bags, and
    - b. Removed from the premises at least once a week;
  - 7. Heating and cooling systems maintain the behavioral health residential facility at a temperature between 70° F and 84° F;
  - 8. A space heater is not used;
  - 9. Common areas:
    - a. Are lighted to assure the safety of residents, and
    - b. Have lighting sufficient to allow personnel members to monitor resident activity;
  - 10. Hot water temperatures are maintained between 95° F and 120° F in the areas of the behavioral health residential facility used by residents;
  - 11. The supply of hot and cold water is sufficient to meet the personal hygiene needs of residents and the cleaning and sanitation requirements in this Article;
  - 12. Soiled linen and soiled clothing stored by the behavioral health residential facility are maintained separate from clean linen and clothing and stored in closed containers away from food storage, kitchen, and dining areas;
  - 13. Oxygen containers are secured in an upright position;
  - 14. Poisonous or toxic materials stored by the behavioral health residential facility are maintained in labeled containers in a locked area separate from food preparation and storage, dining areas, and medications and are inaccessible to residents;
  - 15. Combustible or flammable liquids and hazardous materials stored by a behavioral health residential facility are stored in the original labeled containers or safety containers in a locked area inaccessible to residents;
  - 16. If pets or animals are allowed in the behavioral health residential facility, pets or animals are:
    - a. Controlled to prevent endangering the residents and to maintain sanitation;
    - b. Licensed consistent with local ordinances; and
    - c. For a dog or cat, vaccinated against rabies;
  - 17. If a water source that is not regulated under 18 A.A.C. 4 by the Arizona Department of Environmental Quality is used:
    - a. The water source is tested at least once every 12 months for total coliform bacteria and fecal coliform or *E. coli* bacteria;
    - b. If necessary, corrective action is taken to ensure the water is safe to drink; and
    - c. Documentation of testing is retained for at least 12 months after the date of the test; and
  - 18. If a non-municipal sewage system is used, the sewage system is in working order and is maintained according to all applicable state laws and rules.
- B.** An administrator shall ensure that:
- 1. Smoking tobacco products is not permitted within a behavioral health residential facility; and
  - 2. Smoking tobacco products may be permitted on the premises outside a behavioral health residential facility if:
    - a. Signs designating smoking areas are conspicuously posted, and
    - b. Smoking is prohibited in areas where combustible materials are stored or in use.
- C.** If a swimming pool is located on the premises, an administrator shall ensure that:
- 1. On each day that a resident uses the swimming pool, an employee:
    - a. Tests the swimming pool's water quality at least once for compliance with one of the following chemical disinfection standards:
      - i. A free chlorine residual between 1.0 and 3.0 ppm as measured by the N, N-Diethyl-p-phenylenediamine test;
      - ii. A free bromine residual between 2.0 and 4.0 ppm as measured by the N, N-Diethyl-p-phenylenediamine test; or
      - iii. An oxidation-reduction potential equal to or greater than 650 millivolts; and

- b. Records the results of the water quality tests in a log that includes each testing date and test result;
- 2. Documentation of the water quality test is maintained for at least 12 months after the date of the test;
- 3. A swimming pool is not used by a resident if a water quality test shows that the swimming pool water does not comply with subsection (C)(1)(a);
- 4. At least one personnel member, with cardiopulmonary resuscitation training that meets the requirements in R9-10-703(C)(1)(e), is present in the pool area when a resident is in the pool area; and
- 5. At least two personnel members are present in the pool area if two or more residents are in the pool area.

#### Historical Note

Adopted effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-722. Physical Plant Standards

- A. Except for a behavioral health outdoor program, an administrator shall ensure that the premises and equipment are sufficient to accommodate:
  - 1. The services in the behavioral health residential facility's scope of services, and
  - 2. An individual accepted as a resident by the behavioral health residential facility.
- B. An administrator shall ensure that:
  - 1. A behavioral health residential facility has a:
    - a. Room that provides privacy for a resident to receive treatment or visitors; and
    - b. Common area and a dining area that contain furniture and materials to accommodate the recreational and socialization needs of the residents and other individuals in the behavioral health residential facility;
  - 2. At least one bathroom is accessible from a common area that:
    - a. May be used by residents and visitors;
    - b. Provides privacy when in use; and
    - c. Contains the following:
      - i. At least one working sink with running water,
      - ii. At least one working toilet that flushes and has a seat,
      - iii. Toilet tissue for each toilet,
      - iv. Soap in a dispenser accessible from each sink,
      - v. Paper towels in a dispenser or a mechanical air hand dryer,
      - vi. Lighting, and
      - vii. A window that opens or another means of ventilation;
  - 3. For every six residents who stay overnight at the behavioral health residential facility, there is at least one working toilet that flushes and has a seat, and one sink with running water;
  - 4. For every eight residents who stay overnight at the behavioral health residential facility, there is at least one working bathtub or shower;
  - 5. A resident bathroom provides privacy when in use and contains:

- a. A shatter-proof mirror, unless the resident's treatment plan allows for otherwise;
- b. A window that opens or another means of ventilation; and
- c. Nonporous surfaces for shower enclosures and slip-resistant surfaces in tubs and showers;
- 6. If a resident bathroom door locks from the inside, an employee has a key and access to the bathroom;
- 7. Each resident is provided a sleeping area that is in a bedroom; and
- 8. A resident bedroom complies with the following:
  - a. Is not used as a common area;
  - b. Is not used as a passageway to another bedroom or bathroom unless the bathroom is for the exclusive use of an individual occupying the bedroom;
  - c. Contains a door that opens into a hallway, common area, or outdoors;
  - d. Is constructed and furnished to provide unimpeded access to the door;
  - e. Has window or door covers that provide resident privacy;
  - f. Has floor to ceiling walls;
  - g. Is a:
    - i. Private bedroom that contains at least 60 square feet of floor space, not including the closet; or
    - ii. Shared bedroom that:
      - (1) Is shared by no more than eight residents;
      - (2) Except as provided in subsection (C), contains at least 60 square feet of floor space, not including a closet, for each individual occupying the shared bedroom; and
      - (3) Provides at least three feet of floor space between beds or bunk beds;
  - h. Contains for each resident occupying the bedroom:
    - i. A bed that is at least 36 inches wide and at least 72 inches long, and consists of at least a frame and mattress and linens; and
    - ii. Individual storage space for personal effects and clothing such as shelves, a dresser, or chest of drawers;
  - i. Has clean linen for each bed including mattress pad, sheets large enough to tuck under the mattress, pillows, pillow cases, bedspread, waterproof mattress covers as needed, and blankets to ensure warmth and comfort for each resident;
  - j. Has sufficient lighting for a resident occupying the bedroom to read; and
  - k. Has a clothing rod or hook in the bedroom designed to minimize the opportunity for a resident to cause self-injury.
- C. A behavioral health residential facility that was licensed as a Level 4 transitional agency before October 1, 2013 may continue to use a shared bedroom that provides at least 40 square feet of floor space, not including a closet, for each individual occupying the shared bedroom. If there is a modification to the shared bedroom, the behavioral health residential facility shall comply with the requirement in subsection (B)(8)(g).
- D. If a swimming pool is located on the premises, an administrator shall ensure that:
  - 1. The swimming pool is equipped with the following:
    - a. An operational water circulation system that clarifies and disinfects the swimming pool water continuously and that includes at least:
      - i. A removable strainer,
      - ii. Two swimming pool inlets located on opposite sides of the swimming pool, and

- iii. A drain located at the swimming pool's lowest point and covered by a grating that cannot be removed without using tools; and
    - b. An operational vacuum cleaning system;
  - 2. The swimming pool is enclosed by a wall or fence that:
    - a. Is at least five feet in height as measured on the exterior of the wall or fence;
    - b. Has no vertical openings greater than four inches across;
    - c. Has no horizontal openings, except as described in subsection (D)(2)(e);
    - d. Is not chain-link;
    - e. Does not have a space between the ground and the bottom fence rail that exceeds four inches in height; and
    - f. Has a self-closing, self-latching gate that:
      - i. Opens away from the swimming pool,
      - ii. Has a latch located at least 54 inches from the ground, and
      - iii. Is locked when the swimming pool is not in use; and
  - 3. A life preserver or shepherd's crook is available and accessible in the pool area.
- E.** An administrator shall ensure that a spa that is not enclosed by a wall or fence as described in subsection (D)(2) is covered and locked when not in use.

#### Historical Note

Adopted effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-723. Repealed

#### Historical Note

Adopted effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). Repealed by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2).

#### R9-10-724. Repealed

#### Historical Note

Adopted effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). Repealed by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2).

### ARTICLE 8. ASSISTED LIVING FACILITIES

#### R9-10-801. Definitions

In addition to the definitions in A.R.S. § 36-401 and R9-10-101, the following definitions apply in this Article, unless the context otherwise requires:

- 1. "Accept" or "acceptance" means:
  - a. An individual begins living in and receiving assisted living services from an assisted living facility; or
  - b. An individual begins receiving adult day health care services or respite care services from an assisted living facility.

- 2. "Assistant caregiver" means an employee or volunteer who helps a manager or caregiver provide supervisory care services, personal care services, or directed care services to a resident, and does not include a family member of the resident.
- 3. "Assisted living services" means supervisory care services, personal care services, directed care services, behavioral health services, or ancillary services provided to a resident by or on behalf of an assisted living facility.
- 4. "Caregiver" means an individual who provides supervisory care services, personal care services, or directed care services to a resident, and does not include a family member of the resident.
- 5. "Manager" means an individual designated by a governing authority to act on behalf of the governing authority in the onsite management of the assisted living facility.
- 6. "Medication organizer" means a container that is designed to hold doses of medication and is divided according to date or time increments.
- 7. "Primary care provider" means a physician, a physician's assistant, or registered nurse practitioner who directs a resident's medical services.
- 8. "Residency agreement" means a document signed by a resident or the resident's representative and a manager, detailing the terms of residency.
- 9. "Service plan" means a written description of a resident's need for supervisory care services, personal care services, directed care services, ancillary services, or behavioral health services and the specific assisted living services to be provided to the resident.
- 10. "Termination of residency" or "terminate residency" means a resident is no longer living in and receiving assisted living services from an assisted living facility.

#### Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Amended by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-802. Supplemental Application Requirements

In addition to the license application requirements in A.R.S. § 36-422 and R9-10-105, an applicant for an initial license as an assisted living facility shall include in a Department-provided format:

- 1. Which of the following levels of assisted living services the applicant is requesting authorization to provide:
  - a. Supervisory care services,
  - b. Personal care services, or
  - c. Directed care services; and
- 2. Whether the applicant is requesting authorization to provide:
  - a. Adult day health care services, or

- b. Behavioral health services other than behavioral care.

#### Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Amended by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-803. Administration

- A. A governing authority shall:
  - 1. Consist of one or more individuals responsible for the organization, operation, and administration of an assisted living facility;
  - 2. Establish, in writing, an assisted living facility's scope of services;
  - 3. Designate, in writing, a manager who:
    - a. Is 21 years of age or older; and
    - b. Except for the manager of an adult foster care home, has either a:
      - i. Certificate as an assisted living facility manager issued under A.R.S. § 36-446.04(C), or
      - ii. A temporary certificate as an assisted living facility manager issued under A.R.S. § 36-446.06;
  - 4. Adopt a quality management program that complies with R9-10-804;
  - 5. Review and evaluate the effectiveness of the quality management program at least once every 12 months;
  - 6. Designate, in writing, an acting manager who has the qualifications established in subsection (A)(3), if the manager is:
    - a. Expected not to be present on the assisted living facility's premises for more than 30 calendar days, or
    - b. Not present on the assisted living facility's premises for more than 30 calendar days;
  - 7. Except as provided in subsection (A)(6), notify the Department according to A.R.S. § 36-425(I) when there is a change in the manager and identify the name and qualifications of the new manager;
  - 8. Ensure that a manager or caregiver who is able to read, write, understand, and communicate in English is on an assisted living facility's premises; and
  - 9. Ensure compliance with A.R.S. § 36-411.
- B. A manager:
  - 1. Is directly accountable to the governing authority of an assisted living facility for the daily operation of the assisted living facility and all services provided by or at the assisted living facility;
  - 2. Has the authority and responsibility to manage the assisted living facility; and
- 3. Except as provided in subsection (A)(6), designates, in writing, a caregiver who is:
  - a. At least 21 years of age, and
  - b. Present on the assisted living facility's premises and accountable for the assisted living facility when the manager is not present on the assisted living facility premises.
- C. A manager shall ensure that policies and procedures are:
  - 1. Established, documented, and implemented to protect the health and safety of a resident that:
    - a. Cover job descriptions, duties, and qualifications, including required skills and knowledge, education, and experience for employees and volunteers;
    - b. Cover orientation and in-service education for employees and volunteers;
    - c. Include how an employee may submit a complaint related to resident care;
    - d. Cover the requirements in A.R.S. Title 36, Chapter 4, Article 11;
    - e. Except as provided in subsection (M), cover cardiopulmonary resuscitation training for applicable employees and volunteers, including:
      - i. The method and content of cardiopulmonary resuscitation training, which includes a demonstration of the employee's or volunteer's ability to perform cardiopulmonary resuscitation;
      - ii. The qualifications for an individual to provide cardiopulmonary resuscitation training;
      - iii. The time-frame for renewal of cardiopulmonary resuscitation training; and
      - iv. The documentation that verifies that the employee or volunteer has received cardiopulmonary resuscitation training;
    - f. Cover first aid training;
    - g. Cover how a caregiver will respond to a resident's sudden, intense, or out-of-control behavior to prevent harm to the resident or another individual;
    - h. Cover staffing and recordkeeping;
    - i. Cover resident acceptance, resident rights, and termination of residency;
    - j. Cover the provision of assisted living services, including:
      - i. Coordinating the provision of assisted living services,
      - ii. Making vaccination for influenza available to residents according to A.R.S. § 36-406(1)(d), and
      - iii. Obtaining resident preferences for food and the provision of assisted living services;
    - k. Cover the provision of respite services or adult day health services, if applicable;
    - l. Cover resident medical records, including electronic medical records;
    - m. Cover personal funds accounts, if applicable;
    - n. Cover specific steps for:
      - i. A resident to file a complaint, and
      - ii. The assisted living facility to respond to a resident's complaint;
    - o. Cover health care directives;
    - p. Cover assistance in the self-administration of medication, and medication administration;
    - q. Cover food services;
    - r. Cover contracted services;
    - s. Cover equipment inspection and maintenance, if applicable;
    - t. Cover infection control; and



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- u. Cover a quality management program, including incident report and supporting documentation;
- 2. Available to employees and volunteers of the assisted living facility; and
- 3. Reviewed at least once every three years and updated as needed.
- D.** A manager shall ensure that the following are conspicuously posted:
  - 1. A list of resident rights;
  - 2. The assisted living facility's license;
  - 3. Current phone numbers of:
    - a. The unit in the Department responsible for licensing and monitoring the assisted living facility,
    - b. Adult Protective Services in the Department of Economic Security,
    - c. The State Long-Term Care Ombudsman, and
    - d. The Arizona Center for Disability Law; and
  - 4. The location at which a copy of the most recent Department inspection report and any plan of correction resulting from the Department inspection may be viewed.
- E.** A manager shall ensure that, unless otherwise stated:
  - 1. Documentation required by this Article is provided to the Department within two hours after a Department request; and
  - 2. When documentation or information is required by this Chapter to be submitted on behalf of an assisted living facility, the documentation or information is provided to the unit in the Department that is responsible for licensing and monitoring the assisted living facility.
- F.** If a requirement in this Article states that a manager shall ensure an action or condition or sign a document:
  - 1. A governing authority or licensee may ensure the action or condition or sign the document and retain the responsibility to ensure compliance with the requirement in this Article;
  - 2. The manager may delegate ensuring the action or condition or signing the document to another individual, but the manager retains the responsibility to ensure compliance with the requirement in the Article; and
  - 3. If the manager delegates ensuring an action or condition or signing a document, the delegation is documented and the documentation includes the name of the individual to whom the action, condition, or signing is delegated and the effective date of the delegation.
- G.** A manager shall:
  - 1. Not act as a resident's representative and not allow an employee or a family member of an employee to act as a resident's representative for a resident who is not a family member of the employee;
  - 2. If the assisted living facility administers personal funds accounts for residents and is authorized in writing by a resident or the resident's representative to administer a personal funds account for the resident:
    - a. Ensure that the resident's personal funds account does not exceed \$2,000;
    - b. Maintain a separate record for each resident's personal funds account, including receipts and expenditures;
    - c. Maintain the resident's personal funds account separate from any account of the assisted living facility; and
    - d. Provide a copy of the record of the resident's personal funds account to the resident or the resident's representative at least once every three months;
  - 3. Notify the resident's representative, family member, public fiduciary, or trust officer if the manager determines that a resident is incapable of handling financial affairs; and
- 4. Except when a resident's need for assisted living services changes, as documented in the resident's service plan, ensure that a resident receives at least 30 calendar days written notice before any increase in a fee or charge.
- H.** A manager shall permit the Department to interview an employee, a volunteer, or a resident as part of a compliance survey or a complaint investigation.
- I.** If abuse, neglect, or exploitation of a resident is alleged or suspected to have occurred before the resident was accepted or while the resident is not on the premises and not receiving services from an assisted living facility's manager, caregiver, or assistant caregiver, the manager shall report the alleged or suspected abuse, neglect, or exploitation of the resident according to A.R.S. § 46-454.
- J.** If a manager has a reasonable basis, according to A.R.S. § 46-454, to believe abuse, neglect or exploitation has occurred on the premises or while a resident is receiving services from an assisted living facility's manager, caregiver, or assistant caregiver, the manager shall:
  - 1. If applicable, take immediate action to stop the suspected abuse, neglect, or exploitation;
  - 2. Report the suspected abuse, neglect, or exploitation of the resident according to A.R.S. § 46-454;
  - 3. Document:
    - a. The suspected abuse, neglect, or exploitation;
    - b. Any action taken according to subsection (J)(1); and
    - c. The report in subsection (J)(2);
  - 4. Maintain the documentation in subsection (J)(3) for at least 12 months after the date of the report in subsection (J)(2);
  - 5. Initiate an investigation of the suspected abuse, neglect, or exploitation and document the following information within five working days after the report required in subsection (J)(2):
    - a. The dates, times, and description of the suspected abuse, neglect, or exploitation;
    - b. A description of any injury to the resident related to the suspected abuse or neglect and any change to the resident's physical, cognitive, functional, or emotional condition;
    - c. The names of witnesses to the suspected abuse, neglect, or exploitation; and
    - d. The actions taken by the manager to prevent the suspected abuse, neglect, or exploitation from occurring in the future; and
  - 6. Maintain a copy of the documented information required in subsection (J)(5) for at least 12 months after the date the investigation was initiated.
- K.** A manager shall provide written notification to the Department of a resident's:
  - 1. Death, if the resident's death is required to be reported according to A.R.S. § 11-593, within one working day after the resident's death; and
  - 2. Self-injury, within two working days after the resident inflicts a self-injury that requires immediate intervention by an emergency services provider.
- L.** If a resident is receiving services from a home health agency or hospice service agency, a manager shall ensure that:
  - 1. The resident's medical record contains:
    - a. The name, address, and contact individual, including contact information, of the home health agency or hospice service agency;
    - b. Any information provided by the home health agency or hospice service agency; and

- c. A copy of resident follow-up instructions provided to the resident by the home health agency or hospice service agency; and
  - 2. Any care instructions for a resident provided to the assisted living facility by the home health agency or hospice service agency are:
    - a. Within the assisted living facility's scope of services,
    - b. Communicated to a caregiver, and
    - c. Documented in the resident's service plan.
- M.** A manager of an assisted living home may establish, in policies and procedures, requirements that a caregiver obtains and provides documentation of cardiopulmonary resuscitation training specific to adults, which includes a demonstration of the caregiver's ability to perform cardiopulmonary resuscitation, from one of the following organizations:
- 1. American Red Cross,
  - 2. American Heart Association, or
  - 3. National Safety Council.

#### Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Former Section R9-10-803 renumbered to R9-10-804; new Section R9-10-803 made by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-804. Quality Management

A manager shall ensure that:

- 1. A plan is established, documented, and implemented for an ongoing quality management program that, at a minimum, includes:
  - a. A method to identify, document, and evaluate incidents;
  - b. A method to collect data to evaluate services provided to residents;
  - c. A method to evaluate the data collected to identify a concern about the delivery of services related to resident care;
  - d. A method to make changes or take action as a result of the identification of a concern about the delivery of services related to resident care; and
  - e. The frequency of submitting a documented report required in subsection (2) to the governing authority;
- 2. A documented report is submitted to the governing authority that includes:
  - a. An identification of each concern about the delivery of services related to resident care, and
  - b. Any change made or action taken as a result of the identification of a concern about the delivery of services related to resident care; and

- 3. The report required in subsection (2) and the supporting documentation for the report are maintained for at least 12 months after the date the report is submitted to the governing authority.

#### Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted effective October 30, 1989 (Supp. 89-4). Section repealed; new Section R9-10-804 renumbered from R9-10-803 and amended by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-805. Contracted Services

A manager shall ensure that:

- 1. Contracted services are provided according to the requirements in this Article, and
- 2. Documentation of current contracted services is maintained that includes a description of the contracted services provided.

#### Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted as an emergency and (A)(1)(a)(i)(1) amended effective January 27, 1989 pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted effective October 30, 1989 (Supp. 89-4). Section repealed; new Section made by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-806. Personnel

**A.** A manager shall ensure that:

- 1. A caregiver:
  - a. Is 18 years of age or older; and
  - b. Provides documentation of:
    - i. Completion of a caregiver training program approved by the Department or the Board of Examiners for Nursing Care Institution Administrators and Assisted Living Facility Managers;

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- ii. For supervisory care services, employment as a manager or caregiver of a supervisory care home before November 1, 1998;
  - iii. For supervisory care services or personal care services, employment as a manager or caregiver of a supportive residential living center before November 1, 1998; or
  - iv. For supervisory care services, personal care services, or directed services, one of the following:
    - (1) A nursing care institution administrator's license issued by the Board of Examiners;
    - (2) A nurse's license issued to the individual under A.R.S. Title 32, Chapter 15;
    - (3) Documentation of employment as a manager or caregiver of an unclassified residential care institution before November 1, 1998; or
    - (4) Documentation of sponsorship of or employment as a caregiver in an adult foster care home before November 1, 1998;
2. An assistant caregiver:
    - a. Is 16 years of age or older, and
    - b. Interacts with residents under the supervision of a manager or caregiver;
  3. The qualifications, skills, and knowledge required for a caregiver or assistant caregiver:
    - a. Are based on:
      - i. The type of assisted living services, behavioral health services, or behavioral care expected to be provided by the caregiver or assistant caregiver according to the established job description; and
      - ii. The acuity of the residents receiving assisted living services, behavioral health services, or behavioral care from the caregiver or assistant caregiver according to the established job description; and
    - b. Include:
      - i. The specific skills and knowledge necessary for the caregiver or assistant caregiver to provide the expected assisted living services, behavioral health services, or behavioral care listed in the established job description;
      - ii. The type and duration of education that may allow the caregiver or assistant caregiver to have acquired the specific skills and knowledge for the caregiver or assistant caregiver to provide the expected assisted living services, behavioral health services, or behavioral care listed in the established job description; and
      - iii. The type and duration of experience that may allow the caregiver or assistant caregiver to have acquired the specific skills and knowledge for the caregiver or assistant caregiver to provide the expected assisted living services, behavioral health services or behavioral care listed in the established job description;
  4. A caregiver's or assistant caregiver's skills and knowledge are verified and documented:
    - a. Before the caregiver or assistant caregiver provides physical health services or behavioral health services, and
    - b. According to policies and procedures;
  5. An assisted living facility has a manager, caregivers, and assistant caregivers with the qualifications, experience, skills, and knowledge necessary to:
    - a. Provide the assisted living services, behavioral health services, behavioral care, and ancillary services in the assisted living facility's scope of services;
    - b. Meet the needs of a resident; and
    - c. Ensure the health and safety of a resident;
  6. At least one manager or caregiver is present and awake at an assisted living center when a resident is on the premises;
  7. A manager, a caregiver, and an assistant caregiver, or an employee or a volunteer who has or is expected to have more than eight hours per week of direct interaction with residents, provides evidence of freedom from infectious tuberculosis:
    - a. On or before the date the individual begins providing services at or on behalf of the assisted living facility, and
    - b. As specified in R9-10-113;
  8. Before providing assisted living services to a resident, a caregiver or an assistant caregiver receives orientation that is specific to the duties to be performed by the caregiver or assistant caregiver; and
  9. Before providing assisted living services to a resident, a manager or caregiver provides current documentation of first aid training and cardiopulmonary resuscitation training certification specific to adults.
- B.** A manager of an assisted living home shall ensure that:
1. An individual residing in an assisted living home, who is not a resident, a manager, a caregiver, or an assistant caregiver:
    - a. Either:
      - i. Complies with the fingerprinting requirements in A.R.S. § 36-411, or
      - ii. Interacts with residents only under the supervision of an individual who has a valid fingerprint clearance card; and
    - b. If the individual is 12 years of age or older, provides evidence of freedom from infectious tuberculosis as specified in R9-10-113;
  2. Documentation of compliance with the requirements in subsection (B)(1)(a) and evidence of freedom from infectious tuberculosis, if required under subsection (B)(1)(b), is maintained for an individual residing in the assisted living home who is not a resident, a manager, a caregiver, or an assistant caregiver; and
  3. At least the manager or a caregiver is present at an assisted living home when a resident is present in the assisted living home and:
    - a. Except for nighttime hours, the manager or caregiver is awake; and
    - b. If the manager or caregiver is not awake during nighttime hours:
      - i. The manager or caregiver can hear and respond to a resident needing assistance; and
      - ii. If the assisted living home is authorized to provide directed care services, policies and procedures are developed, documented, and implemented to establish a process for checking on a resident receiving directed care services during nighttime hours to ensure the resident's health and safety.
- C.** A manager shall ensure that a personnel record for each employee or volunteer:

1. Includes:
    - a. The individual's name, date of birth, and contact telephone number;
    - b. The individual's starting date of employment or volunteer service and, if applicable, the ending date; and
    - c. Documentation of:
      - i. The individual's qualifications, including skills and knowledge applicable to the individual's job duties;
      - ii. The individual's education and experience applicable to the individual's job duties;
      - iii. The individual's completed orientation and in-service education required by policies and procedures;
      - iv. The individual's license or certification, if the individual is required to be licensed or certified in this Article or in policies and procedures;
      - v. If the individual is a behavioral health technician, clinical oversight required in R9-10-115;
      - vi. Evidence of freedom from infectious tuberculosis, if required for the individual according to subsection (A)(7);
      - vii. Cardiopulmonary resuscitation training, if required for the individual in this Article or policies and procedures;
      - viii. First aid training, if required for the individual in this Article or policies and procedures; and
      - ix. Documentation of compliance with the requirements in A.R.S. § 36-411(A) and (C);
  2. Is maintained:
    - a. Throughout the individual's period of providing services in or for the assisted living facility; and
    - b. For at least 24 months after the last date the individual provided services in or for the assisted living facility; and
  3. For a manager, a caregiver, or an assistant caregiver who has not provided physical health services or behavioral health services at or for the assisted living facility during the previous 12 months, is provided to the Department within 72 hours after the Department's request.
1. Before or within seven calendar days after the resident's date of occupancy; and
  2. As specified in R9-10-113.
- B.** A manager shall ensure that before or at the time of acceptance of an individual, the individual submits documentation that is dated within 90 calendar days before the individual is accepted by an assisted living facility and:
1. If an individual is requesting or is expected to receive supervisory care services, personal care services, or directed care services:
    - a. Includes whether the individual requires:
      - i. Continuous medical services,
      - ii. Continuous or intermittent nursing services, or
      - iii. Restraints; and
    - b. Is dated and signed by a:
      - i. Physician,
      - ii. Registered nurse practitioner,
      - iii. Registered nurse, or
      - iv. Physician assistant; and
  2. If an individual is requesting or is expected to receive behavioral health services, other than behavioral care, in addition to supervisory care services, personal care services, or directed care services from an assisted living facility:
    - a. Includes whether the individual requires continuous behavioral health services; and
    - b. Is signed and dated by a behavioral health professional.
- C.** A manager shall not accept or retain an individual if:
1. The individual requires continuous:
    - a. Medical services;
    - b. Nursing services, unless the assisted living facility complies with A.R.S. § 36-401(C); or
    - c. Behavioral health services;
  2. The assisted living services needed by the individual are not within the assisted living facility's scope of services;
  3. The assisted living facility does not have the ability to provide the assisted living services needed by the individual; or
  4. The individual requires restraints, including the use of bedrails.
- D.** Before or at the time of an individual's acceptance by an assisted living facility, a manager shall ensure that there is a documented residency agreement with the assisted living facility that includes:
1. The individual's name;
  2. Terms of occupancy, including:
    - a. Date of occupancy or expected date of occupancy,
    - b. Resident responsibilities, and
    - c. Responsibilities of the assisted living facility;
  3. A list of the services to be provided by the assisted living facility to the resident;
  4. A list of the services available from the assisted living facility at an additional fee or charge;
  5. For an assisted living home, whether the manager or a caregiver is awake during nighttime hours;
  6. The policy for refunding fees, charges, or deposits;
  7. The policy and procedure for a resident to terminate residency, including terminating residency because services were not provided to the resident according to the resident's service plan;
  8. The policy and procedure for an assisted living facility to terminate residency;
  9. The complaint process; and
  10. The manager's signature and date signed.

#### Historical Note

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#### R9-10-807. Residency and Residency Agreements

- A.** Except as provided in R9-10-808(B)(2), a manager shall ensure that a resident provides evidence of freedom from infectious tuberculosis:

- E.** Before or within five working days after a resident's acceptance by an assisted living facility, a manager shall obtain on the documented agreement, required in subsection (D), the signature of one of the following individuals:
1. The resident,
  2. The resident's representative,
  3. The resident's legal guardian, or
  4. Another individual who has been designated by the individual under A.R.S. § 36-3221 to make health care decisions on the individual's behalf.
- F.** A manager shall:
1. Before or at the time of an individual's acceptance by an assisted living facility, provide to the resident or resident's representative a copy of:
    - a. The residency agreement in subsection (D),
    - b. Resident's rights, and
    - c. The policy and procedure on health care directives; and
  2. Maintain the original of the residency agreement in subsection (D) in the resident's medical record.
- G.** A manager may terminate residency of a resident as follows:
1. Without notice, if the resident exhibits behavior that is an immediate threat to the health and safety of the resident or other individuals in an assisted living facility;
  2. With a 14 calendar day written notice of termination of residency:
    - a. For nonpayment of fees, charges, or deposit; or
    - b. Under any of the conditions in subsection (C); or
  3. With a 30 calendar day written notice of termination of residency, for any other reason.
- H.** A manager shall ensure that a written notice of termination of residency includes:
1. The date of notice;
  2. The reason for termination;
  3. The policy for refunding fees, charges, or deposits;
  4. The deposition of a resident's fees, charges, and deposits; and
  5. Contact information for the State Long-Term Care Ombudsman.
- I.** A manager shall provide the following to a resident when the manager provides a written notice of termination of residency:
1. A copy of the resident's current service plan, and
  2. Documentation of the resident's freedom from infectious tuberculosis.
- J.** If an assisted living facility issues a written notice of termination of residency to a resident or the resident's representative because the resident needs services the assisted living facility is either not licensed to provide or is licensed to provide but not able to provide, a manager shall ensure that the written notice of termination of residency includes a description of the specific services that the resident needs that the assisted living facility is either not licensed to provide or is licensed to provide but not able to provide.

#### Historical Note

Adopted as an emergency effective October 26, 1988 pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989 pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted effective October 30, 1989 (Supp. 89-4).

Amended by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-808. Service Plans

- A.** Except as required in subsection (B), a manager shall ensure that a resident has a written service plan that:
1. Is completed no later than 14 calendar days after the resident's date of acceptance;
  2. Is developed with assistance and review from:
    - a. The resident or resident's representative,
    - b. The manager, and
    - c. Any individual requested by the resident or the resident's representative;
  3. Includes the following:
    - a. A description of the resident's medical or health problems, including physical, behavioral, cognitive, or functional conditions or impairments;
    - b. The level of service the resident is expected to receive;
    - c. The amount, type, and frequency of assisted living services being provided to the resident, including medication administration or assistance in the self-administration of medication;
    - d. For a resident who requires intermittent nursing services or medication administration, review by a nurse or medical practitioner;
    - e. For a resident who requires behavioral care:
      - i. Any of the following that is necessary to provide assistance with the resident's psychosocial interactions to manage the resident's behavior:
        - (1) The psychosocial interactions or behaviors for which the resident requires assistance,
        - (2) Psychotropic medications ordered for the resident,
        - (3) Planned strategies and actions for changing the resident's psychosocial interactions or behaviors, and
        - (4) Goals for changes in the resident's psychosocial interactions or behaviors; and
      - ii. Review by a medical practitioner or behavioral health professional; and
    - f. For a resident who will be storing medication in the resident's bedroom or residential unit, how the medication will be stored and controlled;
  4. Is reviewed and updated based on changes in the requirements in subsections (A)(3)(a) through (f):
    - a. No later than 14 calendar days after a significant change in the resident's physical, cognitive, or functional condition; and
    - b. As follows:
      - i. At least once every 12 months for a resident receiving supervisory care services,
      - ii. At least once every six months for a resident receiving personal care services, and
      - iii. At least once every three months for a resident receiving directed care services; and
  5. When initially developed and when updated, is signed and dated by:
    - a. The resident or resident's representative;
    - b. The manager;
    - c. If a review is required in subsection (A)(3)(d), the nurse or medical practitioner who reviewed the service plan; and

- d. If a review is required in subsection (A)(3)(e)(ii), the medical practitioner or behavioral health professional who reviewed the service plan.
- B.** For a resident receiving respite care services, a manager shall ensure that:
  - 1. A written service plan is:
    - a. Based on a determination of the resident's current needs and:
      - i. Is completed no later than three working days after the resident's date of acceptance; or
      - ii. If the resident has a service plan in the resident's medical record that was developed within the previous 12 months, is reviewed and updated based on changes in the requirements in subsections (A)(3)(a) through (f) within three working days after the resident's date of acceptance; and
    - b. If a significant change in the resident's physical, cognitive, or functional condition occurs while the resident is receiving respite care services, updated based on changes in the requirements in subsections (A)(3)(a) through (f) within three working days after the significant change occurs; and
  - 2. If the resident is not expected to be present in the assisted living facility for more than seven calendar days, the resident is not required to comply with the requirements in R9-10-807(A).
- C.** A manager shall ensure that:
  - 1. A caregiver or an assistant caregiver:
    - a. Provides a resident with the assisted living services in the resident's service plan;
    - b. Is only assigned to provide the assisted living services the caregiver or assistant caregiver has the documented skills and knowledge to perform;
    - c. Provides assistance with activities of daily living according to the resident's service plan;
    - d. If applicable, suggests techniques a resident may use to maintain or improve the resident's independence in performing activities of daily living;
    - e. Provides assistance with, supervises, or directs a resident's personal hygiene according to the resident's service plan;
    - f. Encourages a resident to participate in activities planned according to subsection (E); and
    - g. Documents the services provided in the resident's medical record; and
  - 2. A volunteer or an assistant caregiver who is 16 or 17 years of age does not provide:
    - a. Assistance to a resident for:
      - i. Bathing,
      - ii. Toileting, or
      - iii. Moving the resident's body from one surface to another surface;
    - b. Assistance in the self-administration of medication;
    - c. Medication administration; or
    - d. Nursing services.
- D.** A manager of an assisted living facility that is authorized to provide adult day health services shall ensure that the adult day health care services are provided as specified in R9-10-1113.
- E.** A manager shall ensure that:
  - 1. Daily social, recreational, or rehabilitative activities are planned according to residents' preferences, needs, and abilities;
  - 2. A calendar of planned activities is:
    - a. Prepared at least one week in advance of the date the activity is provided,
    - b. Posted in a location that is easily seen by residents,
    - c. Updated as necessary to reflect substitutions in the activities provided, and
    - d. Maintained for at least 12 months after the last scheduled activity;
  - 3. Equipment and supplies are available and accessible to accommodate a resident who chooses to participate in a planned activity; and
  - 4. Daily newspapers, current magazines, and a variety of reading materials are available and accessible to a resident.
- F.** If a resident is not receiving assistance with the resident's psychosocial interactions under the direction of a behavioral health professional or any other behavioral health services at an assisted living facility, the resident is not considered to be receiving behavioral care or behavioral health services from the assisted living facility if the resident:
  - 1. Is prescribed a psychotropic medication, or
  - 2. Is receiving directed care services and has a primary diagnosis of:
    - a. Dementia,
    - b. Alzheimer's disease-related dementia, or
    - c. Traumatic brain injury.

#### Historical Note

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#### R9-10-809. Transport; Transfer

- A.** Except as provided in subsection (B), a manager shall ensure that:
  - 1. A caregiver or employee coordinates the transport and the services provided to the resident;
  - 2. According to policies and procedures:
    - a. An evaluation of the resident is conducted before and after the transport, and
    - b. Information from the resident's medical record is provided to a receiving health care institution; and
  - 3. Documentation includes:
    - a. If applicable, any communication with an individual at a receiving health care institution;
    - b. The date and time of the transport; and
    - c. If applicable, the name of the caregiver accompanying the resident during a transport.
- B.** Subsection (A) does not apply to:
  - 1. Transportation to a location other than a licensed health care institution,

2. Transportation provided for a resident by the resident or the resident's representative,
  3. Transportation provided by an outside entity that was arranged for a resident by the resident or the resident's representative, or
  4. A transport to another licensed health care institution in an emergency.
- C.** Except for a transfer of a resident due to an emergency, a manager shall ensure that:
1. A caregiver coordinates the transfer and the services provided to the resident;
  2. According to policies and procedures:
    - a. An evaluation of the resident is conducted before the transfer;
    - b. Information from the resident's medical record, including orders that are in effect at the time of the transfer, is provided to a receiving health care institution; and
    - c. A caregiver explains risks and benefits of the transfer to the resident or the resident's representative; and
  3. Documentation in the resident's medical record includes:
    - a. Communication with an individual at a receiving health care institution;
    - b. The date and time of the transfer;
    - c. The mode of transportation; and
    - d. If applicable, the name of the caregiver accompanying the resident during a transfer.
- Historical Note**
- Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted effective October 30, 1989 (Supp. 89-4). Former Section R9-10-809 renumbered to R9-10-812; new Section R9-10-809 made by final rulemaking at 9 A.A.R. 319, effective March 31, 2003 (Supp. 03-1). R9-10-809(E) reflects a corrected reference to Article 14 from Article 4 (05-2). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).
- R9-10-810. Resident Rights**
- A.** A manager shall ensure that, at the time of admission, a resident or the resident's representative receives a written copy of the requirements in subsection (B) and the resident rights in subsection (C).
- B.** A manager shall ensure that:
1. A resident is treated with dignity, respect, and consideration;
  2. A resident is not subjected to:
    - a. Abuse;
    - b. Neglect;
    - c. Exploitation;
    - d. Coercion;
    - e. Manipulation;
    - f. Sexual abuse;
  - g. Sexual assault;
  - h. Seclusion;
  - i. Restraint;
  - j. Retaliation for submitting a complaint to the Department or another entity; or
  - k. Misappropriation of personal and private property by the assisted living facility's manager, caregivers, assistant caregivers, employees, or volunteers; and
- 3.** A resident or the resident's representative:
- a. Is informed of the following:
    - i. The policy on health care directives, and
    - ii. The resident complaint process;
  - b. Consents to photographs of the resident before the resident is photographed, except that a resident may be photographed when admitted to an assisted living facility for identification and administrative purposes;
  - c. Except as otherwise permitted by law, provides written consent before the release of information in the resident's:
    - i. Medical record, or
    - ii. Financial records;
  - d. May:
    - i. Request or consent to relocation within the assisted living facility; and
    - ii. Except when relocation is necessary based on a change in the resident's condition as documented in the resident's service plan, refuse relocation within the assisted living facility;
  - e. Has access to the resident's records during normal business hours or at a time agreed upon by the resident or resident's representative and the manager; and
  - f. Is informed of:
    - i. The rates and charges for services before the services are initiated;
    - ii. A change in rates or charges at least 30 calendar days before the change is implemented, unless the change in rates or charges results from a change in services; and
    - iii. A change in services at least 30 calendar days before the change is implemented, unless the resident's service plan changes.
- C.** A resident has the following rights:
1. Not to be discriminated against based on race, national origin, religion, gender, sexual orientation, age, disability, marital status, or diagnosis;
  2. To receive assisted living services that support and respect the resident's individuality, choices, strengths, and abilities;
  3. To receive privacy in:
    - a. Care for personal needs;
    - b. Correspondence, communications, and visitation; and
    - c. Financial and personal affairs;
  4. To maintain, use, and display personal items unless the personal items constitute a hazard;
  5. To choose to participate or refuse to participate in social, recreational, rehabilitative, religious, political, or community activities;
  6. To review, upon written request, the resident's own medical record;
  7. To receive a referral to another health care institution if the assisted living facility is not authorized or not able to provide physical health services or behavioral health services needed by the patient;

8. To choose to access services from a health care provider, health care institution, or pharmacy other than the assisted living facility where the resident is residing and receiving services or a health care provider, health care institution, or pharmacy recommended by the assisted living facility;
9. To participate or have the resident's representative participate in the development of, or decisions concerning, the resident's service plan; and
10. To receive assistance from a family member, the resident's representative, or other individual in understanding, protecting, or exercising the resident's rights.

#### Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted effective October 30, 1989 (Supp. 89-4). Former Section R9-10-810 renumbered to R9-10-813; new Section R9-10-810 made by final rulemaking at 9 A.A.R. 319, effective March 31, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-811. Medical Records

##### A. A manager shall ensure that:

1. A medical record is established and maintained for each resident according to A.R.S. Title 12, Chapter 13, Article 7.1;
2. An entry in a resident's medical record is:
  - a. Only recorded by an individual authorized by policies and procedures to make the entry;
  - b. Dated, legible, and authenticated; and
  - c. Not changed to make the initial entry illegible;
3. If a rubber-stamp signature or an electronic signature is used to authenticate an order, the individual whose signature the rubber-stamp signature or electronic signature represents is accountable for the use of the rubber-stamp signature or electronic signature;
4. A resident's medical record is available to an individual:
  - a. Authorized according to policies and procedures to access the resident's medical record;
  - b. If the individual is not authorized according to policies and procedures, with the written consent of the resident or the resident's representative; or
  - c. As permitted by law; and
5. A resident's medical record is protected from loss, damage, or unauthorized use.

##### B. If an assisted living facility maintains residents' medical records electronically, a manager shall ensure that:

1. Safeguards exist to prevent unauthorized access, and
2. The date and time of an entry in a resident's medical record is recorded by the computer's internal clock.

##### C. A manager shall ensure that a resident's medical record contains:

1. Resident information that includes:

- a. The resident's name, and
- b. The resident's date of birth;
2. The names, addresses, and telephone numbers of:
  - a. The resident's primary care provider;
  - b. Other persons, such as a home health agency or hospice service agency, involved in the care of the resident; and
  - c. An individual to be contacted in the event of emergency, significant change in the resident's condition, or termination of residency;
3. If applicable, the name and contact information of the resident's representative and:
  - a. The document signed by the resident consenting for the resident's representative to act on the resident's behalf; or
  - b. If the resident's representative:
    - i. Has a health care power of attorney established under A.R.S. § 36-3221 or a mental health care power of attorney executed under A.R.S. § 36-3282, a copy of the health care power of attorney or mental health care power of attorney; or
    - ii. Is a legal guardian, a copy of the court order establishing guardianship;
4. The date of acceptance and, if applicable, date of termination of residency;
5. Documentation of the resident's needs required in R9-10-807(B);
6. Documentation of general consent and informed consent, if applicable;
7. Except as allowed in R9-10-808(B)(2), documentation of freedom from infectious tuberculosis as required in R9-10-807(A);
8. A copy of resident's health care directive, if applicable;
9. The resident's signed residency agreement and any amendments;
10. Resident's service plan and updates;
11. Documentation of assisted living services provided to the resident;
12. A medication order from a medical practitioner for each medication that is administered to the resident or for which the resident receives assistance in the self-administration of the medication;
13. Documentation of medication administered to the resident or for which the resident received assistance in the self-administration of medication that includes:
  - a. The date and time of administration or assistance;
  - b. The name, strength, dosage, and route of administration;
  - c. The name and signature of the individual administering or providing assistance in the self-administration of medication; and
  - d. An unexpected reaction the resident has to the medication;
14. Documentation of the resident's refusal of a medication, if applicable;
15. If applicable, documentation of any actions taken to control the resident's sudden, intense, or out-of-control behavior to prevent harm to the resident or another individual;
16. If applicable, documentation of a determination by a medical practitioner that evacuation from the assisted living facility during an evacuation drill would cause harm to the resident;
17. Documentation of notification of the resident of the availability of vaccination for influenza and pneumonia, according to A.R.S. § 36-406(1)(d);



18. Documentation of the resident's orientation to exits from the assisted living facility required in R9-10-818(B);
19. If a resident is receiving behavioral health services other than behavioral care, documentation of the determination in R9-10-813(3);
20. If a resident is receiving behavioral care, documentation of the determination in R9-10-812(3);
21. If applicable, for a resident who is unable to direct self-care, the information required in R9-10-815(F);
22. Documentation of any significant change in a resident's behavior, physical, cognitive, or functional condition and the action taken by a manager or caregiver to address the resident's changing needs;
23. Documentation of the notification required in R9-10-803(G) if the resident is incapable of handling financial affairs; and
24. If the resident no longer resides and receives assisted living services from the assisted living facility:
  - a. A written notice of termination of residency; or
  - b. If the resident terminated residency, the date the resident terminated residency.

#### Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Former Section R9-10-811 renumbered to R9-10-814; new Section R9-10-811 made by final rulemaking at 9 A.A.R. 319, effective March 31, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-812. Behavioral Care

A manager shall ensure that for a resident who requests or receives behavioral care from the assisted living facility, a behavioral health professional or medical practitioner:

1. Evaluates the resident:
  - a. Within 30 calendar days before acceptance of the resident or before the resident begins receiving behavioral care, and
  - b. At least once every six months throughout the duration of the resident's need for behavioral care;
2. Reviews the assisted living facility's scope of services; and
3. Signs and dates a determination stating that the resident's need for behavioral care can be met by the assisted living facility within the assisted living facility's scope of services and, for retention of a resident, are being met by the assisted living facility.

#### Historical Note

Adopted as an emergency effective October 26, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted without change as an emergency effective January 27, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp.

89-1). Emergency expired. Readopted without change as an emergency effective April 27, 1989 (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective July 31, 1989 (Supp. 89-3). Permanent rules adopted with changes effective October 30, 1989 (Supp. 89-4). Section repealed; new Section R9-10-812 renumbered from R9-10-809 and amended by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-813. Behavioral Health Services

If an assisted living facility is authorized to provide behavioral health services other than behavioral care, a manager shall ensure that:

1. Policies and procedures are established, documented, and implemented that cover when general consent and informed consent are required and by whom general consent and informed consent may be given;
2. The behavioral health services:
  - a. Are provided under the direction of a behavioral health professional; and
  - b. Comply with the requirements:
    - i. For behavioral health paraprofessionals and behavioral health technicians, in R9-10-115; and
    - ii. For an assessment, in R9-10-1011(B); and
3. For a resident who requests or receives behavioral health services from the assisted living facility, a behavioral health professional:
  - a. Evaluates the resident within 30 calendar days before acceptance of the resident and at least once every six months throughout the duration of the resident's need for behavioral health services;
  - b. Reviews the assisted living facility's scope of services; and
  - c. Signs and dates a determination stating that the resident's needs can be met by the assisted living facility within the assisted living facility's scope of services and, for retention of a resident, are being met by the assisted living facility.

#### Historical Note

New Section renumbered from R9-10-810 and amended by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-814. Personal Care Services

- A. A manager of an assisted living facility authorized to provide personal care services shall not accept or retain a resident who:
  1. Is unable to direct self-care;
  2. Except as specified in subsection (B), is confined to a bed or chair because of an inability to ambulate even with assistance; or
  3. Except as specified in subsection (C), has a stage 3 or stage 4 pressure sore, as determined by a registered nurse or medical practitioner.
- B. A manager of an assisted living facility authorized to provide personal care services may accept or retain a resident who is confined to a bed or chair because of an inability to ambulate even with assistance if:

1. The condition is a result of a short-term illness or injury; or
2. The following requirements are met at the onset of the condition or when the resident is accepted by the assisted living facility:
  - a. The resident or resident's representative requests that the resident be accepted by or remain in the assisted living facility;
  - b. The resident's primary care provider or other medical practitioner:
    - i. Examines the resident at the onset of the condition, or within 30 calendar days before acceptance, and at least once every six months throughout the duration of the resident's condition;
    - ii. Reviews the assisted living facility's scope of services; and
    - iii. Signs and dates a determination stating that the resident's needs can be met by the assisted living facility within the assisted living facility's scope of services and, for retention of a resident, are being met by the assisted living facility; and
  - c. The resident's service plan includes the resident's increased need for personal care services.
- C. A manager of an assisted living facility authorized to provide personal care services may accept or retain a resident who has a stage 3 or stage 4 pressure sore, as determined by a registered nurse or medical practitioner, if the requirements in subsection (B)(2) are met.
- D. A manager of an assisted living facility authorized to provide personal care services may accept or retain a resident who:
  1. Is receiving nursing services from a home health agency or a hospice service agency; or
  2. Requires intermittent nursing services if:
    - a. The resident's condition for which nursing services are required is a result of a short-term illness or injury, and
    - b. The requirements of subsection (B)(2) are met.
- E. A manager shall ensure that a bell, intercom, or other mechanical means to alert employees to a resident's needs or emergencies is available and accessible in a bedroom or residential unit being used by a resident receiving personal care services.
- F. In addition to the requirements in R9-10-808(A)(3), a manager shall ensure that the service plan for a resident receiving personal care services includes:
  1. Skin maintenance to prevent and treat bruises, injuries, pressure sores, and infections;
  2. Offering sufficient fluids to maintain hydration;
  3. Incontinence care that ensures that a resident maintains the highest practicable level of independence when toileting; and
  4. If applicable, the determination in subsection (B)(2)(b).
- G. A manager shall ensure that an employee does not provide non-prescription medication to a resident receiving personal care services unless the resident has an order from the resident's primary care provider or another medical practitioner for the non-prescription medication.

#### Historical Note

New Section renumbered from R9-10-811 and amended by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-815. Directed Care Services

- A. A manager shall ensure that a resident's representative is designated for a resident who is unable to direct self-care.
- B. A manager of an assisted living facility authorized to provide directed care services shall not accept or retain a resident who, except as provided in R9-10-814(B)(2):
  1. Is confined to a bed or chair because of an inability to ambulate even with assistance; or
  2. Has a stage 3 or stage 4 pressure sore, as determined by a registered nurse or medical practitioner.
- C. In addition to the requirements in R9-10-808(A)(3), a manager shall ensure that the service plan for a resident receiving directed care services includes:
  1. The requirements in R9-10-814(F)(1) through (3);
  2. If applicable, the determination in R9-10-814(B)(2)(b);
  3. Cognitive stimulation and activities to maximize functioning;
  4. Strategies to ensure a resident's personal safety;
  5. Encouragement to eat meals and snacks;
  6. Documentation:
    - a. Of the resident's weight, or
    - b. From a medical practitioner stating that weighing the resident is contraindicated; and
  7. Coordination of communications with the resident's representative, family members, and, if applicable, other individuals identified in the resident's service plan.
- D. A manager shall ensure that an employee does not provide non-prescription medication to a resident receiving directed care services unless the resident has an order from a medical practitioner for the non-prescription medication.
- E. A manager shall ensure that:
  1. A bell, intercom, or other mechanical means to alert employees to a resident's needs or emergencies is available in a bedroom being used by a resident receiving directed care services; or
  2. An assisted living facility has implemented another means to alert a caregiver or assistant caregiver to a resident's needs or emergencies.
- F. A manager of an assisted living facility authorized to provide directed care services shall ensure that:
  1. Policies and procedures are established, documented, and implemented that ensure the safety of a resident who may wander;
  2. There is a means of exiting the facility for a resident who does not have a key, special knowledge for egress, or the ability to expend increased physical effort that meets one of the following:
    - a. Provides access to an outside area that:
      - i. Allows the resident to be at least 30 feet away from the facility, and
      - ii. Controls or alerts employees of the egress of a resident from the facility;
    - b. Provides access to an outside area:
      - i. From which a resident may exit to a location at least 30 feet away from the facility, and
      - ii. Controls or alerts employees of the egress of a resident from the facility; or
    - c. Uses a mechanism that meets the Special Egress-Control Devices provisions in the Uniform Building Code incorporated by reference in A.A.C. R9-1-412; and
  3. A caregiver or an assistant caregiver complies with the requirements for incidents in R9-10-804 when a resident who is unable to direct self-care wanders into an area not designated by the governing authority for use by the resident.

**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-816. Medication Services****A.** A manager shall ensure that:

1. Policies and procedures for medication services include:
  - a. Procedures for preventing, responding to, and reporting a medication error;
  - b. Procedures for responding to and reporting an unexpected reaction to a medication;
  - c. Procedures to ensure that a resident's medication regimen and method of administration is reviewed by a medical practitioner to ensure the medication regimen meets the resident's needs;
  - d. Procedures for:
    - i. Documenting, as applicable, medication administration and assistance in the self-administration of medication; and
    - ii. Monitoring a resident who self-administers medication;
  - e. Procedures for assisting a resident in procuring medication; and
  - f. If applicable, procedures for providing medication administration or assistance in the self-administration of medication off the premises; and
2. If a verbal order for a resident's medication is received from a medical practitioner by the assisted living facility:
  - a. The manager or a caregiver takes the verbal order from the medical practitioner,
  - b. The verbal order is documented in the resident's medical record, and
  - c. A written order verifying the verbal order is obtained from the medical practitioner within 14 calendar days after receiving the verbal order.

**B.** If an assisted living facility provides medication administration, a manager shall ensure that:

1. Medication is stored by the assisted living facility;
2. Policies and procedures for medication administration:
  - a. Are reviewed and approved by a medical practitioner, registered nurse, or pharmacist;
  - b. Include a process for documenting an individual, authorized, according to the definition of "administer" in A.R.S. § 32-1901, by a medical practitioner to administer medication under the direction of the medical practitioner;
  - c. Ensure that medication is administered to a resident only as prescribed; and
  - d. Cover the documentation of a resident's refusal to take prescribed medication in the resident's medical record; and
3. A medication administered to a resident:
  - a. Is administered by an individual under direction of a medical practitioner,
  - b. Is administered in compliance with a medication order, and
  - c. Is documented in the resident's medical record.

**C.** If an assisted living facility provides assistance in the self-administration of medication, a manager shall ensure that:

1. A resident's medication is stored by the assisted living facility;
2. The following assistance is provided to a resident:

- a. A reminder when it is time to take the medication;
  - b. Opening the medication container or medication organizer for the resident;
  - c. Observing the resident while the resident removes the medication from the container or medication organizer;
  - d. Except when a resident uses a medication organizer, verifying that the medication is taken as ordered by the resident's medical practitioner by confirming that:
    - i. The resident taking the medication is the individual stated on the medication container label,
    - ii. The resident is taking the dosage of the medication stated on the medication container label or according to an order from a medical practitioner dated later than the date on the medication container label, and
    - iii. The resident is taking the medication at the time stated on the medication container label or according to an order from a medical practitioner dated later than the date on the medication container label;
  - e. For a resident using a medication organizer, verifying that the resident is taking the medication in the medication organizer according to the schedule specified on the medical practitioner's order; or
  - f. Observing the resident while the resident takes the medication;
3. Policies and procedures for assistance in the self-administration of medication are reviewed and approved by a medical practitioner or nurse; and
  4. Assistance in the self-administration of medication provided to a resident:
    - a. Is in compliance with an order, and
    - b. Is documented in the resident's medical record.

**D.** A manager shall ensure that:

1. A current drug reference guide is available for use by personnel members, and
2. A current toxicology reference guide is available for use by personnel members.

**E.** A manager shall ensure that a resident's medication organizer is only filled by:

1. The resident;
2. The resident's representative;
3. A family member of the resident;
4. A personnel member of a home health agency or hospice service agency; or
5. The manager or a caregiver who has been designated and is under the direction of a medical practitioner, according to subsection (B)(2)(b).

**F.** When medication is stored by an assisted living facility, a manager shall ensure that:

1. Medication is stored in a separate locked room, closet, cabinet, or self-contained unit used only for medication storage;
2. Medication is stored according to the instructions on the medication container; and
3. Policies and procedures are established, documented, and implemented for:
  - a. Receiving, storing, inventorying, tracking, dispensing, and discarding medication including expired medication;
  - b. Discarding or returning prepackaged and sample medication to the manufacturer if the manufacturer requests the discard or return of the medication;

- c. A medication recall and notification of residents who received recalled medication; and
- d. Storing, inventorying, and dispensing controlled substances.
- G.** A manager shall ensure that a caregiver immediately reports a medication error or a resident's unexpected reaction to a medication to the medical practitioner who ordered the medication or, if the medical practitioner who ordered the medication is not available, another medical practitioner.
- H.** If medication is stored by a resident in the resident's bedroom or residential unit, a manager shall ensure that:
  - 1. The medication is stored according to the resident's service plan; or
  - 2. If the medication is not being stored according to the resident's service plan, the resident's service plan is updated to include how the medication is being stored by the resident.
- B.** If the assisted living facility offers therapeutic diets, a manager shall ensure that:
  - 1. A current therapeutic diet manual is available for use by employees, and
  - 2. The therapeutic diet is provided to a resident according to a written order from the resident's primary care provider or another medical practitioner.
- C.** A manager shall ensure that food is obtained, prepared, served, and stored as follows:
  - 1. Food is free from spoilage, filth, or other contamination and is safe for human consumption;
  - 2. Food is protected from potential contamination;
  - 3. Food is prepared:
    - a. Using methods that conserve nutritional value, flavor, and appearance; and
    - b. In a form to meet the needs of a resident, such as cut, chopped, ground, pureed, or thickened;
  - 4. Potentially hazardous food is maintained as follows:
    - a. Foods requiring refrigeration are maintained at 41° F or below; and
    - b. Foods requiring cooking are cooked to heat all parts of the food to a temperature of at least 145° F for 15 seconds, except that:
      - i. Ground beef and ground meats are cooked to heat all parts of the food to at least 155° F;
      - ii. Poultry, poultry stuffing, stuffed meats, and stuffing that contains meat are cooked to heat all parts of the food to at least 165° F;
      - iii. Pork and any food containing pork are cooked to heat all parts of the food to at least 155° F;
      - iv. Raw shell eggs for immediate consumption are cooked to at least 145° F for 15 seconds and any food containing raw shell eggs is cooked to heat all parts of the food to at least 155° F;
      - v. Roast beef and beef steak are cooked to an internal temperature of at least 155° F; and
      - vi. Leftovers are reheated to a temperature of at least 165° F;
  - 5. A refrigerator used by an assisted living facility to store food or medication contains a thermometer, accurate to plus or minus 3° F, placed at the warmest part of the refrigerator;
  - 6. Frozen foods are stored at a temperature of 0° F or below; and
  - 7. Tableware, utensils, equipment, and food-contact surfaces are clean and in good repair.
- D.** A manager of an assisted living center shall ensure that:
  - 1. The assisted living center has a license or permit as a food establishment under 9 A.A.C. 8, Article 1; and
  - 2. A copy of the assisted living center's food establishment license or permit is maintained.

#### Historical Note

New Section made by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-817. Food Services

- A.** A manager shall ensure that:
  - 1. A food menu:
    - a. Is prepared at least one week in advance,
    - b. Includes the foods to be served each day,
    - c. Is conspicuously posted at least one calendar day before the first meal on the food menu is served,
    - d. Includes any food substitution no later than the morning of the day of meal service with a food substitution, and
    - e. Is maintained for at least 60 calendar days after the last day included in the food menu;
  - 2. Meals and snacks provided by the assisted living facility are served according to posted menus;
  - 3. If the assisted living facility contracts with a food establishment, as established in 9 A.A.C. 8, Article 1, to prepare and deliver food to the assisted living facility, a copy of the food establishment's license or permit under 9 A.A.C. 8, Article 1 is maintained by the assisted living facility;
  - 4. The assisted living facility is able to store, refrigerate, and reheat food to meet the dietary needs of a resident;
  - 5. Meals and snacks for each day are planned using the applicable guidelines in <http://www.health.gov/dietaryguidelines/2010.asp>;
  - 6. A resident is provided a diet that meets the resident's nutritional needs as specified in the resident's service plan;
  - 7. Water is available and accessible to residents at all times, unless otherwise stated in a medical practitioner's order; and
  - 8. A resident requiring assistance to eat is provided with assistance that recognizes the resident's nutritional, physical, and social needs, including the provision of adaptive eating equipment or utensils, such as a plate guard, rocking fork, or assistive hand device, if not provided by the resident.

#### Historical Note

New Section made by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-818. Emergency and Safety Standards

- A.** A manager shall ensure that:
  - 1. A disaster plan is developed, documented, maintained in a location accessible to caregivers and assistant caregivers, and, if necessary, implemented that includes:
    - a. When, how, and where residents will be relocated;

- b. How a resident's medical record will be available to individuals providing services to the resident during a disaster;
    - c. A plan to ensure each resident's medication will be available to administer to the resident during a disaster; and
    - d. A plan for obtaining food and water for individuals present in the assisted living facility or the assisted living facility's relocation site during a disaster;
  - 2. The disaster plan required in subsection (A)(1) is reviewed at least once every 12 months;
  - 3. Documentation of the disaster plan review required in subsection (A)(2) includes:
    - a. The date and time of the disaster plan review;
    - b. The name of each employee or volunteer participating in the disaster plan review;
    - c. A critique of the disaster plan review; and
    - d. If applicable, recommendations for improvement;
  - 4. A disaster drill for employees is conducted on each shift at least once every three months and documented;
  - 5. An evacuation drill for employees and residents:
    - a. Is conducted at least once every six months; and
    - b. Includes all individuals on the premises except for:
      - i. A resident whose medical record contains documentation that evacuation from the assisted living facility would cause harm to the resident, and
      - ii. Sufficient caregivers to ensure the health and safety of residents not evacuated according to subsection (A)(5)(b)(i);
  - 6. Documentation of each evacuation drill is created, is maintained for at least 12 months after the date of the evacuation drill, and includes:
    - a. The date and time of the evacuation drill;
    - b. The amount of time taken for employees and residents to evacuate the assisted living facility;
    - c. If applicable:
      - i. An identification of residents needing assistance for evacuation, and
      - ii. An identification of residents who were not evacuated;
    - d. Any problems encountered in conducting the evacuation drill; and
    - e. Recommendations for improvement, if applicable; and
  - 7. An evacuation path is conspicuously posted in each hallway of each floor of the assisted living facility.
- B.** A manager shall ensure that:
- 1. A resident receives orientation to the exits from the assisted living facility and the route to be used when evacuating the assisted living facility within 24 hours after the resident's acceptance by the assisted living facility, and
  - 2. The resident's orientation is documented.
- C.** A manager shall ensure that a first-aid kit is maintained in the assisted living facility in a location accessible to caregivers and assistant caregivers.
- D.** When a resident has an accident, emergency, or injury that results in the resident needing medical services, a manager shall ensure that a caregiver or an assistant caregiver:
- 1. Immediately notifies the resident's emergency contact and primary care provider; and
  - 2. Documents the following:
    - a. The date and time of the accident, emergency, or injury;
    - b. A description of the accident, emergency, or injury;
    - c. The names of individuals who observed the accident, emergency, or injury;
    - d. The actions taken by the caregiver or assistant caregiver;
    - e. The individuals notified by the caregiver or assistant caregiver; and
    - f. Any action taken to prevent the accident, emergency, or injury from occurring in the future.
- E.** A manager of an assisted living center shall ensure that:
- 1. Unless the assisted living center has documentation of having received an exception from the Department before October 1, 2013, in the areas of the assisted living center providing personal care services or directed care services:
    - a. A fire alarm system is installed according to the National Fire Protection Association 72: National Fire Alarm and Signaling Code, incorporated by reference in A.A.C. R9-1-412, and is in working order; and
    - b. A sprinkler system is installed according to the National Fire Protection Association 13 Standard for the Installation of Sprinkler Systems, incorporated by reference in A.A.C. R9-1-412, and is in working order;
  - 2. For the areas of the assisted living center providing only supervisory care services:
    - a. A fire alarm system and a sprinkler system meeting the requirements in subsection (E)(1) are installed and in working order, or
    - b. The assisted living center complies with the requirements in subsection (F);
  - 3. A fire inspection is conducted by a local fire department or the State Fire Marshal before initial licensing and according to the time-frame established by the local fire department or the State Fire Marshal;
  - 4. Any repairs or corrections stated on the fire inspection report are made; and
  - 5. Documentation of a current fire inspection is maintained.
- F.** A manager of an assisted living home shall ensure that:
- 1. A fire extinguisher that is labeled as rated at least 2A-10-BC by the Underwriters Laboratories is mounted and maintained in the assisted living home;
  - 2. A disposable fire extinguisher is replaced when its indicator reaches the red zone;
  - 3. A rechargeable fire extinguisher:
    - a. Is serviced at least once every 12 months, and
    - b. Has a tag attached to the fire extinguisher that specifies the date of the last servicing and the identification of the person who serviced the fire extinguisher;
  - 4. Except as provided in subsection (G):
    - a. A smoke detector is:
      - i. Installed in each bedroom, hallway that adjoins a bedroom, storage room, laundry room, attached garage, and room or hallway adjacent to the kitchen, and other places recommended by the manufacturer;
      - ii. Either battery operated or, if hard-wired into the electrical system of the assisted living home, has a back-up battery;
      - iii. In working order; and
      - iv. Tested at least once a month; and
    - b. Documentation of the test required in subsection (F)(4)(a)(iv) is maintained for at least 12 months after the date of the test;
  - 5. An appliance, light, or other device with a frayed or spliced electrical cord is not used at the assisted living home; and

6. An electrical cord, including an extension cord, is not run under a rug or carpeting, over a nail, or from one room to another at the assisted living home.
- G. A manager of an assisted living home may use a fire alarm system and a sprinkler system to ensure the safety of residents if the fire alarm system and sprinkler system:
  1. Are installed and in working order, and
  2. Meet the requirements in subsection (E)(1).

**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-819. Environmental Standards**

- A. A manager shall ensure that:
  1. The premises and equipment used at the assisted living facility are:
    - a. Cleaned and, if applicable, disinfected according to policies and procedures designed to prevent, minimize, and control illness or infection; and
    - b. Free from a condition or situation that may cause a resident or other individual to suffer physical injury;
  2. A pest control program is implemented and documented;
  3. Garbage and refuse are:
    - a. Stored in covered containers lined with plastic bags, and
    - b. Removed from the premises at least once a week;
  4. Heating and cooling systems maintain the assisted living facility at a temperature between 70° F and 84° F at all times, unless individually controlled by a resident;
  5. Common areas:
    - a. Are lighted to ensure the safety of residents, and
    - b. Have lighting sufficient to allow caregivers and assistant caregivers to monitor resident activity;
  6. Hot water temperatures are maintained between 95° F and 120° F in areas of an assisted living facility used by residents;
  7. The supply of hot and cold water is sufficient to meet the personal hygiene needs of residents and the cleaning and sanitation requirements in this Article;
  8. A resident has access to a laundry service or a washing machine and dryer in the assisted living facility;
  9. Soiled linen and soiled clothing stored by the assisted living facility are maintained separate from clean linen and clothing and stored in closed containers away from food storage, kitchen, and dining areas;
  10. Oxygen containers are secured in an upright position;
  11. Poisonous or toxic materials stored by the assisted living facility are maintained in labeled containers in a locked area separate from food preparation and storage, dining areas, and medications and are inaccessible to residents;
  12. Combustible or flammable liquids and hazardous materials stored by the assisted living facility are stored in the original labeled containers or safety containers in a locked area inaccessible to residents;
  13. Equipment used at the assisted living facility is:
    - a. Maintained in working order;
    - b. Tested and calibrated according to the manufacturer's recommendations or, if there are no manufacturer's recommendations, as specified in policies and procedures; and

- c. Used according to the manufacturer's recommendations;
  14. If pets or animals are allowed in the assisted living facility, pets or animals are:
    - a. Controlled to prevent endangering the residents and to maintain sanitation;
    - b. Licensed consistent with local ordinances; and
    - c. For a dog or cat, vaccinated against rabies;
  15. If a water source that is not regulated under 18 A.A.C. 4 by the Arizona Department of Environmental Quality is used:
    - a. The water source is tested at least once every 12 months for total coliform bacteria and fecal coliform or *E. coli* bacteria;
    - b. If necessary, corrective action is taken to ensure the water is safe to drink; and
    - c. Documentation of testing is retained for at least 12 months after the date of the test; and
  16. If a non-municipal sewage system is used, the sewage system is in working order and is maintained according to applicable state laws and rules.
- B. If a swimming pool is located on the premises, a manager shall ensure that:
  1. On a day that a resident uses the swimming pool, an employee:
    - a. Tests the swimming pool's water quality at least once for compliance with one of the following chemical disinfection standards:
      - i. A free chlorine residual between 1.0 and 3.0 ppm as measured by the N, N-Diethyl-p-phenylenediamine test;
      - ii. A free bromine residual between 2.0 and 4.0 ppm as measured by the N, N-Diethyl-p-phenylenediamine test; or
      - iii. An oxidation-reduction potential equal to or greater than 650 millivolts; and
    - b. Records the results of the water quality tests in a log that includes the date tested and test result;
  2. Documentation of the water quality test is maintained for at least 12 months after the date of the test; and
  3. A swimming pool is not used by a resident if a water quality test shows that the swimming pool water does not comply with subsection (B)(1)(a).

**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 319, effective March 14, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-820. Physical Plant Standards**

- A. A manager shall ensure that an assisted living center complies with the applicable physical plant health and safety codes and standards, incorporated by reference in A.A.C. R9-1-412, in effect on the date the assisted living facility submitted architectural plans and specifications to the Department for approval, according to R9-10-104.
- B. A manager shall ensure that:
  1. The premises and equipment are sufficient to accommodate:
    - a. The services stated in the assisted living facility's scope of services, and
    - b. An individual accepted as a resident by the assisted living facility;

2. A common area for use by residents is provided that has sufficient space and furniture to accommodate the recreational and socialization needs of residents;
  3. A dining area has sufficient space and tables and chairs to accommodate the needs of the residents;
  4. At least one bathroom is accessible from a common area and:
    - a. May be used by residents and visitors;
    - b. Provides privacy when in use; and
    - c. Contains the following:
      - i. At least one working sink with running water,
      - ii. At least one working toilet that flushes and has a seat,
      - iii. Toilet tissue for each toilet,
      - iv. Soap in a dispenser accessible from each sink,
      - v. Paper towels in a dispenser or a mechanical air hand dryer,
      - vi. Lighting, and
      - vii. A window that opens or another means of ventilation;
  5. An outside activity space is provided and available that:
    - a. Is on the premises,
    - b. Has a hard-surfaced section for wheelchairs, and
    - c. Has an available shaded area;
  6. Exterior doors are equipped with ramps or other devices to allow use by a resident using a wheelchair or other assistive device; and
  7. The key to the door of a lockable bathroom, bedroom, or residential unit is available to a manager, caregiver, and assistant caregiver.
- C.** A manager shall ensure that:
1. For every eight residents there is at least one working toilet that flushes and has a seat and one sink with running water;
  2. For every eight residents there is at least one working bathtub or shower; and
  3. A resident bathroom provides privacy when in use and contains:
    - a. A mirror;
    - b. Toilet tissue for each toilet;
    - c. Soap accessible from each sink;
    - d. Paper towels in a dispenser or a mechanical air hand dryer for a bathroom that is not in a residential unit and used by more than one resident;
    - e. A window that opens or another means of ventilation;
    - f. Grab bars for the toilet and, if applicable, the bathtub or shower and other assistive devices, if required to provide for resident safety; and
    - g. Nonporous surfaces for shower enclosures and slip-resistant surfaces in tubs and showers.
- D.** A manager shall ensure that:
1. Each resident is provided with a sleeping area in a residential unit or a bedroom;
  2. For an assisted living home, a resident's sleeping area is on the ground floor of the assisted living home unless:
    - a. The resident is able to direct self-care;
    - b. The resident is ambulatory without assistance; and
    - c. There are at least two unobstructed, usable exits to the outside from the sleeping area that the resident is capable of using;
  3. Except as provided in subsection (E), no more than two individuals reside in a residential unit or bedroom;
  4. A resident's sleeping area:
    - a. Is not used as a common area;
    - b. Is not used as a passageway to a common area, another sleeping area, or common bathroom unless the resident's sleeping area:
      - i. Was used as a passageway to a common area, another sleeping area, or common bathroom before October 1, 2013; and
      - ii. Written consent is obtained from the resident or the resident's representative;
    - c. Is constructed and furnished to provide unimpeded access to the door;
    - d. Has floor-to-ceiling walls with at least one door;
    - e. Has access to natural light through a window or a glass door to the outside; and
    - f. Has a window or door that can be used for direct egress to outside the building;
  5. If a resident's sleeping area is in a bedroom, the bedroom has:
    - a. For a private bedroom, at least 80 square feet of floor space, not including a closet or bathroom;
    - b. For a shared bedroom, at least 60 square feet of floor space for each individual occupying the shared bedroom, not including a closet or bathroom; and
    - c. A door that opens into a hallway, common area, or outdoors;
  6. If a resident's sleeping area is in a residential unit, the residential unit has:
    - a. Except as provided in subsection (E)(2), at least 220 square feet of floor space, not including a closet or bathroom, for one individual residing in the residential unit and an additional 100 square feet of floor space, not including a closet or bathroom, for each additional individual residing in the residential unit;
    - b. An individually keyed entry door;
    - c. A bathroom that provides privacy when in use and contains:
      - i. A working toilet that flushes and has a seat;
      - ii. A working sink with running water;
      - iii. A working bathtub or shower;
      - iv. Lighting;
      - v. A mirror;
      - vi. A window that opens or another means of ventilation;
      - vii. Grab bars for the toilet and, if applicable, the bathtub or shower and other assistive devices, if required to provide for resident safety; and
      - viii. Nonporous surfaces for shower enclosures and slip-resistant surfaces in bathtubs and showers;
    - d. A resident-controlled thermostat for heating and cooling;
    - e. A kitchen area equipped with:
      - i. A working sink and refrigerator,
      - ii. A cooking appliance that can be removed or disconnected,
      - iii. Space for food preparation, and
      - iv. Storage for utensils and supplies; and
    - f. If not furnished by a resident:
      - i. An armchair, and
      - ii. A table where a resident may eat a meal; and
  7. If not furnished by a resident, each sleeping area has:
    - a. A bed, at least 36 inches in width and 72 inches in length, consisting of at least a frame and mattress that is clean and in good repair;
    - b. Clean linen, including a mattress pad, sheets large enough to tuck under the mattress, pillows, pillow cases, a bedspread, waterproof mattress covers as

needed, and blankets to ensure warmth and comfort for the resident;

- c. Sufficient light for reading;
- d. Storage space for clothing;
- e. Individual storage space for personal effects; and
- f. Adjustable window covers that provide resident privacy.

- E. A manager may allow more than two individuals to reside in a residential unit or bedroom if:
  - 1. There is at least 60 square feet for each individual living in the bedroom;
  - 2. There is at least 100 square feet for each individual living in the residential unit; and
  - 3. The manager has documentation that the assisted living facility has been operating since before November 1, 1998, with more than two individuals living in the residential unit or bedroom.
- F. If there is a swimming pool on the premises of the assisted living facility, a manager shall ensure that:
  - 1. Unless the assisted living facility has documentation of having received an exception from the Department before October 1, 2013, the swimming pool is enclosed by a wall or fence that:
    - a. Is at least five feet in height as measured on the exterior of the wall or fence;
    - b. Has no vertical openings greater than four inches across;
    - c. Has no horizontal openings, except as described in subsection (F)(1)(e);
    - d. Is not chain-link;
    - e. Does not have a space between the ground and the bottom fence rail that exceeds four inches in height; and
    - f. Has a self-closing, self-latching gate that:
      - i. Opens away from the swimming pool,
      - ii. Has a latch located at least 54 inches from the ground, and
      - iii. Is locked when the swimming pool is not in use;
  - 2. A life preserver or shepherd's crook is available and accessible in the swimming pool area; and
  - 3. Pool safety requirements are conspicuously posted in the swimming pool area.
- G. A manager shall ensure that a spa that is not enclosed by a wall or fence as described in subsection (F)(1) is covered and locked when not in use.

#### Historical Note

New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

### ARTICLE 9. OUTPATIENT SURGICAL CENTERS

#### R9-10-901. Definitions

In addition to the definitions in A.R.S. § 36-401 and R9-10-101, the following apply in this Article, unless otherwise specified:

- 1. "Inpatient care" means postsurgical services provided in a hospital.
- 2. "Outpatient surgical services" means anesthesia and surgical services provided to a patient in an outpatient surgical center.
- 3. "Surgical suite" means an area of an outpatient surgical center that includes one or more operating rooms and one or more recovery rooms.

#### Historical Note

Adopted effective February 17, 1995 (Supp. 95-1). Amended by final rulemaking at 9 A.A.R. 338, effective March 16, 2003 (Supp. 03-1). Amended by final rulemaking at 9 A.A.R. 3792, effective October 4, 2003 (Supp. 03-3). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-902. Administration

- A. A governing authority shall:
  - 1. Consist of one or more individuals responsible for the organization, operation, and administration of an outpatient surgical center;
  - 2. Establish, in writing:
    - a. An outpatient surgical center's scope of services, and
    - b. Qualifications for an administrator;
  - 3. Designate, in writing, an administrator who has the qualifications established in subsection (A)(2)(b);
  - 4. Grant, deny, suspend, or revoke clinical privileges of a physician and other members of the medical staff and delineate, in writing, the clinical privileges of each medical staff member, according to the medical staff by-laws;
  - 5. Adopt a quality management plan according to R9-10-903;
  - 6. Review and evaluate the effectiveness of the quality management plan at least once every 12 months;
  - 7. Designate in writing, an acting administrator who has the qualifications established in subsection (A)(2)(b) if the administrator is:
    - a. Expected not to be present on an outpatient surgical center's premises for more than 30 calendar days, or
    - b. Not present on an outpatient surgical center's premises for more than 30 calendar days; and
  - 8. Except as provided in subsection (A)(7), notify the Department according to A.R.S. § 36-425(I) when there is a change in the administrator and identify the name and qualifications of the new administrator.
- B. An administrator:
  - 1. Is directly accountable to the governing authority of an outpatient surgical center for the daily operation of the outpatient surgical center and for all services provided by or at the outpatient surgical center;
  - 2. Has the authority and responsibility to manage the outpatient surgical center; and
  - 3. Except as provided in subsection (A)(7), designates, in writing, an individual who is present on an outpatient surgical center's premises and accountable for the outpatient surgical center when the administrator is not present on the outpatient surgical center's premises.
- C. An administrator shall ensure that:
  - 1. Policies and procedures are established, documented, and implemented to protect the health and safety of a patient that:
    - a. Cover job descriptions, duties, and qualifications, including required skills, knowledge, education, and experience for personnel members, employees, volunteers, and students;
    - b. Cover orientation and in-service education for personnel members, employees, volunteers, and students;
    - c. Include how a personnel member may submit a complaint relating to patient care;



- d. Cover the requirements in A.R.S. Title 36, Chapter 4, Article 11;
  - e. Include a method to identify a patient to ensure that the patient receives services as ordered;
  - f. Cover patient rights, including assisting a patient who does not speak English or who has a disability to become aware of patient rights;
  - g. Cover specific steps for:
    - i. A patient to file a complaint, and
    - ii. The outpatient surgical center to respond to a patient complaint;
  - h. Cover health care directives;
  - i. Cover medical records, including electronic medical records;
  - j. Cover a quality management program, including incident reports and supporting documentation; and
  - k. Cover contracted services;
2. Policies and procedures for medical services and nursing services provided by an outpatient surgical center are established, documented, and implemented to protect the health and safety of a patient that:
- a. Cover patient screening, admission, transfer, and discharge;
  - b. Cover the provision of medical services, nursing services, and health-related services in the outpatient surgical center's scope of services;
  - c. Include when general consent and informed consent are required;
  - d. Cover dispensing, administering, and disposing of medications;
  - e. Cover prescribing a controlled substance to minimize substance abuse by a patient;
  - f. Cover how personnel members will respond to a patient's sudden, intense, or out-of-control behavior to prevent harm to the patient or another individual;
  - g. Cover infection control; and
  - h. Cover environmental services that affect patient care;
3. Policies and procedures are:
- a. Available to personnel members, employees, volunteers, and students of the outpatient surgical center; and
  - b. Reviewed at least once every three years and updated as needed;
4. A pharmacy maintained by the outpatient surgical center is licensed according to A.R.S. Title 32, Chapter 18;
5. Pathology services are provided by a laboratory that holds a certificate of accreditation, certificate of compliance, or certificate of waiver issued by the U.S. Department of Health and Human Services under the 1988 amendments to the Clinical Laboratories Act of 1967;
6. If the outpatient surgical center meets the definition of "abortion clinic" in A.R.S. § 36-449.01, abortions and related services are provided in compliance with the requirements in Article 15 of this Chapter; and
7. Unless otherwise stated:
- a. Documentation required by this Article is provided to the Department within two hours after a Department request; and
  - b. When documentation or information is required by this Chapter to be submitted on behalf of an outpatient surgical center, the documentation or information is provided to the unit in the Department that is responsible for licensing and monitoring the outpatient surgical center.

**Historical Note**

Adopted effective February 17, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 9 A.A.R. 338, effective March 16, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-903. Quality Management**

An administrator shall ensure that:

- 1. A plan is established, documented, and implemented for an ongoing quality management program that, at a minimum, includes:
  - a. A method to identify, document, and evaluate incidents;
  - b. A method to collect data to evaluate services provided to patients;
  - c. A method to evaluate the data collected to identify a concern about the delivery of services related to patient care;
  - d. A method to make changes or take action as a result of the identification of a concern about the delivery of services related to patient care; and
  - e. The frequency of submitting a documented report required in subsection (2) to the governing authority;
- 2. A documented report is submitted to the governing authority that includes:
  - a. An identification of each concern about the delivery of services related to patient care, and
  - b. Any change made or action taken as a result of the identification of a concern about the delivery of services related to patient care; and
- 3. The report required in subsection (2) and the supporting documentation for the report are maintained for at least 12 months after the date the report is submitted to the governing authority.

**Historical Note**

Adopted effective February 17, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 9 A.A.R. 338, effective March 16, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-904. Contracted Services**

An administrator shall ensure that:

- 1. Contracted services are provided according to the requirements in this Article, and
- 2. Documentation of current contracted services is maintained that includes a description of the contracted services provided.

**Historical Note**

Adopted effective February 17, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 9 A.A.R. 338, effective March 16, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-905. Personnel**

A. An administrator shall ensure that:

1. The qualifications, skills, and knowledge required for each type of personnel member:
    - a. Are based on:
      - i. The type of physical health services or behavioral health services expected to be provided by the personnel member according to the established job description, and
      - ii. The acuity of the patients receiving physical health services or behavioral health services from the personnel member according to the established job description; and
    - b. Include:
      - i. The specific skills and knowledge necessary for the personnel member to provide the expected physical health services and behavioral health services listed in the established job description,
      - ii. The type and duration of education that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected physical health services or behavioral health services listed in the established job description, and
      - iii. The type and duration of experience that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected physical health services or behavioral health services listed in the established job description;
  2. A personnel member's skills and knowledge are verified and documented:
    - a. Before the personnel member provides physical health services or behavioral health services, and
    - b. According to policies and procedures;
  3. Sufficient personnel members are present on an outpatient surgical center's premises with the qualifications, skills, and knowledge necessary to:
    - a. Provide the services in the outpatient surgical center's scope of services,
    - b. Meet the needs of a patient, and
    - c. Ensure the health and safety of a patient;
  4. A personnel member, or an employee, a volunteer, or a student who has or is expected to have more than eight hours of direct interaction per week with patients, provides evidence of freedom from infectious tuberculosis:
    - a. On or before the date the individual begins providing services at or on behalf of the outpatient surgical center, and
    - b. As specified in R9-10-113;
  5. A plan to provide orientation, specific to the duties of a personnel member, an employee, a volunteer, and a student is developed, documented, and implemented;
  6. A personnel member completes orientation before providing physical health services or behavioral health services;
  7. An individual's orientation is documented, to include:
    - a. The individual's name,
    - b. The date of the orientation, and
    - c. The subject or topics covered in the orientation;
  8. A plan to provide in-service education specific to the job duties of a personnel member is developed, documented, and implemented; and
  9. A personnel member's in-service education is documented, to include:
    - a. The personnel member's name,
    - b. The date of the training, and
    - c. The subject or topics covered in the in-service education.
- B.** An administrator shall ensure that a personnel member:
1. Is 18 years of age or older; and
  2. Is certified in cardiopulmonary resuscitation within the first month of employment or volunteer service, and maintains current certification in cardiopulmonary resuscitation.
- C.** An administrator shall ensure that a personnel record for each personnel member, employee, volunteer, or student includes:
1. The individual's name, date of birth, and contact telephone number;
  2. The individual's starting date of employment or volunteer service and, if applicable, the ending date; and
  3. Documentation of:
    - a. The individual's qualifications, including skills and knowledge applicable to the individual's job duties;
    - b. The individual's education and experience applicable to the individual's job duties;
    - c. The individual's completed orientation and in-service education as required by policies and procedures;
    - d. The individual's license or certification, if the individual is required to be licensed or certified in this Article or policies and procedures;
    - e. If the individual is a behavioral health technician, clinical oversight required in R9-10-115;
    - f. Cardiopulmonary resuscitation training, if required for the individual according to subsection (B); and
    - g. Evidence of freedom from infectious tuberculosis, if required for the individual according to subsection (A)(4).
- D.** An administrator shall ensure that personnel records are:
1. Maintained:
    - a. Throughout the individual's period of providing services in or for the outpatient surgical center, and
    - b. For at least 24 months after the last date the individual provided services in or for the outpatient surgical center; and
  2. For a personnel member who has not provided physical health services or behavioral health services at or for the outpatient surgical center during the previous 12 months, provided to the Department within 72 hours after the Department's request.

#### Historical Note

Adopted effective February 17, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 9 A.A.R. 338, effective March 16, 2003 (Supp. 03-1). Amended by final rulemaking at 9 A.A.R. 3792, effective October 4, 2003 (Supp. 03-3). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-906. Medical Staff

A governing authority shall ensure that:

1. The medical staff approve bylaws for the conduct of medical staff activities according to medical staff bylaws and governing authority requirements;
2. The medical staff physicians conduct medical peer review according to A.R.S. Title 36, Chapter 4, Article 5 and submit recommendations to the governing authority for approval; and

3. The medical staff establish written policies and procedures that define the extent of emergency treatment to be performed in the outpatient surgical center.

#### Historical Note

Adopted effective February 17, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 9 A.A.R. 338, effective March 16, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-907. Admission

- A. A medical staff member shall only admit patients to the outpatient surgical center who:
  1. Do not require planned inpatient care, and
  2. Are discharged from the outpatient surgical center within 24 hours.
- B. Within 30 calendar days before a patient is admitted to an outpatient surgical center, a medical staff member shall complete a medical history and physical examination of the patient.
- C. The individual who is responsible for performing a patient's surgical procedure shall document the preoperative diagnosis and the surgical procedure to be performed in the patient's medical record.
- D. An administrator shall ensure that the following documents are in a patient's medical record before the patient's surgery:
  1. A medical history and the physical examination required in subsection (B),
  2. A preoperative diagnosis and the results of any laboratory tests or diagnostic procedures relative to the surgery and the condition of the patient,
  3. Evidence of informed consent by the patient or patient's representative for the surgical procedure and care of the patient,
  4. Health care directives, and
  5. Physician orders.

#### Historical Note

Adopted effective February 17, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 9 A.A.R. 338, effective March 16, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2).

#### R9-10-908. Transfer

Except for a transfer of a patient due to an emergency, an administrator shall ensure that:

1. A personnel member coordinates the transfer and the services provided to the patient;
2. According to policies and procedures:
  - a. An evaluation of the patient is conducted before the transfer;
  - b. Information in the patient's medical record, including orders that are in effect at the time of the transfer, is provided to a receiving health care institution; and
  - c. A personnel member explains risks and benefits of the transfer to the patient or the patient's representative; and
3. Documentation in the patient's medical record includes:
  - a. Communication with an individual at a receiving health care institution;
  - b. The date and time of the transfer;
  - c. The mode of transportation; and

- d. If applicable, the name of the personnel member accompanying the patient during a transfer.

#### Historical Note

Adopted effective February 17, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 9 A.A.R. 338, effective March 16, 2003 (Supp. 03-1). Amended by final rulemaking at 9 A.A.R. 3792, effective October 4, 2003 (Supp. 03-3). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-909. Patient Rights

- A. An administrator shall ensure that:
  1. The requirements in subsection (B) and the patient rights in subsection (C) are conspicuously posted on the premises;
  2. At the time of admission, a patient or the patient's representative receives a written copy of the requirements in subsection (B) and the patient rights in subsection (C); and
  3. Policies and procedures include:
    - a. How and when a patient or the patient's representative is informed of patient rights in subsection (C), and
    - b. Where patient rights are posted as required in subsection (A)(1).
- B. An administrator shall ensure that:
  1. A patient is treated with dignity, respect, and consideration;
  2. A patient is not subjected to:
    - a. Abuse;
    - b. Neglect;
    - c. Exploitation;
    - d. Coercion;
    - e. Manipulation;
    - f. Sexual abuse;
    - g. Sexual assault;
    - h. Seclusion;
    - i. Restraint;
    - j. Retaliation for submitting a complaint to the Department or another entity; or
    - k. Misappropriation of personal and private property by the outpatient surgical center's medical staff, personnel members, employees, volunteers, or students; and
  3. A patient or the patient's representative:
    - a. Except in an emergency, either consents to or refuses treatment;
    - b. May refuse or withdraw consent for treatment before treatment is initiated;
    - c. Except in an emergency, is informed of alternatives to a proposed psychotropic medication or surgical procedure and the associated risks and possible complications of the proposed psychotropic medication or surgical procedure;
    - d. Is informed of the following:
      - i. Policies and procedures on health care directives, and
      - ii. The patient complaint process;
    - e. Consents to photographs of the patient before a patient is photographed, except that a patient may be photographed when admitted to an outpatient surgical center for identification and administrative purposes; and

- f. Except as otherwise permitted by law, provides written consent to the release of information in the patient's:
  - i. Medical record, or
  - ii. Financial records.
- C. A patient has the following rights:
  - 1. Not to be discriminated against based on race, national origin, religion, gender, sexual orientation, age, disability, marital status, or diagnosis;
  - 2. To receive treatment that supports and respects the patient's individuality, choices, strengths, and abilities;
  - 3. To receive privacy in treatment and care for personal needs;
  - 4. To review, upon written request, the patient's own medical record according to A.R.S. §§ 12-2293, 12-2294, and 12-2294.01;
  - 5. To receive a referral to another health care institution if the outpatient surgical center is not authorized or not able to provide physical health services needed by the patient;
  - 6. To participate, or have the patient's representative participate, in the development of or decisions concerning treatment;
  - 7. To participate or refuse to participate in research or experimental treatment; and
  - 8. To receive assistance from a family member, a patient's representative, or other individual in understanding, protecting, or exercising the patient's rights.

#### Historical Note

Adopted effective February 17, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 9 A.A.R. 338, effective March 16, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-910. Medical Records

- A. An administrator shall ensure that:
  - 1. A medical record is established and maintained for a patient according to A.R.S. Title 12, Chapter 13, Article 7.1;
  - 2. An entry in a patient's medical record is:
    - a. Recorded only by an individual authorized by policies and procedures to make the entry;
    - b. Dated, legible, and authenticated; and
    - c. Not changed to make the initial entry illegible;
  - 3. An order is:
    - a. Dated when the order is entered in the patient's medical record and includes the time of the order;
    - b. Authenticated by a medical staff member according to policies and procedures; and
    - c. If the order is a verbal order, authenticated by the medical staff member issuing the order;
  - 4. If a rubber-stamp signature or an electronic signature is used to authenticate an order, the individual whose signature the rubber-stamp signature or electronic signature represents is accountable for the use of the rubber-stamp signature or electronic signature;
  - 5. A patient's medical record is available to an individual:
    - a. Authorized according to policies and procedures to access the patient's medical record;
    - b. If the individual is not authorized according to policies and procedures, with the written consent of the patient or the patient's representative; or
    - c. As permitted by law; and
  - 6. A patient's medical record is protected from loss, damage, or unauthorized use.
- B. If an outpatient surgical center maintains patients' medical records electronically, an administrator shall ensure that:
  - 1. Safeguards exist to prevent unauthorized access, and
  - 2. The date and time of an entry in a patient's medical record is recorded by the computer's internal clock.
- C. An administrator shall ensure that a patient's medical record contains:
  - 1. Patient information that includes:
    - a. The patient's name;
    - b. The patient's address;
    - c. The patient's date of birth; and
    - d. Any known allergies, including medication allergies;
  - 2. The admitting medical practitioner;
  - 3. An admitting diagnosis;
  - 4. Documentation of general consent and informed consent for treatment by the patient or the patient's representative, except in an emergency;
  - 5. If applicable, the name and contact information of the patient's representative and:
    - a. If the patient is 18 years of age or older or an emancipated minor, the document signed by the patient consenting for the patient's representative to act on the patient's behalf; or
    - b. If the patient's representative:
      - i. Has a health care power of attorney established under A.R.S. § 36-3221 or a mental health care power of attorney executed under A.R.S. § 36-3282, a copy of the health care power of attorney or mental health care power of attorney; or
      - ii. Is a legal guardian, a copy of the court order establishing guardianship;
  - 6. The date of admission and, if applicable, date of discharge;
  - 7. Documentation of medical history and results of a physical examination;
  - 8. A copy of patient's health care directive, if applicable;
  - 9. Orders;
  - 10. Progress notes;
  - 11. If applicable, documentation of any actions taken to control the patient's sudden, intense, or out-of-control behavior to prevent harm to the patient or another individual;
  - 12. Documentation of outpatient surgical center services provided to the patient;
  - 13. A discharge summary, if applicable;
  - 14. Documentation of receipt of written discharge instructions by the patient or patient's representative;
  - 15. If applicable:
    - a. Laboratory reports,
    - b. Radiologic report, and
    - c. Diagnostic reports;
  - 16. The anesthesia report, required in R9-10-911(C)(2);
  - 17. The operative report of the surgical procedure, required in R9-10-911(C)(1); and
  - 18. Documentation of a medication administered to the patient that includes:
    - a. The date and time of administration;
    - b. The name, strength, dosage, and route of administration;
    - c. For a medication administered for pain:
      - i. An assessment of the patient's pain before administering the medication, and
      - ii. The effect of the medication administered;
    - d. For a psychotropic medication:

- i. An assessment of the patient's behavior before administering the psychotropic medication, and
- ii. The effect of the psychotropic medication administered;
- e. The identification, signature, and professional designation of the individual administering or observing the self-administration of the medication; and
- f. Any adverse reaction a patient has to the medication.

**Historical Note**

Adopted effective February 17, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 9 A.A.R. 338, effective March 16, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-911. Surgical Services**

- A.** An administrator shall ensure that:
  - 1. A current listing of surgical procedures offered by an outpatient surgical center is maintained on the outpatient surgical center's premises, and
  - 2. A chronological register of surgical procedures performed in the outpatient surgical center is maintained for at least 24 months after the date of the last entry.
- B.** An administrator shall ensure that a roster of medical staff members who have clinical privileges at the outpatient surgical center is available to the medical staff, specifying the privileges and limitations of each medical staff member on the roster.
- C.** An administrator shall ensure that the individual responsible for:
  - 1. Performing a surgical procedure completes an operative report of the surgical procedure and any necessary discharge instructions according to medical staff by-laws and policies and procedures, and
  - 2. Administering anesthesia during a surgical procedure completes an anesthesia report and any necessary discharge instructions according to medical staff by-laws and policies and procedures.
- D.** An administrator shall ensure that a physician remains on the outpatient surgical center's premises until all patients are discharged from the recovery room.

**Historical Note**

Adopted effective October 20, 1982 (Supp. 82-5). Section repealed, new Section adopted effective February 17, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 9 A.A.R. 338, effective March 16, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-912. Nursing Services**

An administrator shall appoint a registered nurse as the director of nursing who:

- 1. Is responsible for the management of the outpatient surgical center's nursing services;
- 2. Ensures that policies and procedures are established, documented, and implemented for nursing services provided in the outpatient surgical center;
- 3. Ensures that the outpatient surgical center is staffed with sufficient nursing personnel, based on the number of

patients, the health care needs of the patients, and the outpatient surgical center's scope of services;

- 4. Participates in quality management activities;
- 5. Designates a registered nurse, in writing, to manage an outpatient surgical center's nursing services when the director of nursing is not present on the outpatient surgical center's premises;
- 6. Ensures that a nurse who is not directly assisting the surgeon is responsible for the functioning of an operating room while a surgical procedure is being performed in the operating room;
- 7. Ensures that a registered nurse is present in the:
  - a. Recovery room when a patient is present in the recovery room, and
  - b. Outpatient surgical center until all patients are discharged; and
- 8. Ensures that a nurse documents in a patient's medical record that the patient or the patient's representative has received written discharge instructions.

**Historical Note**

Adopted effective October 20, 1982 (Supp. 82-5). Section repealed, new Section adopted effective February 17, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 9 A.A.R. 338, effective March 16, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-913. Behavioral Health Services**

If an outpatient surgical center is authorized to provide behavioral health services, an administrator shall ensure that:

- 1. Policies and procedures are established, documented, and implemented that cover when informed consent is required and by whom informed consent may be given; and
- 2. The behavioral health services:
  - a. Are provided under the direction of a behavioral health professional; and
  - b. Comply with the requirements:
    - i. For behavioral health paraprofessionals and behavioral health technicians, in R9-10-115; and
    - ii. For an assessment, in R9-10-1011(B).

**Historical Note**

Adopted effective October 20, 1982 (Supp. 82-5). Section repealed, new Section adopted effective February 17, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 9 A.A.R. 338, effective March 16, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-914. Medication Services**

**A.** An administrator shall ensure that policies and procedures for medication services:

- 1. Include:
  - a. A process for providing information to a patient about medication prescribed for the patient including:
    - i. The prescribed medication's anticipated results,
    - ii. The prescribed medication's potential adverse reactions,

- iii. The prescribed medication's potential side effects, and
      - iv. Potential adverse reactions that could result from not taking the medication as prescribed;
    - b. Procedures for preventing, responding to, and reporting:
      - i. A medication error,
      - ii. An adverse reaction to a medication, or
      - iii. A medication overdose; and
    - c. Procedures to ensure that a patient's medication regimen is reviewed by a medical practitioner to ensure the medication regimen meets the patient's needs; and
  - 2. Specify a process for review through the quality management program of:
    - a. A medication administration error, and
    - b. An adverse reaction to a medication.
- B.** An administrator shall ensure that:
- 1. Policies and procedures for medication administration:
    - a. Are reviewed and approved by a medical practitioner;
    - b. Specify the individuals who may:
      - i. Order medication, and
      - ii. Administer medication;
    - c. Ensure that medication is administered to a patient only as prescribed; and
    - d. Cover the documentation of a patient's refusal to take prescribed medication in the patient's medical record;
  - 2. Verbal orders for medication services are taken by a nurse, unless otherwise provided by law; and
  - 3. A medication administered to a patient:
    - a. Is administered in compliance with an order, and
    - b. Is documented in the patient's medical record.
- C.** An administrator shall ensure that:
- 1. A current drug reference guide is available for use by personnel members;
  - 2. A current toxicology reference guide is available for use by personnel members; and
  - 3. If pharmaceutical services are provided on the premises:
    - a. A committee, composed of at least one physician, one pharmacist, and other personnel members as determined by policies and procedures, is established to:
      - i. Develop a drug formulary,
      - ii. Update the drug formulary at least once every 12 months,
      - iii. Develop medication usage and medication substitution policies and procedures, and
      - iv. Specify which medications and medication classifications are required to be stopped automatically after a specific time period unless the ordering medical staff member specifically orders otherwise;
    - b. The pharmaceutical services are provided under the direction of a pharmacist;
    - c. The pharmaceutical services comply with A.R.S. Title 36, Chapter 27; A.R.S. Title 32, Chapter 18; and 4 A.A.C. 23; and
    - d. A copy of the pharmacy license is provided to the Department upon request.
- D.** When medication is stored at an outpatient surgical center, an administrator shall ensure that:
- 1. Medication is stored in a separate locked room, closet, or self-contained unit used only for medication storage;
  - 2. Medication is stored according to the instructions on the medication container; and
  - 3. Policies and procedures are established, documented, and implemented for:
    - a. Receiving, storing, inventorying, tracking, dispensing, and discarding medication, including expired medication;
    - b. Discarding or returning prepackaged and sample medication to the manufacturer if the manufacturer requests the discard or return of the medication;
    - c. A medication recall and notification of patients who received recalled medication; and
    - d. Storing, inventorying, and dispensing controlled substances.
- E.** An administrator shall ensure that a personnel member immediately reports a medication error or a patient's adverse reaction to a medication to the medical practitioner who ordered the medication and, if applicable, the outpatient surgical center's director of nursing.

#### Historical Note

Adopted effective October 20, 1982 (Supp. 82-5). Section repealed, new Section adopted effective February 17, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 9 A.A.R. 338, effective March 16, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-915. Infection Control

An administrator shall ensure that:

- 1. An infection control program is established, under the direction of an individual qualified according to policies and procedures, to prevent the development and transmission of infections and communicable diseases including:
  - a. A method to identify and document infections occurring at the outpatient surgical center;
  - b. Analysis of the types, causes, and spread of infections and communicable diseases at the outpatient surgical center;
  - c. The development of corrective measures to minimize or prevent the spread of infections and communicable diseases at the outpatient surgical center; and
  - d. Documenting infection control activities including:
    - i. The collection and analysis of infection control data,
    - ii. The actions taken related to infections and communicable diseases, and
    - iii. Reports of communicable diseases to the governing authority and state and county health departments;
- 2. Infection control documentation is maintained for at least 12 months after the date of the documentation;
- 3. Policies and procedures are established, documented, and implemented that cover:
  - a. Compliance with the requirements in 9 A.A.C. 6 for reporting and control measures for communicable diseases and infestations;
  - b. Handling and disposal of biohazardous medical waste;
  - c. Sterilization, disinfection, distribution, and storage of medical equipment and supplies;
  - d. Using personal protective equipment such as aprons, gloves, gowns, masks, or face protection when applicable;

- e. Training personnel members, employees, and volunteers in infection control practices; and
- f. Work restrictions for a personnel member with a communicable disease or infected skin lesion;
- 4. Biohazardous medical waste is identified, stored, and disposed of according to 18 A.A.C. 13, Article 14 and policies and procedures;
- 5. Soiled linen and clothing are:
  - a. Collected in a manner to minimize or prevent contamination,
  - b. Bagged at the site of use, and
  - c. Maintained separate from clean linen and clothing; and
- 6. A personnel member, employee, or volunteer washes hands or uses a hand disinfection product after patient contact and after handling soiled linen, soiled clothing, or potentially infectious material.

#### Historical Note

Adopted effective October 20, 1982 (Supp. 82-5). Section repealed, new Section adopted effective February 17, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 9 A.A.R. 338, effective March 16, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-916. Emergency and Safety Standards

- A. An administrator shall ensure that policies and procedures for providing medical emergency treatment to a patient are established, documented, and implemented and include:
  - 1. A list of the medications, supplies, and equipment required on the premises for the medical emergency treatment provided by the outpatient surgical center;
  - 2. A system to ensure medications, supplies, and equipment are available, have not been tampered with, and, if applicable, have not expired;
  - 3. A requirement that a cart or a container is available for medical emergency treatment that contains medications, supplies, and equipment specified in policies and procedures;
  - 4. A method to verify and document that the contents of the cart or container are available for medical emergency treatment; and
  - 5. A method for ensuring a patient may be transferred to a hospital or other health care institution to receive treatment for a medical emergency that the outpatient surgical center is not authorized or not able to provide.
- B. An administrator shall ensure that medical emergency treatment is provided to a patient admitted to the outpatient surgical center according to policies and procedures.
- C. An administrator shall ensure that:
  - 1. A disaster plan is developed, documented, maintained in a location accessible to medical staff and employees, and, if necessary, implemented that includes:
    - a. Procedures to be followed in the event of a fire or threat to patient safety;
    - b. Assigned personnel responsibilities;
    - c. Instructions for the evacuation or transfer of patients;
    - d. Maintenance of patient medical records; and
    - e. A plan to provide any other services related to patient care to meet the patients' needs;
  - 2. The disaster plan required in subsection (C)(1) is reviewed at least once every 12 months;

- 3. Documentation of a disaster plan review required in subsection (C)(2) is created, is maintained for at least 12 months after the date of the disaster plan review, and includes:
  - a. The date and time of the disaster plan review;
  - b. The name of each personnel member, employee, medical staff member, or volunteer participating in the disaster plan review;
  - c. A critique of the disaster plan review; and
  - d. If applicable, recommendations for improvement;
- 4. A disaster drill for employees is conducted on each shift at least once every three months and documented;
- 5. An evacuation drill for employees is conducted at least once every six months for employees on the premises;
- 6. Documentation of an evacuation drill is created, is maintained for at least 12 months after the date of the evacuation drill, and includes:
  - a. The date and time of the evacuation drill;
  - b. The amount of time taken for employees to evacuate the outpatient surgical center;
  - c. Any problems encountered in conducting the evacuation drill; and
  - d. Recommendations for improvement, if applicable; and
- 7. An evacuation path is conspicuously posted on each hallway of each floor of the outpatient surgical center and every room where patients may be present.

- D. An administrator shall ensure that, if applicable, a sign is placed at the entrance to a room or area indicating that oxygen is in use.

- E. An administrator shall:

- 1. Obtain a fire inspection conducted according to the time-frame established by the local fire department or the State Fire Marshal,
- 2. Make any repairs or corrections stated on the fire inspection report, and
- 3. Maintain documentation of a current fire inspection.

#### Historical Note

Adopted effective October 20, 1982 (Supp. 82-5). Section repealed, new Section adopted effective February 17, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 9 A.A.R. 338, effective March 16, 2003 (Supp. 03-1). Section amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-917. Environmental Standards

- A. An administrator shall ensure that:
  - 1. An outpatient surgical center's premises and equipment are:
    - a. Cleaned and disinfected according to policies and procedures or manufacturer's instructions to prevent, minimize, and control illness or infection; and
    - b. Free from a condition or situation that may cause a patient or an individual to suffer physical injury;
  - 2. A pest control program is implemented and documented;
  - 3. Equipment used at the outpatient surgical center to provide care to a patient is:
    - a. Maintained in working order;
    - b. Tested and calibrated according to the manufacturer's recommendations or, if there are no manufacturer's recommendations, as specified in policies and procedures; and

- c. Used according to the manufacturer's recommendations;
  - 4. Documentation of equipment testing, calibration, and repair is maintained for at least 12 months after the date of the testing, calibration, or repair;
  - 5. Garbage and refuse are:
    - a. Stored in covered containers lined with plastic bags, and
    - b. Removed from the premises at least once a week;
  - 6. Heating and cooling systems maintain the outpatient surgical center at a temperature between 70° F and 84° F at all times;
  - 7. Common areas:
    - a. Are lighted to assure the safety of patients, and
    - b. Have lighting sufficient to allow personnel members to monitor patient activity; and
  - 8. The supply of hot and cold water is sufficient to meet the personal hygiene needs of patients and the cleaning and sanitation requirements in this Article.
- B. An administrator shall ensure that an outpatient surgical center has a functional emergency power source.

**Historical Note**

Adopted effective October 20, 1982 (Supp. 82-5).  
 Repealed effective February 17, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 9 A.A.R. 338, effective March 16, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-918. Physical Plant Standards**

- A. An administrator shall ensure that the outpatient surgical center complies with the applicable physical plant health and safety codes and standards, incorporated by reference in A.A.C. R9-1-412, that were in effect on the date the outpatient surgical center submitted architectural plans and specifications to the Department for approval according to R9-10-104.
- B. An administrator shall ensure that the premises and equipment are sufficient to accommodate:
  - 1. The services stated in the outpatient surgical center's scope of services, and
  - 2. An individual accepted as a patient by the outpatient surgical center.
- C. An administrator shall ensure that:
  - 1. There are two recovery beds for each operating room, for up to four operating rooms, whenever general anesthesia is administered;
  - 2. One additional recovery bed is available for each additional operating room; and
  - 3. Recovery beds are located in a space that provides for a minimum of 70 square feet per bed, allowing three feet or more between beds and between the sides of a bed and the wall.
- D. An administrator may provide chairs in the recovery room area that allow a patient to recline for patients who have not received general anesthesia.
- E. An administrator shall ensure that the following are available in the surgical suite:
  - 1. Oxygen and the means of administration;
  - 2. Mechanical ventilator assistance equipment including airways, manual breathing bag, and suction apparatus;
  - 3. Cardiac monitor;
  - 4. Defibrillator; and

- 5. Cardiopulmonary resuscitation drugs as determined by the policies and procedures.

**Historical Note**

Adopted effective October 20, 1982 (Supp. 82-5).  
 Repealed effective February 17, 1995 (Supp. 95-1). New Section made by final rulemaking at 9 A.A.R. 338, effective March 16, 2003 (Supp. 03-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-919. Repealed****Historical Note**

Adopted effective October 20, 1982 (Supp. 82-5).  
 Repealed effective February 17, 1995 (Supp. 95-1). New Section made by final rulemaking at 9 A.A.R. 338, effective March 16, 2003 (Supp. 03-1). Section repealed by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2).

**R9-10-920. Repealed****Historical Note**

Adopted effective October 20, 1982 (Supp. 82-5).  
 Repealed effective February 17, 1995 (Supp. 95-1).

**R9-10-921. Repealed****Historical Note**

Adopted effective October 20, 1982 (Supp. 82-5).  
 Repealed effective February 17, 1995 (Supp. 95-1).

**R9-10-922. Repealed****Historical Note**

Adopted effective October 20, 1982 (Supp. 82-5).  
 Repealed effective February 17, 1995 (Supp. 95-1).

**R9-10-923. Repealed****Historical Note**

Adopted effective October 20, 1982 (Supp. 82-5).  
 Repealed effective February 17, 1995 (Supp. 95-1).

**R9-10-924. Repealed****Historical Note**

Adopted effective June 2, 1983 (Supp. 82-5). Former Section R9-10-924 repealed, new Section R9-10-924 adopted effective November 6, 1985 (Supp. 85-6).  
 Repealed effective February 17, 1995 (Supp. 95-1).

**R9-10-925. Repealed****Historical Note**

Adopted effective October 20, 1982 (Supp. 82-5).  
 Repealed effective February 17, 1995 (Supp. 95-1).

**ATTACHMENT 1****Historical Note**

Adopted effective October 20, 1982 (Supp. 82-5).  
 Repealed effective February 17, 1995 (Supp. 95-1).

**ATTACHMENT 2****Historical Note**

Adopted effective October 20, 1982 (Supp. 82-5).  
 Repealed effective November 6, 1985 (Supp. 85-6).

*Editor's Note: The proposed summary action repealing R9-10-1011 through R9-10-1030 was remanded by the Governor's Regulatory Review Council which revoked the interim effective-*



*ness of the summary rules. Sections in effect before the proposed summary action have been restored (Supp. 97-1). Subsequently, those Sections were repealed by final rulemaking (Supp. 99-2).*

## ARTICLE 10. OUTPATIENT TREATMENT CENTERS

### R9-10-1001. Definitions

In addition to the definitions in A.R.S. § 36-401 and R9-10-101, the following applies in this Article unless otherwise specified:

“Emergency room services” means medical services provided to a patient in an emergency.

#### Historical Note

New Section made by final rulemaking at 14 A.A.R. 294, effective March 8, 2008 (Supp. 08-1). Section amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

### R9-10-1002. Supplemental Application Requirements

In addition to the license application requirements in A.R.S. § 36-422 and 9 A.A.C. 10, Article 1, a governing authority applying for an initial license shall submit, in a format provided by the Department:

1. The days and hours of clinical operation and, if different from the days and hours of clinical operation, the days and hours of administrative operation; and
2. A request to provide one or more of the following services:
  - a. Behavioral health services and, if applicable;
    - i. Behavioral health observation/stabilization services,
    - ii. Behavioral health services to individuals under 18 years of age,
    - iii. Court-ordered evaluation,
    - iv. Court-ordered treatment,
    - v. Crisis services,
    - vi. Opioid treatment services,
    - vii. Pre-petition screening,
    - viii. Respite services,
    - ix. DUI education,
    - x. DUI screening,
    - xi. DUI treatment, or
    - xii. Misdemeanor domestic violence offender treatment;
  - b. Diagnostic imaging services;
  - c. Clinical laboratory services;
  - d. Dialysis services;
  - e. Emergency room services;
  - f. Pain management services;
  - g. Physical health services;
  - h. Rehabilitation services;
  - i. Sleep disorder services;
  - j. Urgent care services provided in a freestanding urgent care center setting; or
  - k. Counseling and, if applicable:
    - i. DUI education,
    - ii. DUI screening,
    - iii. DUI treatment, or
    - iv. Misdemeanor domestic violence offender treatment.

#### Historical Note

New Section made by final rulemaking at 14 A.A.R. 294, effective March 8, 2008 (Supp. 08-1). Section amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, §

13; effective July 1, 2014 (Supp. 14-2).

### R9-10-1003. Administration

- A. If an outpatient treatment center is operating under a single group license issued to a hospital according to A.R.S. § 36-422(F) or (G), the hospital's governing authority is the governing authority for the outpatient treatment center.
- B. A governing authority shall:
  1. Consist of one or more individuals accountable for the organization, operation, and administration of an outpatient treatment center;
  2. Establish, in writing:
    - a. An outpatient treatment center's scope of services, and
    - b. Qualifications for an administrator;
  3. Designate, in writing, an administrator who has the qualifications established in subsection (B)(2)(b);
  4. Adopt a quality management program according to R9-10-1004;
  5. Review and evaluate the effectiveness of the quality management program in R9-10-1004 at least once every 12 months;
  6. Designate, in writing, an acting administrator who has the qualifications established in subsection (B)(2)(b) if the administrator is:
    - a. Expected not to be present on an outpatient treatment center's premises for more than 30 calendar days, or
    - b. Not present on an outpatient treatment center's premises for more than 30 calendar days; and
  7. Except as provided in subsection (B)(6), notify the Department according to A.R.S. § 36-425(I) when there is a change in an administrator and identify the name and qualifications of the new administrator.
- C. An administrator:
  1. Is directly accountable to the governing authority for the daily operation of the outpatient treatment center and all services provided by or at the outpatient treatment center;
  2. Has the authority and responsibility to manage the outpatient treatment center; and
  3. Except as provided in subsection (B)(6), designates, in writing, an individual who is present on the outpatient treatment center's premises and accountable for the outpatient treatment center when the administrator is not available.
- D. An administrator shall ensure that:
  1. Policies and procedures are established, documented, and implemented to protect the health and safety of a patient that:
    - a. Cover job descriptions, duties, and qualifications, including required skills, knowledge, education, and experience for personnel members, employees, volunteers, and students;
    - b. Cover orientation and in-service education for personnel members, employees, volunteers, and students;
    - c. Include how a personnel member may submit a complaint relating to services provided to a patient;
    - d. Cover the requirements in Title 36, Chapter 4, Article 11;
    - e. Cover cardiopulmonary resuscitation training including:
      - i. The method and content of cardiopulmonary resuscitation training which includes a demonstration of the individual's ability to perform cardiopulmonary resuscitation,

- ii. The qualifications for an individual to provide cardiopulmonary resuscitation training;
    - iii. The time-frame for renewal of cardiopulmonary resuscitation training; and
    - iv. The documentation that verifies that an individual has received cardiopulmonary resuscitation training;
  - f. Cover first aid training;
  - g. Include a method to identify a patient to ensure the patient receives the services ordered for the patient;
  - h. Cover patient rights, including assisting a patient who does not speak English or who has a physical or other disability to become aware of patient rights;
  - i. Cover health care directives;
  - j. Cover medical records, including electronic medical records;
  - k. Cover quality management, including incident report and supporting documentation; and
  - l. Cover contracted services;
2. Policies and procedures for services provided at or by an outpatient treatment center are established, documented, and implemented to protect the health and safety of a patient that:
- a. Cover patient screening, admission, assessment, transport, transfer, discharge plan, and discharge;
  - b. Cover the provision of medical services, nursing services, health-related services, and ancillary services;
  - c. Include when general consent and informed consent are required;
  - d. Cover obtaining, administering, storing, and disposing of medications, including provisions for controlling inventory and preventing diversion of controlled substances;
  - e. Cover prescribing a controlled substance to minimize substance abuse by a patient;
  - f. Cover infection control;
  - g. Cover telemedicine, if applicable;
  - h. Cover environmental services that affect patient care;
  - i. Cover specific steps for:
    - i. A patient to file a complaint, and
    - ii. An outpatient treatment center to respond to a complaint;
  - j. Cover smoking tobacco products on an outpatient treatment center's premises; and
  - k. Cover how personnel members will respond to a patient's sudden, intense, or out-of-control behavior to prevent harm to the patient or another individual;
3. Outpatient treatment center policies and procedures are:
- a. Reviewed at least once every three years and updated as needed; and
  - b. Available to personnel members and employees;
4. Unless otherwise stated:
- a. Documentation required by this Article is provided to the Department within two hours after a Department request; and
  - b. When documentation or information is required by this Chapter to be submitted on behalf of an outpatient treatment center, the documentation or information is provided to the unit in the Department that is responsible for licensing and monitoring the outpatient treatment center;
5. The following are conspicuously posted:
- a. The current license for the outpatient treatment center issued by the Department;
  - b. The name, address, and telephone number of the Department;
  - c. A notice that a patient may file a complaint with the Department about the outpatient treatment center;
  - d. One of the following:
    - i. A schedule of rates according to A.R.S. § 36-436.01(C), or
    - ii. A notice that the schedule of rates required in A.R.S. § 36-436.01(C) is available for review upon request;
  - e. A list of patient rights;
  - f. A map for evacuating the facility; and
  - g. A notice identifying the location on the premises where current license inspection reports required in A.R.S. § 36-425(D), with patient information redacted, are available; and
6. Patient follow-up instructions are:
- a. Provided, orally or in written form, to a patient or the patient's representative before the patient leaves the outpatient treatment center unless the patient leaves against a personnel member's advice; and
  - b. Documented in the patient's medical record.
- E.** If abuse, neglect, or exploitation of a patient is alleged or suspected to have occurred before the patient was admitted or while the patient is not on the premises and not receiving services from an outpatient treatment center's employee or personnel member, an administrator shall report the alleged or suspected abuse, neglect, or exploitation of the patient as follows:
- 1. For a patient 18 years of age or older, according to A.R.S. § 46-454; or
  - 2. For a patient under 18 years of age, according to A.R.S. § 13-3620.
- F.** If an administrator has a reasonable basis, according to A.R.S. § 13-3620 or 46-454, to believe that abuse, neglect, or exploitation has occurred on the premises or while a patient is receiving services from an outpatient treatment center's employee or personnel member, an administrator shall:
- 1. If applicable, take immediate action to stop the suspected abuse, neglect, or exploitation;
  - 2. Report the suspected abuse, neglect, or exploitation of the patient as follows:
    - a. For a patient 18 years of age or older, according to A.R.S. § 46-454; or
    - b. For a patient under 18 years of age, according to A.R.S. § 13-3620;
  - 3. Document:
    - a. The suspected abuse, neglect, or exploitation;
    - b. Any action taken according to subsection (F)(1); and
    - c. The report in subsection (F)(2);
  - 4. Maintain the documentation in subsection (F)(3) for at least 12 months after the date of the report in subsection (F)(2);
  - 5. Initiate an investigation of the suspected abuse, neglect, or exploitation and document the following information within five working days after the report required in subsection (F)(2):
    - a. The dates, times, and description of the suspected abuse, neglect, or exploitation;
    - b. A description of any injury to the patient related to the suspected abuse or neglect and any change to the patient's physical, cognitive, functional, or emotional condition;
    - c. The names of witnesses to the suspected abuse, neglect, or exploitation; and

- d. The actions taken by the administrator to prevent the suspected abuse, neglect, or exploitation from occurring in the future; and
6. Maintain a copy of the documented information required in subsection (F)(5) and any other information obtained during the investigation for at least 12 months after the date the investigation was initiated.

#### Historical Note

New Section made by final rulemaking at 14 A.A.R. 294, effective March 8, 2008 (Supp. 08-1). Section amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-1004. Quality Management

An administrator shall ensure that:

1. A plan is established, documented, and implemented for an ongoing quality management program that, at a minimum, includes:
  - a. A method to identify, document, and evaluate incidents;
  - b. A method to collect data to evaluate services provided to patients;
  - c. A method to evaluate the data collected to identify a concern about the delivery of services related to patient care;
  - d. A method to make changes or take action as a result of the identification of a concern about the delivery of services related to patient care; and
  - e. The frequency of submitting a documented report required in subsection (2) to the governing authority;
2. A documented report is submitted to the governing authority that includes:
  - a. An identification of each concern about the delivery of services related to patient care, and
  - b. Any change made or action taken as a result of the identification of a concern about the delivery of services related to patient care; and
3. The report required in subsection (2) and the supporting documentation for the report are maintained for at least 12 months after the date the report is submitted to the governing authority.

#### Historical Note

New Section made by final rulemaking at 14 A.A.R. 294, effective March 8, 2008 (Supp. 08-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-1005. Contracted Services

An administrator shall ensure that:

1. Contracted services are provided according to the requirements in this Article, and
2. Documentation of current contracted services is maintained that includes a description of the contracted services provided.

#### Historical Note

New Section made by final rulemaking at 14 A.A.R. 294, effective March 8, 2008 (Supp. 08-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

14-2).

#### R9-10-1006. Personnel

An administrator shall ensure that:

1. The qualifications, skills, and knowledge required for each type of personnel member:
  - a. Are based on:
    - i. The type of physical health services or behavioral health services expected to be provided by the personnel member according to the established job description, and
    - ii. The acuity of the patients receiving physical health services or behavioral health services from the personnel member according to the established job description; and
  - b. Include:
    - i. The specific skills and knowledge necessary for the personnel member to provide the expected physical health services and behavioral health services listed in the established job description,
    - ii. The type and duration of education that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected physical health services or behavioral health services listed in the established job description, and
    - iii. The type and duration of experience that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected physical health services or behavioral health services listed in the established job description;
2. A personnel member's skills and knowledge are verified and documented:
  - a. Before the personnel member provides physical health services or behavioral health services, and
  - b. According to policies and procedures;
3. Sufficient personnel members are present on an outpatient treatment center's premises with the qualifications, skills, and knowledge necessary to:
  - a. Provide the services in the outpatient treatment center's scope of services,
  - b. Meet the needs of a patient, and
  - c. Ensure the health and safety of a patient;
4. A personnel member only provides physical health services or behavioral health services the personnel member is qualified to provide;
5. A plan is developed, documented, and implemented to provide orientation specific to the duties of personnel members, employees, volunteers, and students;
6. A personnel member completes orientation before providing medical services, nursing services or health-related services to a patient;
7. An individual's orientation is documented, to include:
  - a. The individual's name,
  - b. The date of the orientation, and
  - c. The subject or topics covered in the orientation;
8. A plan is developed, documented, and implemented to provide in-service education specific to the duties of a personnel member;
9. A personnel member's in-service education is documented, to include:
  - a. The personnel member's name,
  - b. The date of the in-service education, and
  - c. The subject or topics covered in the in-service education;

10. A personnel member who is a behavioral health technician or behavioral health paraprofessional complies with the applicable requirements in R9-10-115;
  11. A record for a personnel member, an employee, a volunteer, or a student is maintained that includes:
    - a. The individual's name, date of birth, and contact telephone number;
    - b. The individual's starting date of employment or volunteer service, and if applicable, the ending date;
    - c. Documentation of:
      - i. The individual's qualifications including skills and knowledge applicable to the individual's job duties;
      - ii. The individual's education and experience applicable to the individual's job duties;
      - iii. The individual's completed orientation and in-service education as required by policies and procedures;
      - iv. The individual's license or certification, if the individual is required to be licensed or certified in this Article or policies and procedures;
      - v. If the individual is a behavioral health technician, clinical oversight required in R9-10-115;
      - vi. The individual's compliance with the fingerprinting requirements in A.R.S. § 36-425.03, if applicable; and
      - vii. Cardiopulmonary resuscitation training, if the individual is required to have cardiopulmonary resuscitation training according to this Article or policies and procedures; and
  12. The record in subsection (A)(11) is:
    - a. Maintained while an individual provides services for or at the outpatient treatment center and for at least 24 months after the last date the employee or volunteer provided services for or at the outpatient treatment center; and
    - b. If the ending date of employment or volunteer service was 12 or more months before the date of the Department's request, provided to the Department within 72 hours after the Department's request.
  3. The patient's medical record includes documentation of:
    - a. Communication or lack of communication with an individual at a receiving health care institution;
    - b. The date and time of the transport;
    - c. The mode of transportation; and
    - d. If applicable, the name of the personnel member accompanying the patient during a transport.
- B.** Subsection (A) does not apply to:
1. Transportation to a location other than a licensed health care institution,
  2. Transportation provided for a patient by the patient or the patient's representative,
  3. Transportation provided by an outside entity that was arranged for a patient by the patient or the patient's representative, or
  4. A transport to another licensed health care institution in an emergency.
- C.** Except for a transfer of a patient due to an emergency, an administrator shall ensure that:
1. A personnel member coordinates the transfer and the services provided to the patient;
  2. According to policies and procedures:
    - a. An evaluation of the patient is conducted before the transfer;
    - b. Information from the patient's medical record, including orders that are in effect at the time of the transfer, is provided to a receiving health care institution; and
    - c. A personnel member explains risks and benefits of the transfer to the patient or the patient's representative; and
  3. Documentation in the patient's medical record includes:
    - a. Communication with an individual at a receiving health care institution;
    - b. The date and time of the transfer;
    - c. The mode of transportation; and
    - d. If applicable, the name of the personnel member accompanying the patient during a transfer.

#### Historical Note

New Section made by final rulemaking at 14 A.A.R. 294, effective March 8, 2008 (Supp. 08-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-1007. Transport; Transfer

- A.** Except as provided in subsection (B), an administrator shall ensure that:
1. A personnel member coordinates the transport and the services provided to the patient;
  2. According to policies and procedures:
    - a. An evaluation of the patient is conducted before and after the transport,
    - b. Information from the patient's medical record is provided to a receiving health care institution,
    - c. A personnel member explains risks and benefits of the transport to the patient or the patient's representative; and
    - d. A personnel member communicates or documents why the personnel member did not communicate with an individual at a receiving health care institution;

#### R9-10-1008. Patient Rights

- A.** An administrator shall ensure that:
1. The requirements in subsection (B) and the patient rights in subsection (C) are conspicuously posted on the premises;
  2. At the time of admission, a patient or the patient's representative receives a written copy of the requirements in subsection (B) and the patient rights in subsection (C); and
  3. Policies and procedures are established, documented, and implemented to protect the health and safety of a patient that include:
    - a. How and when a patient or the patient's representative is informed of patient rights in subsection (C); and
    - b. Where patient rights are posted as required in subsection (A)(1).
- B.** An administrator shall ensure that:

1. A patient is treated with dignity, respect, and consideration;
2. A patient as not subjected to:
  - a. Abuse;
  - b. Neglect;
  - c. Exploitation;
  - d. Coercion;
  - e. Manipulation;
  - f. Sexual abuse;
  - g. Sexual assault;
  - h. Except as allowed in R9-10-1012(B), restraint or seclusion;
  - i. Retaliation for submitting a complaint to the Department or another entity; or
  - j. Misappropriation of personal and private property by an outpatient treatment center's personnel member, employee, volunteer, or student; and
3. A patient or the patient's representative:
  - a. Except in an emergency, either consents to or refuses treatment;
  - b. May refuse or withdraw consent for treatment before treatment is initiated;
  - c. Except in an emergency, is informed of alternatives to a proposed psychotropic medication or surgical procedure and associated risks and possible complications of a proposed psychotropic medication or surgical procedure;
  - d. Is informed of the following:
    - i. The outpatient treatment center's policy on health care directives, and
    - ii. The patient complaint process;
  - e. Consents to photographs of the patient before a patient is photographed, except that a patient may be photographed when admitted to an outpatient treatment center for identification and administrative purposes; and
  - f. Except as otherwise permitted by law, provides written consent to the release of information in the patient's:
    - i. Medical record, or
    - ii. Financial records.
- C. A patient has the following rights:
  1. Not to be discriminated against based on race, national origin, religion, gender, sexual orientation, age, disability, marital status, or diagnosis;
  2. To receive treatment that supports and respects the patient's individuality, choices, strengths, and abilities;
  3. To receive privacy in treatment and care for personal needs;
  4. To review, upon written request, the patient's own medical record according to A.R.S. §§ 12-2293, 12-2294, and 12-2294.01;
  5. To receive a referral to another health care institution if the outpatient treatment center is not authorized or not able to provide physical health services or behavioral health services needed by the patient;
  6. To participate or have the patient's representative participate in the development of, or decisions concerning, treatment;
  7. To participate or refuse to participate in research or experimental treatment; and
  8. To receive assistance from a family member, the patient's representative, or other individual in understanding, protecting, or exercising the patient's rights.

#### Historical Note

New Section made by final rulemaking at 14 A.A.R. 294,

effective March 8, 2008 (Supp. 08-1). Section amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-1009. Medical Records

- A. An administrator shall ensure that:
  1. A medical record is established and maintained for each patient according to A.R.S. Title 12, Chapter 13, Article 7.1;
  2. An entry in a patient's medical record is:
    - a. Recorded only by a personnel member authorized by policies and procedures to make the entry;
    - b. Dated, legible, and authenticated; and
    - c. Not changed to make the initial entry illegible;
  3. An order is:
    - a. Dated when the order is entered in the patient's medical record and includes the time of the order;
    - b. Authenticated by a medical practitioner or behavioral health professional according to policies and procedures; and
    - c. If the order is a verbal order, authenticated by the medical practitioner or behavioral health professional issuing the order;
  4. If a rubber-stamp signature or an electronic signature is used to authenticate an order, the individual whose signature the rubber-stamp signature or electronic signature represents is accountable for the use of the rubber-stamp signature or electronic signature;
  5. A patient's medical record is available to an individual:
    - a. Authorized according to policies and procedures to access the patient's medical record;
    - b. If the individual is not authorized according to policies and procedures, with the written consent of the patient or the patient's representative; or
    - c. As permitted by law;
  6. Policies and procedures include the maximum time-frame to retrieve a patient's medical record at the request of a medical practitioner, behavioral health professional, or authorized personnel member; and
  7. A patient's medical record is protected from loss, damage, or unauthorized use.
- B. If an outpatient treatment center maintains patients' medical records electronically, an administrator shall ensure that:
  1. Safeguards exist to prevent unauthorized access, and
  2. The date and time of an entry in a medical record is recorded by the computer's internal clock.
- C. An administrator shall ensure that a patient's medical record contains:
  1. Patient information that includes:
    - a. Except as specified in A.A.C. R9-6-1005, the patient's name and address;
    - b. The patient's date of birth; and
    - c. Any known allergies, including medication allergies;
  2. A diagnosis or reason for outpatient treatment center services;
  3. Documentation of general consent and, if applicable, informed consent for treatment by the patient or the patient's representative, except in an emergency;
  4. If applicable, the name and contact information of the patient's representative and:
    - a. If the patient is 18 years of age or older or an emancipated minor, the document signed by the patient consenting for the patient's representative to act on the patient's behalf; or

- b. If the patient's representative:
  - i. Has a health care power of attorney established under A.R.S. § 36-3221 or a mental health care power of attorney executed under A.R.S. § 36-3282, a copy of the health care power of attorney or mental health care power of attorney; or
  - ii. Is a legal guardian, a copy of the court order establishing guardianship;
- 5. Documentation of medical history and, if applicable, results of a physical examination;
- 6. Orders;
- 7. Assessment;
- 8. Treatment plans;
- 9. Interval notes;
- 10. Progress notes;
- 11. Documentation of outpatient treatment center services provided to the patient;
- 12. The name of each individual providing treatment or a diagnostic procedure;
- 13. Disposition of the patient upon discharge;
- 14. Documentation of the patient's follow-up instructions provided to the patient;
- 15. A discharge summary;
- 16. If applicable:
  - a. Laboratory reports,
  - b. Radiologic reports,
  - c. Sleep disorder reports,
  - d. Diagnostic reports, and
  - e. Consultation reports;
- 17. If applicable, documentation of any actions taken to control the patient's sudden, intense, or out-of-control behavior to prevent harm to the patient or another individual, other than actions taken while providing behavioral health observation/stabilization services; and
- 18. Documentation of a medication administered to the patient that includes:
  - a. The date and time of administration;
  - b. The name, strength, dosage, and route of administration;
  - c. For a medication administered for pain:
    - i. An assessment of the patient's pain before administering the medication, and
    - ii. The effect of the medication administered;
  - d. For a psychotropic medication:
    - i. An assessment of the patient's behavior before administering the psychotropic medication, and
    - ii. The effect of the psychotropic medication administered;
  - e. The identification, signature, and professional designation of the individual administering or observing the self-administration of the medication;
  - f. Any adverse reaction a patient has to the medication; and
  - g. For prepacked or sample medication provided to the patient for self-administration, the name, strength, dosage, amount, route of administration, and expiration date.

#### Historical Note

New Section made by final rulemaking at 14 A.A.R. 294, effective March 8, 2008 (Supp. 08-1). Section amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-1010. Medication Services

- A. If an outpatient treatment center provides medication administration or assistance in the self-administration of medication, an administrator shall ensure that policies and procedures for medication services:
  - 1. Include:
    - a. A process for providing information to a patient about medication prescribed for the patient including:
      - i. The prescribed medication's anticipated results,
      - ii. The prescribed medication's potential adverse reactions,
      - iii. The prescribed medication's potential side effects, and
      - iv. Potential adverse reactions that could result from not taking the medication as prescribed;
    - b. Procedures for preventing, responding to, and reporting:
      - i. A medication error,
      - ii. An adverse reaction to a medication, or
      - iii. A medication overdose;
    - c. Procedures to ensure that a patient's medication regimen is reviewed by a medical practitioner and meets the patient's needs;
    - d. Procedures for documenting medication administration and assistance in the self-administration of medication;
    - e. Procedures for assisting a patient in obtaining medication; and
    - f. If applicable, procedures for providing medication administration or assistance in the self-administration of medication off the premises; and
  - 2. Specify a process for review through the quality management program of:
    - a. A medication administration error, and
    - b. An adverse reaction to a medication.
- B. If an outpatient treatment center provides medication administration, an administrator shall ensure that:
  - 1. Policies and procedures for medication administration:
    - a. Are reviewed and approved by a medical practitioner;
    - b. Specify the individuals who may:
      - i. Order medication, and
      - ii. Administer medication;
    - c. Ensure that medication is administered to a patient only as prescribed; and
    - d. Cover the documentation of a patient's refusal to take prescribed medication in the patient's medical record;
  - 2. Verbal orders for medication services are taken by a nurse, unless otherwise provided by law; and
  - 3. A medication administered to a patient is:
    - a. Administered in compliance with an order, and
    - b. Documented in the patient's medical record.
- C. If an outpatient treatment center provides assistance in the self-administration of medication, an administrator shall ensure that:
  - 1. A patient's medication is stored by the outpatient treatment center;
  - 2. The following assistance is provided to a patient:
    - a. A reminder when it is time to take the medication;
    - b. Opening the medication container for the patient;
    - c. Observing the patient while the patient removes the medication from the container;
    - d. Verifying that the medication is taken as ordered by the patient's medical practitioner by confirming that:

- i. The patient taking the medication is the individual stated on the medication container label;
    - ii. The patient is taking the dosage of the medication stated on the medication container label; and
    - iii. The patient is taking the medication at the time stated on the medication container label; or
  - e. Observing the patient while the patient takes the medication;
  - 3. Policies and procedures for assistance in the self-administration of medication are reviewed and approved by a medical practitioner or registered nurse;
  - 4. Training for a personnel member, other than a medical practitioner or registered nurse, in assistance in the self-administration of medication:
    - a. Is provided by a medical practitioner or registered nurse or an individual trained by a medical practitioner or registered nurse; and
    - b. Includes:
      - i. A demonstration of the personnel member's skills and knowledge necessary to provide assistance in the self-administration of medication;
      - ii. Identification of medication errors and medical emergencies related to medication that require emergency medical intervention; and
      - iii. The process for notifying the appropriate entities when an emergency medical intervention is needed;
  - 5. A personnel member, other than a medical practitioner or registered nurse, completes the training in subsection (C)(4) before the personnel member provides assistance in the self-administration of medication; and
  - 6. Assistance in the self-administration of medication provided to a patient is:
    - a. In compliance with an order; and
    - b. Documented in the patient's medical record.
- D.** An administrator shall ensure that:
- 1. A current drug reference guide is available for use by personnel members;
  - 2. A current toxicology reference guide is available for use by personnel members;
  - 3. If pharmaceutical services are provided:
    - a. The pharmaceutical services are provided under the direction of a pharmacist;
    - b. The pharmaceutical services comply with ARS Title 36, Chapter 27; A.R.S. Title 32, Chapter 18; and 4 A.A.C. 23; and
    - c. A copy of the pharmacy license is provided to the Department upon request.
- E.** When medication is stored at an outpatient treatment center, an administrator shall ensure that:
- 1. Medication is stored in a separate locked room, closet, or self-contained unit used only for medication storage;
  - 2. Medication is stored according to the instructions on the medication container; and
  - 3. Policies and procedures are established, documented, and implemented for:
    - a. Receiving, storing, inventorying, tracking, dispensing, and discarding medication including expired medication;
    - b. Discarding or returning prepackaged and sample medication to the manufacturer if the manufacturer requests the discard or return of the medication;
    - c. A medication recall and notification of patients who received recalled medication; and
    - d. Storing, inventorying, and dispensing controlled substances.
- F.** An administrator shall ensure that a personnel member immediately reports a medication error or a patient's adverse reaction to a medication to the medical practitioner who ordered the medication and, if applicable, the outpatient treatment center's clinical director.
- Historical Note**
- New Section made by final rulemaking at 14 A.A.R. 294, effective March 8, 2008 (Supp. 08-1). Section amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).
- R9-10-1011. Behavioral Health Services**
- A.** An administrator of an outpatient treatment center that is authorized to provide behavioral health services shall ensure that:
- 1. The outpatient treatment center does not provide a behavioral health service the outpatient treatment center is not authorized to provide;
  - 2. The behavioral health services provided by or at the outpatient treatment center:
    - a. Are provided under the direction of a behavioral health professional; and
    - b. Comply with the requirements:
      - i. For behavioral health paraprofessionals and behavioral health technicians, in R9-10-115, and
      - ii. For an assessment, in subsection (B);
  - 3. A personnel member who provides behavioral health services is:
    - a. At least 21 years of age; or
    - b. At least 18 years of age and is licensed or certified under A.R.S. Title 32 and providing services within the personnel member's scope of practice; and
  - 4. If an outpatient treatment center provides behavioral health services to a patient who is less than 18 years of age, the owner and an employee or a volunteer comply with the fingerprint clearance card requirements in A.R.S. § 36-425.03.
- B.** An administrator of an outpatient treatment center that is authorized to provide behavioral health services shall ensure that:
- 1. Except as provided in subsection (B)(2), a behavioral health assessment for a patient is completed before treatment for the patient is initiated;
  - 2. If a behavioral health assessment that complies with the requirements in this Section is received from a behavioral health provider other than the outpatient treatment center or the outpatient treatment center has a medical record for the patient that contains an assessment that was completed within 12 months before the date of the patient's current admission:
    - a. The patient's assessment information is reviewed and updated if additional information that affects the patient's assessment is identified; and
    - b. The review and update of the patient's assessment information is documented in the patient's medical record within 48 hours after the review is completed;
  - 3. If a behavioral health assessment is conducted by a:
    - a. Behavioral health technician or a registered nurse, within 72 hours a behavioral health professional certified or licensed to provide the behavioral health services needed by the patient reviews and signs the

- behavioral health assessment to ensure that the behavioral health assessment identifies the behavioral health services needed by the patient; or
- b. Behavioral health paraprofessional, a behavioral health professional certified or licensed to provide the behavioral health services needed by the patient supervises the behavioral health paraprofessional during the completion of the behavioral health assessment and signs the behavioral health assessment to ensure that the assessment identifies the behavioral health services needed by the patient;
4. A behavioral health assessment:
    - a. Documents a patient's:
      - i. Presenting issue;
      - ii. Substance abuse history;
      - iii. Co-occurring disorder;
      - iv. Medical condition and history;
      - v. Legal history, including:
        - (1) Custody,
        - (2) Guardianship, and
        - (3) Pending litigation;
      - vi. Criminal justice record;
      - vii. Family history;
      - viii. Behavioral health treatment history; and
      - ix. Symptoms reported by the patient and referrals needed by the patient, if any;
    - b. Includes:
      - i. Recommendations for further assessment or examination of the patient's needs;
      - ii. The behavioral health services, physical health services, or ancillary services that will be provided to the patient; and
      - iii. The signature and date signed of the personnel member conducting the behavioral health assessment; and
    - c. Is documented in patient's medical record;
  5. A patient is referred to a medical practitioner if a determination is made that the patient requires immediate physical health services or the patient's behavioral health issue may be related to the patient's medical condition;
  6. A request for participation in a patient's behavioral health assessment is made to the patient or the patient's representative;
  7. An opportunity for participation in the patient's behavioral health assessment is provided to the patient or the patient's representative;
  8. Documentation of the request in subsection (B)(6) and the opportunity in subsection (B)(7) is in the patient's medical record;
  9. A patient's behavioral health assessment information is documented in the medical record within 48 hours after completing the assessment;
  10. If information in subsection (B)(4)(a) is obtained about a patient after the patient's behavioral health assessment is completed, an interval note, including the information, is documented in the patient's medical record within 48 hours after the information is obtained;
  11. Counseling is:
    - a. Offered as described in the outpatient treatment center's scope of services,
    - b. Provided according to the frequency and number of hours identified in the patient's assessment, and
    - c. Provided by a behavioral health professional or a behavioral health technician;
  12. A personnel member providing counseling that addresses a specific type of behavioral health issue has the skills and knowledge necessary to provide the counseling that addresses the specific type of behavioral health issue; and
  13. Each counseling session is documented in the patient's medical record to include:
    - a. The date of the counseling session;
    - b. The amount of time spent in the counseling session;
    - c. Whether the counseling was individual counseling, family counseling, or group counseling;
    - d. The treatment goals addressed in the counseling session; and
    - e. The signature of the personnel member who provided the counseling and the date signed.
- C. An administrator of an outpatient treatment center authorized to provide behavioral health services may request to provide any of the following to individuals required to attend by a referring court:
    1. DUI screening,
    2. DUI education,
    3. DUI treatment, or
    4. Misdemeanor domestic violence offender treatment.
  - D. An administrator of an outpatient treatment center authorized to provide the services in subsection (C):
    1. Shall comply with the requirements for the specific service in 9 A.A.C. 20, and
    2. May have a behavioral health technician who has the appropriate skills and knowledge established in policies and procedures provide the services.

#### Historical Note

Adopted as an emergency effective November 17, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Former Section R9-10-1011 adopted as an emergency now adopted and amended as a permanent rule effective February 15, 1984 (Supp. 84-1). Repealed by summary action, interim effective date July 21, 1995 (Supp. 95-3). The proposed summary action repealing R9-10-1011 was remanded by the Governor's Regulatory Review Council which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 97-1). Section repealed by final rulemaking at 5 A.A.R. 1222, effective April 5, 1999 (Supp. 99-2). New Section made by final rulemaking at 14 A.A.R. 294, effective March 8, 2008 (Supp. 08-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-1012. Behavioral Health Observation/Stabilization Services

- A. An administrator of an outpatient treatment center that is authorized to provide behavioral health observation/stabilization services shall ensure that:
  1. Behavioral health observation/stabilization services are available 24 hours a day, every calendar day;
  2. Behavioral health observation/stabilization services are provided in a designated area that:
    - a. Is used exclusively for behavioral health observation/stabilization services;
    - b. Has the space for a patient to receive privacy in treatment and care for personal needs; and
    - c. For every 15 observation chairs or less, has at least one bathroom that contains:
      - i. A working sink with running water,
      - ii. A working toilet that flushes and has a seat,
      - iii. Toilet tissue,



- iv. Soap for hand washing;
  - v. Paper towels or a mechanical air hand dryer;
  - vi. Lighting; and
  - vii. A means of ventilation;
3. If the outpatient treatment center is authorized to provide behavioral health observation/stabilization services to individuals under 18 years of age:
    - a. There is a separate designated area for providing behavioral health observation/stabilization services to individuals under 18 years of age that:
      - i. Meets the requirements in subsection (B)(2), and
      - ii. Has floor to ceiling walls that separate the designated area from other areas of the outpatient treatment center;
    - b. A registered nurse is present in the separate designated area; and
    - c. A patient under 18 years of age does not share any space, participate in any activity or treatment, or have verbal or visual interaction with a patient 18 years of age or older;
  4. A medical practitioner is available;
  5. If the medical practitioner present at the outpatient treatment center is a registered nurse practitioner or a physician assistant, a physician is on-call;
  6. A registered nurse is present and provides direction for behavioral health observation/stabilization services in the designated area;
  7. A nurse monitors each patient at the intervals determined according to subsection (A)(12) and documents the monitoring in the patient's medical record;
  8. An individual who arrives at the designated area for behavioral health observation/stabilization services in the outpatient treatment center is screened within 30 minutes after entering the designated area to determine whether the individual is in need of immediate physical health services;
  9. If a screening indicates that an individual needs immediate physical health services that the outpatient treatment center is:
    - a. Able to provide according to the outpatient treatment center's scope of services, the individual is examined by a medical practitioner within 30 minutes after being screened; or
    - b. Not able to provide, the individual is transferred to a health care institution capable of meeting the individual's immediate physical health needs;
  10. If a screening indicates that an individual needs behavioral health observation/stabilization services and the outpatient treatment center has the capabilities to provide the behavioral health observation/stabilization services, the individual is admitted to the designated area for behavioral health observation/stabilization services and may remain in the designated area and receive observation/stabilization services for up to 23 hours and 59 minutes;
  11. Before a patient is discharged from the designated area for behavioral health observation/stabilization services, a medical practitioner determines whether the patient will be:
    - a. If the behavioral health observation/stabilization services are provided in a health care institution that also provides inpatient services and is capable of meeting the patient's needs, admitted to the health care institution as an inpatient;
    - b. Transferred to another health care institution capable of meeting the patient's needs;
    - c. Provided a referral to another entity capable of meeting the patient's needs; or
    - d. Discharged and provided patient follow-up instructions;
  12. When a patient is admitted to a designated area for behavioral health observation/stabilization services, an assessment of the patient includes the interval for monitoring the patient based on the patient's medical condition, behavior, suspected drug or alcohol abuse, and medication status to ensure the health and safety of the patient;
  13. If a patient is not being admitted as an inpatient to a health care institution, before discharging the patient from a designated area for behavioral health observation/stabilization services, a personnel member:
    - a. Identifies the specific needs of the patient after discharge necessary to assist the patient to function independently;
    - b. Identifies any resources, including family members, community social services, peer support services, and Regional Behavioral Health Agency staff, that may be available to assist the patient; and
    - c. Documents the information in subsection (A)(13)(a) and the resources in subsection (A)(13)(b) in the patient's medical record;
  14. When a patient is discharged from a designated area for behavioral health observation/stabilization services, a personnel member:
    - a. Provides the patient with discharge information that includes:
      - i. The identified specific needs of the patient after discharge, and
      - ii. Resources that may be available for the patient; and
    - b. Contacts any resources identified as required in subsection (A)(13)(b);
  15. Except as provided in subsection (A)(16), a patient is not re-admitted to the outpatient treatment center for behavioral health observation/stabilization services within two hours after the patient's discharge from a designated area for behavioral health observation/stabilization services;
  16. A patient may be re-admitted to the outpatient treatment center for behavioral health observation/stabilization services within two hours after the patient's discharge if:
    - a. It is at least one hour since the time of the patient's discharge;
    - b. A law enforcement officer or the patient's case manager accompanies the patient to the outpatient treatment center;
    - c. Based on a screening of the patient, it is determined that re-admission for behavioral health observation/stabilization is necessary for the patient; and
    - d. The name of the law enforcement officer or the patient's case manager and the reasons for the determination in subsection (A)(16)(c) are documented in the patient's medical record;
  17. A patient admitted for behavioral health observation/stabilization services is provided:
    - a. An observation chair; or
    - b. A separate piece of equipment for the patient to use to sit or recline that:
      - i. Is at least 12 inches from the floor; and
      - ii. Has sufficient space around the piece of equipment to allow a personnel member to provide behavioral health services and physical health services, including emergency services, to the patient;

18. If an individual is not admitted for behavioral health observation/stabilization services because there is not an observation chair available for the individual's use, a personnel member provides support to the individual to access the services or resources necessary for the individual's health and safety, which may include:
    - a. Admitting the individual to the outpatient treatment center to provide behavioral health services other than behavioral health observation/stabilization services;
    - b. Establishing a method to notify the individual when there is an observation chair available;
    - c. Referring or providing transportation to the individual to another health care institution;
    - d. Assisting the individual to contact the individual's support system; and
    - e. If the individual is enrolled with a Regional Behavioral Health Authority, contacting the appropriate person to request assistance for the individual;
  19. Personnel members establish a log of individuals who were not admitted because there was not an observation chair available and document the individual's name, actions taken to provide support to the individual to access the services or resources necessary for the individual's health and safety, and date and time the actions were taken;
  20. The log required in subsection (A)(19) is maintained for at least 12 months after the date of documentation in the log;
  21. An observation chair or, as provided in subsection (A)(17)(b), a piece of equipment used by a patient to sit or recline is visible to a personnel member;
  22. Except as provided in subsection (A)(23), a patient admitted to receive behavioral health observation/stabilization services is visible to a personnel member;
  23. A patient admitted to receive behavioral health observation/stabilization services may use the bathroom and not be visible to a personnel member, if the personnel member:
    - a. Determines that the patient is capable of using the bathroom unsupervised,
    - b. Is aware of the patient's location, and
    - c. Is able to intervene in the patient's actions to ensure the patient's health and safety; and
  24. An observation chair:
    - a. Effective until July 1, 2015, has space around the observation chair that allows a personnel member to provide behavioral health services and physical health services, including emergency services, to a patient in the observation chair; and
    - b. Effective on July 1, 2015, has at least three feet of clear floor space:
      - i. On at least two sides of the observation chair, and
      - ii. Between the observation chair and any other observation chair.
- B.** An administrator of an outpatient treatment center that is authorized to provide behavioral health observation/stabilization services shall:
1. Have a room used for seclusion that complies with requirements for seclusion rooms in R9-10-316, and
  2. Comply with the requirements for restraint and seclusion in R9-10-316.
- C.** An administrator of an outpatient treatment center that is authorized to provide behavioral health observation/stabilization services shall ensure that:
1. Policies and procedures are established, documented, and implemented to protect the health and safety of a patient that:
    - a. Cover the process for:
      - i. Evaluating a patient previously admitted to the designated area to determine whether the patient is ready for admission to an inpatient setting or discharge, including when to implement the process;
      - ii. Contacting other health care institutions that provide behavioral health observation/stabilization services to determine if the patient could be admitted for behavioral health observation/stabilization services in another health care institution, including when to implement the process; and
      - iii. Ensuring that sufficient personnel members, space, and equipment are available to provide behavioral health observation/stabilization services to patients admitted to receive behavioral health observation/stabilization services; and
    - b. Establish a maximum capacity of the number of patients for whom the outpatient treatment center is capable of providing behavioral health observation/stabilization services;
  2. The outpatient treatment center does not:
    - a. Exceed the maximum capacity established by the outpatient treatment center in subsection (C)(1)(b); or
    - b. Admit an individual if the outpatient treatment center does not have personnel members, space, and equipment available to provide behavioral health observation/stabilization services to the individual; and
  3. Effective on July 1, 2015:
    - a. If an admission of an individual causes the outpatient treatment center to exceed the outpatient treatment center's licensed occupancy, the individual is only admitted for behavioral health observation/stabilization services after:
      - (i.) A behavioral health professional reviews the individual's screening and determines the admission is an emergency; and
      - (ii.) Documents the determination in the individual's medical record; and
    - b. The outpatient treatment center's quality management program's plan, required in R9-10-1004(1), includes a method to identify and document each occurrence of exceeding licensed occupancy, to evaluate the occurrences of exceeding licensed occupancy, and to review the actions taken to reduce future occurrences of exceeding licensed occupancy.

#### Historical Note

Adopted as an emergency effective November 17, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Former Section R9-10-1012 adopted as an emergency now adopted and amended as a permanent rule effective February 15, 1984 (Supp. 84-1). Repealed by summary action, interim effective date July 21, 1995 (Supp. 95-3). The proposed summary action repealing R9-10-1012 was remanded by the Governor's Regulatory Review Council which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 97-1). Section repealed by final rulemaking at 5 A.A.R. 1222, effective April 5, 1999 (Supp. 99-2). New Section made

by final rulemaking at 14 A.A.R. 294, effective March 8, 2008 (Supp. 08-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### **R9-10-1013. Court-ordered Evaluation**

An administrator of an outpatient treatment center that is authorized to provide court-ordered evaluation shall comply with the requirements for court-ordered evaluation in A.R.S. § 36-425.03.

##### **Historical Note**

Adopted as an emergency effective November 17, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Former Section R9-10-1013 adopted as an emergency now adopted and amended as a permanent rule effective February 15, 1984 (Supp. 84-1). Repealed by summary action, interim effective date July 21, 1995 (Supp. 95-3). The proposed summary action repealing R9-10-1013 was remanded by the Governor's Regulatory Review Council which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 97-1). Section repealed by final rulemaking at 5 A.A.R. 1222, effective April 5, 1999 (Supp. 99-2). New Section made by final rulemaking at 14 A.A.R. 294, effective March 8, 2008 (Supp. 08-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### **R9-10-1014. Court-ordered Treatment**

An administrator of an outpatient treatment center that is authorized to provide court-ordered treatment shall comply with the requirements for court-ordered treatment in A.R.S. Title 36, Chapter 5, Article 4.

##### **Historical Note**

Adopted as an emergency effective November 17, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Former Section R9-10-1014 adopted as an emergency now adopted and amended as a permanent rule effective February 15, 1984 (Supp. 84-1). Repealed by summary action, interim effective date July 21, 1995 (Supp. 95-3). The proposed summary action repealing R9-10-1014 was remanded by the Governor's Regulatory Review Council which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 97-1). Section repealed by final rulemaking at 5 A.A.R. 1222, effective April 5, 1999 (Supp. 99-2). New Section made by final rulemaking at 14 A.A.R. 294, effective March 8, 2008 (Supp. 08-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### **R9-10-1015. Clinical Laboratory Services**

An administrator of an outpatient treatment center that is authorized to provide clinical laboratory services shall ensure that:

1. If clinical laboratory services are provided on the premises or at another location, the clinical laboratory services are provided by a laboratory that holds a certificate of accreditation, certificate of compliance, or certificate of waiver issued by the U.S. Department of Health and Human Services under the Clinical Laboratory Improve-

- ment Act of 1967, 42 U.S.C. 263a, as amended by Public Law 100-578, October 31, 1988; and
2. A clinical laboratory test result is documented in a patient's medical record including:
  - a. The name of the clinical laboratory test;
  - b. The patient's name;
  - c. The date of the clinical laboratory test;
  - d. The results of the clinical laboratory test; and
  - e. If applicable, any adverse reaction related to or as a result of the clinical laboratory test.

##### **Historical Note**

Adopted as an emergency effective November 17, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Former Section R9-10-1015 adopted as an emergency now adopted and amended as a permanent rule effective February 15, 1984 (Supp. 84-1). Repealed by summary action, interim effective date July 21, 1995 (Supp. 95-3). The proposed summary action repealing R9-10-1015 was remanded by the Governor's Regulatory Review Council which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 97-1). Section repealed by final rulemaking at 5 A.A.R. 1222, effective April 5, 1999 (Supp. 99-2). New Section made by final rulemaking at 14 A.A.R. 294, effective March 8, 2008 (Supp. 08-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### **R9-10-1016. Crisis Services**

- A. An administrator of an outpatient treatment center that is authorized to provide crisis services shall comply with the requirements for behavioral health services in R9-10-1011.
- B. An administrator of an outpatient treatment center that is authorized to provide crisis services shall ensure that:
  1. Crisis services are available during clinical hours of operation;
  2. A behavioral health technician, qualified to provide crisis services according to the outpatient treatment center's policies and procedures, is present in the outpatient treatment center during clinical hours of operation; and
  3. The following individuals, qualified to provide crisis services according to policies and procedures, are available during clinical hours of operation:
    - a. A behavioral health professional,
    - b. A medical practitioner, and
    - c. A registered nurse.

##### **Historical Note**

Adopted as an emergency effective November 17, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Former Section R9-10-1016 adopted as an emergency now adopted and amended as a permanent rule effective February 15, 1984 (Supp. 84-1). Repealed by summary action, interim effective date July 21, 1995 (Supp. 95-3). The proposed summary action repealing R9-10-1016 was remanded by the Governor's Regulatory Review Council which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 97-1). Section repealed by final rulemaking at 5 A.A.R. 1222, effective April 5, 1999 (Supp. 99-2). New Section made by final rulemaking at 14 A.A.R. 294, effective March 8, 2008 (Supp. 08-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective Octo-

ber 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### **R9-10-1017. Diagnostic Imaging Services**

An administrator of an outpatient treatment center that is authorized to provide diagnostic imaging services shall:

1. Designate an individual to provide direction for diagnostic imaging services who is a:
  - a. Radiologic technologist certified under A.R.S. Title 32, Chapter 28, Article 2 who has at least 12 months experience in an outpatient treatment center;
  - b. Physician; or
  - c. Radiologist; and
2. Ensure that:
  - a. Diagnostic imaging services are provided in compliance with A.R.S. Title 30, Chapter 4 and 12 A.A.C. 1;
  - b. A copy of a certificate documenting compliance with subsection (2)(a) is maintained;
  - c. Diagnostic imaging services are provided to a patient according to an order that includes:
    - i. The patient's name,
    - ii. The name of the ordering individual,
    - iii. The diagnostic imaging procedure ordered, and
    - iv. The reason for the diagnostic imaging procedure;
  - d. A physician or radiologist interprets the diagnostic image; and
  - e. A diagnostic imaging patient report is completed that includes:
    - i. The patient's name,
    - ii. The date of the procedure, and
    - iii. A physician's or radiologist's interpretation of the diagnostic image.

#### **Historical Note**

Adopted as an emergency effective November 17, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Former Section R9-10-1017 adopted as an emergency now adopted and amended as a permanent rule effective February 15, 1984 (Supp. 84-1). Repealed by summary action, interim effective date July 21, 1995 (Supp. 95-3). The proposed summary action repealing R9-10-1017 was remanded by the Governor's Regulatory Review Council which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 97-1). Section repealed by final rulemaking at 5 A.A.R. 1222, effective April 5, 1999 (Supp. 99-2). New Section made by final rulemaking at 14 A.A.R. 294, effective March 8, 2008 (Supp. 08-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### **R9-10-1018. Dialysis Services**

**A.** In addition to the definitions in A.R.S. § 36-401, R9-10-101, and R9-10-1001, the following definitions apply in this Section:

1. "Caregiver" means an individual designated by a patient or a patient's representative to perform self-dialysis in the patient's stead.
2. "Chief clinical officer" means a physician appointed to provide direction for dialysis services provided by an outpatient treatment center.

3. "Long-term care plan" means a written plan of action for a patient with kidney failure that is developed to achieve long-term optimum patient outcome.
4. "Modality" means a method of treatment for kidney failure, including transplant, hemodialysis, and peritoneal dialysis.
5. "Nutritional assessment" means an analysis of a patient's weight, height, lifestyle, medication, mobility, food and fluid intake, and diagnostic procedures to identify conditions and behaviors that indicate whether the patient's nutritional needs are being met.
6. "Patient care plan" means a written document for a patient receiving dialysis that identifies the patient's needs for medical services, nursing services, and health-related services and the process by which the medical services, nursing services, or health-related services will be provided to the patient.
7. "Peritoneal dialysis" means the process of using the peritoneal cavity for removing waste products by fluid exchange.
8. "Psychosocial evaluation" means an analysis of an individual's mental and social conditions to determine the individual's need for social work services.
9. "Reprocessing" means cleaning and sterilizing a dialyzer previously used by a patient so that the dialyzer can be reused by the same patient.
10. "Self-dialysis" means dialysis performed by a patient or a caregiver on the patient's body.
11. "Social worker" means an individual licensed according to A.R.S. Title 32, Chapter 33 to engage in the "practice of social work" as defined in A.R.S. § 32-3251.
12. "Stable means" that a patient's blood pressure, temperature, pulse, respirations, and diagnostic procedure results are within medically recognized acceptable ranges or consistent with the patient's usual medical condition so that medical intervention is not indicated.
13. "Transplant surgeon" means a physician who:
  - a. Is board eligible or board certified in general surgery or urology by a professional credentialing board, and
  - b. Has at least 12 months of training or experience performing renal transplants and providing care for patients with renal transplants.

**B.** A governing authority of an outpatient treatment center that is authorized to provide dialysis services shall:

1. Ensure that the administrator appointed as required in R9-10-1003(B)(3) has at least 12 months of experience in an outpatient treatment center providing dialysis services; and
2. Appoint a chief clinical officer to direct the dialysis services provided by or at the outpatient treatment center who is a physician who:
  - a. Is board eligible or board certified in internal medicine or pediatrics by a professional credentialing board, and
  - b. Has at least 12 months of experience or training in providing dialysis services.

**C.** An administrator of an outpatient treatment center that is authorized to provide dialysis services shall ensure that:

1. In addition to the policies and procedures required in R9-10-1003(D), policies and procedures are established, documented, and implemented to protect the health and safety of a patient that cover:
  - a. Long-term care plans and patient care plans,
  - b. Assigning a patient an identification number,

- c. Personnel members' response to a patient's adverse reaction during dialysis, and
    - d. Personnel members' response to an equipment malfunction during dialysis;
  - 2. A personnel member complies with the requirements in A.R.S. § 36-423 and R9-10-114 for hemodialysis technicians and hemodialysis technician trainees, if applicable;
  - 3. A personnel member completes basic cardiopulmonary resuscitation training specific to the age of the patients receiving dialysis from the outpatient treatment center:
    - a. Before providing dialysis services, and
    - b. At least once every 12 months after the initial date of employment or volunteer service;
  - 4. A personnel member wears a name badge that displays the individual's first name, job title, and professional license or certification; and
  - 5. At least one registered nurse or medical practitioner is on the premises while a patient receiving dialysis services is on the premises.
- D.** An administrator of an outpatient treatment center that is authorized to provide dialysis services shall ensure that:
- 1. The premises of the outpatient treatment center where dialysis services are provided complies with the applicable physical plant health and safety codes and standards for outpatient treatment centers providing dialysis services, incorporated by reference in A.A.C. R9-1-412, that were in effect on the date listed on the building permit or zoning clearance submitted, as required by R9-10-104, as part of the application for approval of the architectural plans and specifications submitted before initial approval of the inclusion of dialysis services in the outpatient treatment center's scope of services;
  - 2. Before a modification of the premises of an outpatient treatment center where dialysis services are provided is made, an application for approval of the architectural plans and specifications of the outpatient treatment center required in R9-10-104(A):
    - a. Is submitted to the Department; and
    - b. Demonstrates compliance with the applicable physical plant health and safety codes and standards for outpatient treatment centers providing dialysis services, incorporated by reference in A.A.C. R9-1-412, in effect on the date:
      - i. Listed on the building permit or zoning clearance submitted as part of the application for approval of the architectural plans and specifications for the modification, or
      - ii. The application for approval of the architectural plans and specifications of the modification of the outpatient treatment center required in R9-10-104(A) is submitted to the Department; and
  - 3. A modification of the outpatient treatment center complies with applicable physical plant health and safety codes and standards for outpatient treatment centers providing dialysis services, incorporated by reference in A.A.C. R9-1-412 in effect on the date:
    - a. Listed on the building permit or zoning clearance submitted as part of the application for approval of the architectural plans and specifications for the modification, or
    - b. The application for approval of the architectural plans and specifications required in R9-10-104(A) is submitted to the Department.
- E.** An administrator of an outpatient treatment center that is authorized to provide dialysis services shall ensure that for a patient receiving dialysis services:
- 1. The dialysis services provided to the patient meet the needs of the patient;
  - 2. A physician:
    - a. Performs a medical history and physical examination on the patient within 30 calendar days before admission or within 48 hours after admission, and
    - b. Documents the medical history and physical examination in the patient's medical record within 48 hours after admission;
  - 3. If the patient's medical history and physical examination required in subsection (E)(2) is not performed by the patient's nephrologist, the patient's nephrologist, within 30 calendar days after the date of the medical history and physical examination:
    - a. Reviews and authenticates the patient's medical history and physical examination, documents concurrence with the medical history and physical examination, and includes information specific to nephrology; or
    - b. Performs a medical history and physical examination that includes information specific to nephrology;
  - 4. The patient's nephrologist or the nephrologist's designee:
    - a. Performs a medical history and physical examination on the patient at least once every 12 months after the date of the patient's admission to the outpatient treatment center, and
    - b. Documents monthly notes related to the patient's progress in the patient's medical record;
  - 5. A registered nurse responsible for the nursing services provided to the patient receiving dialysis services:
    - a. Reviews with the patient the results of any diagnostic tests performed on the patient;
    - b. Assesses the patient's medical condition before the patient begins receiving hemodialysis and after the patient has received hemodialysis;
    - c. If the patient returns to another health care institution after receiving dialysis services at the outpatient treatment center, provides an oral or written notice of information related to the patient's medical condition to the registered nurse responsible for the nursing services provided to the patient at the health care institution or, if there is not a registered nurse responsible, the individual responsible for the medical services, nursing services, or health-related services provided to the patient at the health care institution;
    - d. Informs the patient's nephrologist of any changes in the patient's medical condition or needs; and
    - e. Documents in the patient's medical record:
      - i. Any notice provided as required in subsection (E)(5)(c), and
      - ii. Monthly notes related to the patient's progress;
  - 6. If the patient is not stable, before dialysis is provided to the patient, a nephrologist is notified of the patient's medical condition and dialysis is not provided until the nephrologist provides direction;
  - 7. The patient:
    - a. Is under the care of a nephrologist;
    - b. Is assigned a patient identification number according to the policy and procedure in subsection (C)(1)(b);
    - c. Is identified by a personnel member before beginning dialysis;

- d. Receives the dialysis services ordered for the patient by a medical practitioner;
  - e. Is monitored by a personnel member while receiving dialysis at least once every 30 minutes; and
  - f. If the outpatient treatment center reprocesses and reuses dialyzers, is informed that the outpatient treatment center reprocesses and reuses dialyzers before beginning hemodialysis;
8. Equipment used for hemodialysis is inspected and tested according to the manufacturer's recommendations or the outpatient treatment center's policies and procedures before being used to provide hemodialysis to a patient;
  9. The equipment inspection and testing required in subsection (E)(8) is documented in the patient's medical record;
  10. Supplies and equipment used for dialysis services for the patient are used, stored, and discarded according to manufacturer's recommendations;
  11. If hemodialysis is provided to the patient, a personnel member:
    - a. Inspects the dialyzer before use to ensure that the:
      - i. External surface of the dialyzer is clean;
      - ii. Dialyzer label is intact and legible;
      - iii. Dialyzer, blood port, and dialysate port are free from leaks and cracks or other structural damage; and
      - iv. Dialyzer is free of visible blood and other foreign material;
    - b. Verifies the order for the dialyzer to ensure the correct dialyzer is used for the correct patient;
    - c. Verifies the duration of dialyzer storage based on the type of germicide used or method of sterilization or disinfection used;
    - d. If the dialyzer has been reprocessed and is being reused, verifies that the label on the dialyzer includes:
      - i. The patient's name and the patient's identification number,
      - ii. The number of times the dialyzer has been used in patient treatments,
      - iii. The date of the last use of the dialyzer by the patient, and
      - iv. The date of the last reprocessing of the dialyzer;
    - e. If the patient's name is similar to the name of another patient receiving dialysis in the same outpatient treatment center, informs other personnel members, employees, and volunteers, of the similar names to ensure that the name or other identifying information on the label corresponds to the correct patient; and
    - f. Ensures that a patient's vascular access is visible to a personnel member during dialysis;
  12. A patient receiving dialysis is visible to a nurse at a location used by nurses to coordinate patients and treatment;
  13. If the patient has an adverse reaction during dialysis, a personnel member responds by implementing the policy and procedure required in subsection (C)(1)(c);
  14. If the equipment used during the patient's dialysis malfunctions, a personnel member responds by implementing the policy and procedure required in subsection (C)(1)(d); and
  15. After a patient's discharge from an outpatient treatment center, the nephrologist responsible for the dialysis services provided to the patient documents the patient's discharge in the patient's medical record within 30 calendar days after the patient's discharge and includes:
    - a. A description of the patient's medical condition and the dialysis services provided to the patient, and
    - b. The signature of the nephrologist.
- F.** If an outpatient treatment center provides support for self-dialysis services, an administrator shall ensure that:
1. A patient or the patient's caregiver is:
    - a. Instructed to use the equipment to perform self-dialysis by a personnel member trained to provide the instruction, and
    - b. Monitored in the patient's home to assess the patient's or patient caregiver's ability to use the equipment to perform self-dialysis;
  2. Instruction provided to a patient as required in subsection (F)(1)(a) and monitoring in the patient's home as required in subsection (F)(1)(b) is documented in the patient's medical record;
  3. All supplies for self-dialysis necessary to meet the needs of the patient are provided to the patient;
  4. All equipment necessary to meet the needs of the patient's self-dialysis is provided for the patient and maintained by the outpatient treatment center according to the manufacturer's recommendations;
  5. The water used for hemodialysis is tested and treated according to the requirements in subsection (N);
  6. Documentation of the self-dialysis maintained by the patient or the patient's caregiver is:
    - a. Reviewed to ensure that the patient is receiving continuity of care, and
    - b. Placed in the patient's medical record; and
  7. If a patient uses self-dialysis and self-administers medication:
    - a. The medical practitioner responsible for the dialysis services provided to the patient reviews the patient's diagnostic laboratory tests;
    - b. The patient and the patient's caregiver are informed of any potential:
      - i. Side effects of the medication; and
      - ii. Hazard to a child having access to the medication and, if applicable, a syringe used to inject the medication; and
    - c. The patient or the patient's caregiver is:
      - i. Taught the route and technique of administration and is able to administer the medication, including injecting the medication;
      - ii. Taught and able to perform sterile techniques if the patient or the patient's caregiver will be injecting the medication;
      - iii. Provided with instructions for the administration of the medication, including the specific route and technique the patient or the patient's caregiver has been taught to use;
      - iv. Able to read and understand the directions for using the medication;
      - v. Taught and able to self-monitor the patient's blood pressure; and
      - vi. Informed how to store the medication according to the manufacturer's instructions.
- G.** An administrator of an outpatient treatment center that is authorized to provide dialysis services shall ensure that a social worker is employed by the outpatient treatment center to meet the needs of a patient receiving dialysis services including:
1. Conducting an initial psychosocial evaluation of the patient within 30 calendar days after the patient's admission to the outpatient treatment center;

2. Participating in reviewing the patient's need for social work services;
  3. Recommending changes in treatment based on the patient's psychosocial evaluation;
  4. Assisting the patient and the patient's representative in obtaining and understanding information for making decisions about the medical services provided to the patient;
  5. Identifying community agencies and resources and assisting the patient and the patient's representative to utilize the community agencies and resources;
  6. Documenting monthly notes related to the patient's progress in the patient's medical record; and
  7. Conducting a follow-up psychosocial evaluation of the patient at least once every 12 months after the date of the patient's admission to the outpatient treatment center.
- H.** An administrator of an outpatient treatment center that is authorized to provide dialysis services shall ensure that a registered dietitian is employed by the outpatient treatment center to assist a patient receiving dialysis services to meet the patient's nutritional and dietetic needs including:
1. Conducting an initial nutritional assessment of the patient within 30 calendar days after the patient's admission to the outpatient treatment center;
  2. Consulting with the patient's nephrologist and recommending a diet to meet the patient's nutritional needs;
  3. Providing advice to the patient and the patient's representative regarding a diet prescribed by the patient's nephrologist;
  4. Monitoring the patient's adherence and response to a prescribed diet;
  5. Reviewing with the patient any diagnostic test performed on the patient that is related to the patient's nutritional or dietetic needs;
  6. Documenting monthly notes related to the patient's progress in the patient's medical record; and
  7. Conducting a follow-up nutritional assessment of the patient at least once every 12 months after the date of the patient's admission to the outpatient treatment center.
- I.** An administrator of an outpatient treatment center that is authorized to provide dialysis services shall ensure that a long-term care plan for each patient:
1. Is developed by a team that includes at least:
    - a. The chief clinical officer of the outpatient treatment center;
    - b. If the chief clinical officer is not a nephrologist, the patient's nephrologist;
    - c. A transplant surgeon or the transplant surgeon's designee;
    - d. A registered nurse responsible for nursing services provided to the patient;
    - e. A social worker;
    - f. A registered dietitian; and
    - g. The patient or patient's representative, if the patient or patient's representative chooses to participate in the development of the long-term care plan;
  2. Identifies the modality of treatment and dialysis services to be provided to the patient;
  3. Is reviewed and approved by the chief clinical officer;
  4. Is signed and dated by each personnel member participating in the development of the long-term care plan;
  5. Includes documentation signed by the patient or the patient's representative that the patient or the patient's representative was provided an opportunity to participate in the development of the long-term care plan;
6. Is signed and dated by the patient or the patient's representative; and
  7. Is reviewed at least once every 12 months by the team in subsection (I)(1) and updated according to the patient's needs.
- J.** An administrator of an outpatient treatment center that is authorized to provide dialysis services shall ensure that a patient care plan for each patient:
1. Is developed by a team that includes at least:
    - a. The patient's nephrologist;
    - b. A registered nurse responsible for nursing services provided to the patient;
    - c. A social worker;
    - d. A registered dietitian; and
    - e. The patient or the patient's representative, if the patient or patient's representative chooses to participate in the development of the patient care plan;
  2. Includes an assessment of the patient's need for dialysis services;
  3. Identifies treatment and treatment goals;
  4. Is signed and dated by each personnel member participating in the development of the patient care plan;
  5. Includes documentation signed by the patient or the patient's representative that the patient or the patient's representative was provided an opportunity to participate in the development of the patient care plan;
  6. Is signed and dated by the patient or the patient's representative;
  7. Is implemented;
  8. Is evaluated by:
    - a. The registered nurse responsible for the dialysis services provided to the patient;
    - b. The registered dietitian providing services to the patient related to the patient's nutritional or dietetic needs; and
    - c. The social worker providing services to the patient related to the patient's psychosocial needs;
  9. Includes documentation of interventions, resolutions, and outcomes related to treatment goals; and
  10. Is reviewed and updated according to the needs of the patient:
    - a. At least once every six months for a patient whose medical condition is stable; and
    - b. At least once every 30 calendar days for a patient whose medical condition is not stable.
- K.** In addition to the requirements in R9-10-1009(C), an administrator of an outpatient treatment center that is authorized to provide dialysis services shall ensure that a medical record for each patient contains:
1. An annual medical history;
  2. An annual physical examination;
  3. Monthly notes related to the patient's progress by a medical practitioner, registered dietitian, social worker, and registered nurse;
  4. If applicable, documentation of:
    - a. The equipment inspection and testing required in subsection (E)(9), and
    - b. The self-dialysis required in subsection (F)(2); and
  5. If applicable, documentation of the patient's discharge.
- L.** For a patient who received dialysis services, an administrator shall ensure that after the patient's discharge from an outpatient treatment center that is authorized to provide dialysis services, the nephrologist responsible for the dialysis services provided to the patient documents the patient's discharge in the patient's medical record within 30 calendar days after the patient's discharge and includes:

1. A description of the patient's medical condition and the dialysis services provided to the patient, and
  2. The signature of the nephrologist.
- M.** If an outpatient treatment center reuses dialyzers or other dialysis supplies, an administrator shall ensure that the outpatient treatment center complies with the guidelines adopted by the Association for the Advancement of Medical Instrumentation in Reuse of Hemodialyzers, ANSI/AAMI RD47:2002 & RD47:2002/A1:2003, incorporated by reference, on file with the Department, and including no future editions or amendments. Copies may be purchased from the Association for the Advancement of Medical Instrumentation, 1110 N. Glebe Road, Suite 220, Arlington, VA 22201-4795.
- N.** A chief clinical officer shall ensure that the quality of water used in dialysis conforms to the guidelines adopted by the Association for the Advancement of Medical Instrumentation in Hemodialysis systems, ANSI/AAMI RD5:2003, incorporated by reference, on file with the Department, and including no future editions or amendments. Copies may be purchased from the Association for the Advancement of Medical Instrumentation, 1110 N. Glebe Road, Suite 220, Arlington, VA 22201-4795.

#### Historical Note

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#### R9-10-1019. Emergency Room Services

An administrator of an outpatient treatment center that is authorized to provide emergency room services shall ensure that:

1. Emergency room services are:
  - a. Available on the premises:
    - i. At all times, and
    - ii. To stabilize an individual's emergency medical condition; and
  - b. Provided:
    - i. In a designated area, and
    - ii. Under the direction of a physician;
2. Clinical laboratory services are available on the premises;
3. Diagnostic imaging services are available on the premises;
4. An area designated for emergency room services complies with the physical plant codes and standards for a freestanding emergency care facility in R9-1-412;
5. Policies and procedures are established, documented, and implemented to protect the health and safety of a patient that specify requirements for the use of a seclusion room;
6. A physician is present in an area designated for emergency room services;
7. A registered nurse is present in an area designated for emergency room services and provides direction for nursing services in the designated area;

8. The outpatient treatment center has a documented transfer agreement with a general hospital;
9. Emergency room services are provided to an individual, including a woman in active labor, requesting medical services in an emergency;
10. If emergency room services cannot be provided at the outpatient treatment center, measures and procedures are implemented to minimize the risk to the patient until the patient is transferred to the general hospital with which the outpatient treatment center has a transfer agreement as required in subsection (8);
11. There is a chronological log of emergency room services provided to a patient that includes:
  - a. The patient's name;
  - b. The date, time, and mode of arrival; and
  - c. The disposition of the patient, including discharge or transfer; and
12. The chronological log required in subsection (12) is maintained:
  - a. In the designated area for emergency room services for at least 12 months after the date the emergency room services were provided; and
  - b. By the outpatient treatment center for a total of at least 24 months after the date the emergency room services were provided.

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#### R9-10-1020. Opioid Treatment Services

**A.** A governing authority of an outpatient treatment center that is authorized to provide opioid treatment services shall:

1. Ensure that the outpatient treatment center obtains certification by the Substance Abuse and Mental Health Services Administration before providing opioid treatment,
2. Maintain a current Substance Abuse and Mental Health Services Administration certificate for the outpatient treatment center on the premises, and
3. Ensure that the administrator appointed as required in R9-10-1003(B)(3) is named on the Substance Abuse and Mental Health Services Administration certificate as the individual responsible for the opioid treatment services provided by or at the outpatient treatment center.

**B.** An administrator of an outpatient treatment center that is authorized to provide opioid treatment services shall ensure that:

1. In addition to the policies and procedures required in R9-10-1003(D), policies and procedures are established, documented, and implemented to protect the health and safety of a patient that:



- a. Include the criteria for receiving opioid treatment services and address:
    - i. Comprehensive maintenance treatment consisting of dispensing or administering an opioid agonist treatment medication at stable dosage levels to a patient for a period in excess of 21 calendar days and providing medical and health-related services to the patient, and
    - ii. Detoxification treatment that occurs over a continuous period of more than 30 calendar days;
  - b. Include the criteria and procedures for discontinuing opioid treatment services;
  - c. Address the needs of specific groups of patients, such as patients who:
    - i. Are pregnant;
    - ii. Are children;
    - iii. Have chronic or acute medical conditions such as HIV infection, hepatitis, diabetes, tuberculosis, or cardiovascular disease;
    - iv. Have a mental disorder;
    - v. Abuse alcohol or other drugs; or
    - vi. Are incarcerated or detained;
  - d. Contain a method of patient identification to ensure the patient receives the opioid treatment services ordered;
  - e. Contain methods to assess whether a patient is receiving concurrent opioid treatment services from more than one health care institution;
  - f. Contain methods to ensure that the opioid treatment services provided to a patient by or at the outpatient treatment center meet the patient's needs;
  - g. Include relapse prevention procedures;
  - h. Include for laboratory testing:
    - i. Criteria for the assessment of a patient's opioid agonist blood levels,
    - ii. Procedures for specimen collection and processing to reduce the risk of fraudulent results, and
    - iii. Procedures for conducting random drug testing of patients receiving an opioid agonist treatment medication;
  - i. Include procedures for the response of personnel members to a patient's adverse reaction during opioid treatment; and
  - j. Include criteria for dispensing one or more doses of an opioid agonist treatment medication to a patient for use off the premises and address:
    - i. Who may authorize dispensing,
    - ii. Restrictions on dispensing, and
    - iii. Information to be provided to a patient or the patient's representative before dispensing;
2. A physician provides direction for the opioid treatment services provided at the outpatient treatment center;
  3. If a patient requires administration of an opioid agonist treatment medication as a result of chronic pain, the patient:
    - a. Receives consultation with or a referral for consultation with a physician or registered nurse practitioner who specializes in chronic pain management, and
    - b. Is not admitted for opioid treatment services:
      - i. Unless the patient is physically addicted to an opioid drug, as manifested by the symptoms of withdrawal in the absence of the opioid drug; and
      - ii. A medical practitioner at the outpatient treatment center coordinates with the physician or registered nurse practitioner who is providing chronic pain management to the patient; and
  4. In addition to the requirements in R9-10-1009(C), a medical record for each patient contains:
    - a. If applicable, documentation of the dispensing of doses of an opioid agonist treatment medication to the patient for use off the premises; and
    - b. If applicable, documentation of the patient's discharge from receiving opioid treatment services.
- C. An administrator of an outpatient treatment center that is authorized to provide opioid treatment services shall ensure that for a patient receiving opioid treatment services:
1. The opioid treatment services provided to the patient meet the needs of the patient;
  2. A physician or a medical practitioner under the direction of a physician:
    - a. Performs a medical history and physical examination on the patient within 30 calendar days before admission or within 48 hours after admission, and
    - b. Documents the medical history and physical examination in the patient's medical record within 48 hours after admission;
  3. Before receiving opioid treatment, the patient is informed of the following:
    - a. The progression of opioid addiction and the patient's apparent stage of opioid addiction;
    - b. The goal and benefits of opioid treatment;
    - c. The signs and symptoms of overdose and when to seek emergency assistance;
    - d. The characteristics of opioid agonist treatment medication, including common side-effects and potential interaction effects with other drugs;
    - e. The requirement for a staff member to report suspected or alleged abuse or neglect of a child or an incapacitated or vulnerable adult according to state law;
    - f. Confidentiality requirements;
    - g. Drug screening and urinalysis procedures;
    - h. Requirements for dispensing to a patient one or more doses of an opioid agonist treatment medication for use by the patient off the premises;
    - i. Testing and treatment available for HIV and other communicable diseases; and
    - j. The patient complaint process;
  4. Documentation of the provision of the information specified in subsection (C)(3) is included in the patient's medical record;
  5. The patient receives a dose of an opioid agonist treatment medication only on the order of a medical practitioner;
  6. The patient begins detoxification treatment only at the request of the patient or according to the outpatient treatment center's policy and procedure for discontinuing opioid treatment services required in subsection (B)(1)(b);
  7. If the patient has an adverse reaction during opioid treatment, a personnel member and, if appropriate, a medical practitioner responds by implementing the policy and procedure required in subsection (B)(1)(i);
  8. Before the patient's discharge from opioid treatment services, the patient is provided with patient follow-up instructions that:
    - a. Include information that may reduce the risk of relapse; and
    - b. May include a referral for counseling, support groups, or medication for depression or sleep disorders; and

9. After the patient's discharge from opioid treatment services provided by or at the outpatient treatment center, the medical practitioner responsible for the opioid treatment services provided to the patient documents the patient's discharge in the patient's medical record within 30 calendar days after the patient's discharge and includes:
  - a. A description of the patient's medical condition and the opioid treatment services provided to the patient, and
  - b. The signature of the medical practitioner.
- D. An administrator of an outpatient treatment center that is authorized to provide opioid treatment services shall ensure that an assessment for each patient receiving opioid treatment services:
  1. Includes, in addition to the information in R9-10-1010(B):
    - a. An assessment of the patient's need for opioid treatment services,
    - b. An assessment of the patient's medical conditions that may be affected by opioid treatment,
    - c. An assessment of other medications being taken by the patient and conditions that may be affected by opioid treatment, and
    - d. A plan to prevent relapse;
  2. Identifies the treatment to be provided to the patient and treatment goals; and
  3. Specifies whether the patient may receive an opioid agonist treatment medication for use off the premises and, if so, the number of doses that may be dispensed.
- ii. Documentation of the discussion in subsection (3)(a),
- iii. The nature and intensity of the patient's pain, and
- iv. The objectives used to determine whether the patient is being successfully treated; and
4. If an injection or a nerve block is used to provide pain management services:
  - a. Before the injection or nerve block is initially used on a patient, an evaluation of the patient is performed by a physician or nurse anesthetist;
  - b. An injection or nerve block is administered by a physician or nurse anesthetist; and
  - c. The following information is included in a patient's medical record:
    - i. The evaluation of the patient required in subsection (4)(a),
    - ii. A record of the administration of the injection or nerve block, and
    - iii. Any resuscitation measures taken.

#### Historical Note

Adopted as an emergency effective November 17, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Former Section R9-10-1021 adopted as an emergency now adopted and amended as a permanent rule effective February 15, 1984 (Supp. 84-1). Repealed by summary action, interim effective date July 21, 1995 (Supp. 95-3). The proposed summary action repealing R9-10-1021 was remanded by the Governor's Regulatory Review Council which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 97-1). Section repealed by final rulemaking at 5 A.A.R. 1222, effective April 5, 1999 (Supp. 99-2). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-1022. Physical Health Services

An administrator of an outpatient treatment center that is authorized to provide physical health services shall ensure that:

1. Medical services provided at or by the outpatient treatment center are provided under the direction of a physician or a registered nurse practitioner,
2. Nursing services provided at or by the outpatient treatment center are provided under the direction of a registered nurse, and
3. A personnel member certified in cardiopulmonary resuscitation is available on the outpatient treatment center's premise.

#### Historical Note

Adopted as an emergency effective November 17, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Former Section R9-10-1022 adopted as an emergency now adopted and amended as a permanent rule effective February 15, 1984 (Supp. 84-1). Repealed by summary action, interim effective date July 21, 1995 (Supp. 95-3). The proposed summary action repealing R9-10-1022 was remanded by the Governor's Regulatory Review Council which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 97-1). Section repealed by final rulemaking at 5 A.A.R. 1222, effective April 5, 1999 (Supp. 99-2). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-1021. Pain Management Services

An administrator of an outpatient treatment center that is authorized to provide pain management services shall ensure that:

1. Pain management services are provided under the direction of a physician;
2. A personnel member certified in cardiopulmonary resuscitation is available on the outpatient treatment center's premise;
3. If a controlled substance is used to provide pain management services:
  - a. A medical practitioner discusses the risks and benefits of using a controlled substance with a patient; and
  - b. The following information is included in a patient's medical record:
    - i. The patient's history or alcohol and substance abuse,

ber 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### **R9-10-1023. Pre-petition Screening**

An administrator of an outpatient treatment center that is authorized to provide pre-petition screening shall comply with the requirements for pre-petition screening in A.R.S. Title 36, Chapter 5, Article 4.

##### **Historical Note**

Adopted as an emergency effective November 17, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Former Section R9-10-1023 adopted as an emergency now adopted and amended as a permanent rule effective February 15, 1984 (Supp. 84-1). Repealed by summary action, interim effective date July 21, 1995 (Supp. 95-3). The proposed summary action repealing R9-10-1023 was remanded by the Governor's Regulatory Review Council which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 97-1). Section repealed by final rulemaking at 5 A.A.R. 1222, effective April 5, 1999 (Supp. 99-2). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### **R9-10-1024. Rehabilitation Services**

An administrator shall ensure that if an outpatient treatment center is authorized to provide:

1. Occupational therapy services, an occupational therapist provides direction for the occupational therapy services provided at or by the outpatient treatment center;
2. Physical therapy services, a physical therapist provides direction for the physical therapy services provided at or by the outpatient treatment center; or
3. Speech-language pathology services, a speech-language pathologist provides direction for the speech-language pathology services provided at or by the outpatient treatment center.

##### **Historical Note**

Adopted as an emergency effective November 17, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). New Section R9-10-1024 adopted as a permanent rule effective February 15, 1984 (Supp. 84-1). Repealed by summary action, interim effective date July 21, 1995 (Supp. 95-3). The proposed summary action repealing R9-10-1024 was remanded by the Governor's Regulatory Review Council which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 97-1). Section repealed by final rulemaking at 5 A.A.R. 1222, effective April 5, 1999 (Supp. 99-2). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### **R9-10-1025. Respite Services**

An administrator of an outpatient treatment center that is authorized to provide respite services shall ensure that:

1. Respite services are not provided in a personnel member's residence unless the personnel member's residence is licensed as a behavioral health respite home; and
2. Respite services are provided:
  - a. In a patient's residence; or

- b. Up to 10 continuous hours in a 24 hour time period while the individual who is receiving the respite services is:
  - i. Supervised by a personnel member,
  - ii. Awake,
  - iii. Provided food,
  - iv. Allowed to rest,
  - v. Provided an opportunity to use the toilet and meet the individual's hygiene needs, and
  - vi. Participating in activities in the community but is not in a licensed health care institution or child care facility.

##### **Historical Note**

Adopted as an emergency effective November 17, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Former Section R9-10-1025 adopted as an emergency now adopted and amended as a permanent rule effective February 15, 1984 (Supp. 84-1). Repealed by summary action, interim effective date July 21, 1995 (Supp. 95-3). The proposed summary action repealing R9-10-1025 was remanded by the Governor's Regulatory Review Council which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 97-1). Section repealed by final rulemaking at 5 A.A.R. 1222, effective April 5, 1999 (Supp. 99-2). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### **R9-10-1026. Sleep Disorder Services**

An administrator of an outpatient treatment center that is authorized to provide sleep disorder services shall ensure that:

1. A physician provides direction for the sleep disorder services provided by the outpatient treatment center;
2. At least one of the following is present on the premise of the outpatient treatment center:
  - a. A polysomnographic technician certified by the Board of Registered Polysomnographic Technologists (BRPT),
  - b. A polysomnographic technician accepted by the BRPT to sit for the BRPT certification examination, or
  - c. A respiratory therapist;
3. There is at least one patient testing room having a minimum of 140 square feet and no dimension less than 10 feet;
4. There is a bathroom available for use by a patient that contains:
  - a. A working sink with running water,
  - b. A working toilet that flushes and has a seat,
  - c. Toilet tissue,
  - d. Soap for hand washing,
  - e. Paper towels or a mechanical air hand dryer,
  - f. Lighting, and
  - g. A means of ventilation;
5. A personnel member certified in cardiopulmonary resuscitation is available on the outpatient treatment center's premise; and
6. Equipment for the delivery of continuous positive airway pressure and bi-level positive airway pressure, including remote control of the airway pressure, is available on the premises of the outpatient treatment center.

##### **Historical Note**

Adopted as an emergency effective November 17, 1983,

pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Former Section R9-10-1026 adopted as an emergency now adopted and amended as a permanent rule effective February 15, 1984 (Supp. 84-1). Repealed by summary action, interim effective date July 21, 1995 (Supp. 95-3). The proposed summary action repealing R9-10-1026 was remanded by the Governor's Regulatory Review Council which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 97-1). Section repealed by final rulemaking at 5 A.A.R. 1222, effective April 5, 1999 (Supp. 99-2). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### **R9-10-1027. Urgent Care Services Provided in a Freestanding Urgent Care Setting**

An administrator of an outpatient treatment center that is authorized to provide urgent care services in a freestanding urgent care setting shall ensure that:

1. In addition to the policies and procedures required in R9-10-1003(D)(1), policies and procedures are established, documented, and implemented to protect the health and safety of a patient that cover basic life support training and pediatric basic life support training including:
  - a. Method and content of training,
  - b. Qualifications of individuals providing the training, and
  - c. Documentation that verifies a medical practitioner has received the training;
2. A medical practitioner is on the premises during hours of clinical operation to provide the medical services, nursing services, and health-related services included in the outpatient treatment center's scope of services;
3. If a physician is not on the premises during hours of operation, a notice stating this fact is conspicuously posted in the waiting room according to A.R.S. § 36-432;
4. If a patient's death occurs at the outpatient treatment center, a written report is submitted to the Department as required in A.R.S. § 36-445.04;
5. A medical practitioner completes basic life support training and pediatric basic life support training:
  - a. Before providing medical services, nursing services, or health-related services at the outpatient treatment center, and
  - b. At least once every 24 months after the initial date of employment;
6. Except as provided in subsection (5), a personnel member completes basic adult and pediatric cardiopulmonary resuscitation training:
  - a. Before providing medical services, nursing services, or health-related services at the outpatient treatment center; and
  - b. At least once every 24 months after the initial date of employment or volunteer service; and
7. In addition to the requirements in R9-10-1006(11), a medical practitioner's record includes documentation of completion of basic life support training and pediatric basic life support training.

#### **Historical Note**

Adopted as an emergency effective November 17, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Former Section R9-10-1027 adopted as an emergency now adopted and amended as a permanent

rule effective February 15, 1984 (Supp. 84-1). Repealed by summary action, interim effective date July 21, 1995 (Supp. 95-3). The proposed summary action repealing R9-10-1027 was remanded by the Governor's Regulatory Review Council which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 97-1). Section repealed by final rulemaking at 5 A.A.R. 1222, effective April 5, 1999 (Supp. 99-2). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### **R9-10-1028. Infection Control**

An administrator shall ensure that:

1. An infection control program is established, under the direction of an individual qualified according to the outpatient treatment center's policies and procedures, to prevent the development and transmission of infections and communicable diseases including:
  - a. A method to identify and document infections occurring at the outpatient treatment center;
  - b. Analysis of the types, causes, and spread of infections and communicable diseases at the outpatient treatment center;
  - c. The development of corrective measures to minimize or prevent the spread of infections and communicable diseases at the outpatient treatment center; and
  - d. Documentation of infection control activities including:
    - i. The collection and analysis of infection control data,
    - ii. The actions taken related to infections and communicable diseases, and
    - iii. Reports of communicable diseases to the governing authority and state and county health departments;
2. Infection control documentation is maintained for at least 12 months after the date of the documentation;
3. Policies and procedures are established, documented, and implemented to protect the health and safety of a patient that cover:
  - a. If applicable:
    - i. Handling and disposal of biohazardous medical waste;
    - ii. Isolation of a patient;
    - iii. Sterilization and disinfection of medical equipment and supplies;
    - iv. Use of personal protective equipment such as aprons, gloves, gowns, masks, or face protection when applicable; and
    - v. Collection, storage, and cleaning of soiled linens and clothing;
  - b. Cleaning an individual's hands when the individual's hands are visibly soiled;
  - c. Training of personnel members, employees, and volunteers in infection control practices; and
  - d. Work restrictions for a personnel member, employee, or volunteer with a communicable disease or infected skin lesion;
4. Biohazardous medical waste is identified, stored, and disposed of according to 18 A.A.C. 13, Article 14 and policies and procedures; and
5. A personnel member, employee, or volunteer washes his or her hands with soap and water or uses a hand disinfectant.

tion product before and after each patient contact and after handling soiled linen, soiled clothing, or a potentially infectious material.

#### Historical Note

Adopted as an emergency effective November 17, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Former Section R9-10-1028 adopted as an emergency now adopted and amended as a permanent rule effective February 15, 1984 (Supp. 84-1). Repealed by summary action, interim effective date July 21, 1995 (Supp. 95-3). The proposed summary action repealing R9-10-1028 was remanded by the Governor's Regulatory Review Council which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 97-1). Section repealed by final rulemaking at 5 A.A.R. 1222, effective April 5, 1999 (Supp. 99-2). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-1029. Emergency and Safety Standards

- A. An administrator shall ensure that policies and procedures for providing emergency treatment are established, documented, and implemented that protect the health and safety of patients and include:
  1. A list of the medications, supplies, and equipment required on the premises for the emergency treatment provided by the outpatient treatment center;
  2. A system to ensure medications, supplies, and equipment are available, have not been tampered with, and, if applicable, have not expired;
  3. A requirement that a cart or a container is available for emergency treatment that contains the medication, supplies, and equipment specified in the outpatient treatment center's policies and procedures; and
  4. A method to verify and document that the contents of the cart or container are available for emergency treatment.
- B. An administrator shall ensure that emergency treatment is provided to a patient admitted to the outpatient treatment center according to the outpatient treatment center's policies and procedures.
- C. An administrator shall ensure that:
  1. A disaster plan is developed, documented, maintained in a location accessible to personnel members, and, if necessary, implemented that includes:
    - a. Procedures for protecting the health and safety of patients and other individuals on the premises;
    - b. Assigned responsibilities for each personnel member, employee, or volunteer;
    - c. Instructions for the evacuation of patients and other individuals on the premises; and
    - d. Arrangements to provide medical services, nursing services, and health-related services to meet patients' needs;
  2. The disaster plan required in subsection (C)(1) is reviewed at least once every 12 months;
  3. An evacuation drill is conducted on each shift at least once every 12 months;
  4. A disaster plan review required in subsection (C)(2) or an evacuation drill required in subsection (C)(3) is documented as follows:
    - a. The date and time of the evacuation drill or disaster plan review;
    - b. The name of each personnel member, employee, or volunteer participating in the evacuation drill or disaster plan review;
    - c. A critique of the evacuation drill or disaster plan review; and
    - d. If applicable, recommendations for improvement;
5. Documentation required in subsection (C)(4) is maintained for at least 12 months after the date of the evacuation drill or disaster plan review; and
6. An evacuation path is conspicuously posted on each hallway of each floor of the outpatient treatment center.
- D. An administrator shall ensure that an outpatient treatment center has either:
  1. Both of the following that are tested and serviced at least once every 12 months:
    - a. A fire alarm system installed according to the National Fire Protection Association 72: National Fire Alarm and Signaling Code, incorporated by reference in A.A.C. R9-1-412, that is in working order; and
    - b. A sprinkler system installed according to the National Fire Protection Association 13 Standard for the Installation of Sprinkler Systems, incorporated by reference in A.A.C. R9-1-412, that is in working order; or
  2. The following:
    - a. A smoke detector installed in each hallway of the outpatient treatment center that is:
      - i. Maintained in an operable condition;
      - ii. Either battery operated or, if hard-wired into the electrical system of the outpatient treatment center, has a back-up battery; and
      - iii. Tested monthly; and
    - b. A portable, operable fire extinguisher, labeled as rated at least 2A-10-BC by the Underwriters Laboratories, that:
      - i. Is available at the outpatient treatment center;
      - ii. Is mounted in a fire extinguisher cabinet or placed on wall brackets so that the top handle of the fire extinguisher is not over five feet from the floor and the bottom of the fire extinguisher is at least four inches from the floor;
      - iii. If a disposable fire extinguisher, is replaced when its indicator reaches the red zone; and
      - iv. If a rechargeable fire extinguisher, is serviced at least once every 12 months and has a tag attached to the fire extinguisher that specifies the date of the last servicing and the name of the servicing person.
- E. An administrator shall ensure that documentation of a test required in subsection (D) is maintained for at least 12 months after the date of the test.
- F. An administrator shall ensure that:
  1. Exit signs are illuminated, if the local fire jurisdiction requires illuminated exit signs;
  2. Except as provided in subsection (G), a corridor in the outpatient treatment center is at least 44 inches wide;
  3. Corridors and exits are kept clear of any obstructions;
  4. A patient can exit through any exit during hours of operation;
  5. An extension cord is not used instead of permanent electrical wiring;
  6. Each electrical outlet and electrical switch has a cover plate that is in good repair;
  7. If applicable, a sign is placed at the entrance of a room or an area indicating that oxygen is in use; and

8. Oxygen and medical gas containers:
  - a. Are maintained in a secured, upright position; and
  - b. Are stored in a room with a door:
    - i. In a building with sprinklers, at least five feet from any combustible materials; or
    - ii. In a building without sprinklers, at least 20 feet from any combustible materials.
- G. If an outpatient treatment center licensed before October 1, 2013 has a corridor less than 44 inches wide, an administrator shall ensure that:
  1. The corridor is wide enough to allow for:
    - a. Unobstructed movement of patients within the outpatient treatment center, and
    - b. The safe evacuation of patients from the outpatient treatment center; and
  2. The corridor is used only as a passageway.
- H. An administrator shall:
  1. Obtain a fire inspection conducted according to the time-frame established by the local fire department or the State Fire Marshal,
  2. Make any repairs or corrections stated on the fire inspection report, and
  3. Maintain documentation of a current fire inspection.
- Is for the exclusive use of the outpatient treatment center;
3. A pest control program is implemented and documented;
4. A tobacco smoke-free environment is maintained on the premises;
5. A refrigerator used to store a medication is:
  - a. Maintained in working order, and
  - b. Only used to store medications;
6. Equipment at the outpatient treatment center is:
  - a. Sufficient to provide the outpatient treatment center's scope of services;
  - b. Maintained in working condition;
  - c. Used according to the manufacturer's recommendations; and
  - d. If applicable, tested and calibrated according to the manufacturer's recommendations or, if there are no manufacturer's recommendations, as specified in policies and procedures; and
7. Documentation of equipment testing, calibration, and repair is maintained for at least 12 months after the date of testing, calibration, or repair.

- B. An outpatient treatment center may have a bathroom used for the collection of a patient's urine or stool that is not for the exclusive use of the outpatient treatment center if:
  1. The bathroom is located in the same contiguous building as the outpatient treatment center's premises,
  2. The bathroom is of a sufficient size to support the outpatient treatment center's scope of services, and
  3. There is a documented agreement between the licensee and the owner of the building stating that the bathroom complies with the requirements in this Section and allowing the Department access to the bathroom to verify compliance.
- C. If an outpatient treatment center has a bathroom that is not for the exclusive use of the outpatient treatment center as allowed in subsection (B), an administrator shall ensure that:
  1. Policies and procedures are established, documented, and implemented to:
    - a. Protect the health and safety of an individual using the bathroom; and
    - b. Ensure that the bathroom is cleaned and sanitized to prevent, minimize, and control illness and infection;
  2. Documented instructions are provided to a patient that cover:
    - a. Infection control measures when a patient uses the bathroom, and
    - b. The safe return of a urine or stool specimen to the outpatient treatment center;
  3. The bathroom complies with the requirements in subsection (A)(2)(a); and
  4. The bathroom is free from a condition or situation that may cause an individual using the bathroom to suffer a physical injury.

#### Historical Note

Adopted as an emergency effective November 17, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-6). Former Section R9-10-1029 adopted as an emergency now adopted and amended as a permanent rule effective February 15, 1984 (Supp. 84-1). Repealed by summary action, interim effective date July 21, 1995 (Supp. 95-3). The proposed summary action repealing R9-10-1029 was remanded by the Governor's Regulatory Review Council which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 97-1). Section repealed by final rulemaking at 5 A.A.R. 1222, effective April 5, 1999 (Supp. 99-2). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-1030. Physical Plant, Environmental Services, and Equipment Standards

- A. An administrator shall ensure that:
  1. An outpatient treatment center's premises are:
    - a. Sufficient to provide the outpatient treatment center's scope of services;
    - b. Cleaned and disinfected according to the outpatient treatment center's policies and procedures to prevent, minimize, and control illness and infection; and
    - c. Free from a condition or situation that may cause an individual to suffer physical injury;
  2. Except as provided in subsection (B), if an outpatient treatment center collects urine or stool specimens from a patient, the outpatient treatment center has at least one bathroom on the premises that:
    - a. Contains:
      - i. A working sink with running water,
      - ii. A working toilet that flushes and has a seat,
      - iii. Toilet tissue,
      - iv. Soap for hand washing,
      - v. Paper towels or a mechanical air hand dryer,
      - vi. Lighting, and
      - vii. A means of ventilation; and

#### Historical Note

Adopted effective February 15, 1984 (Supp. 84-1). Repealed by summary action, interim effective date July 21, 1995 (Supp. 95-3). The proposed summary action repealing R9-10-1030 was remanded by the Governor's Regulatory Review Council which revoked the interim effectiveness of the summary rule. The Section in effect before the proposed summary action has been restored (Supp. 97-1). Section repealed by final rulemaking at 5 A.A.R. 1222, effective April 5, 1999 (Supp. 99-2). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws

2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

## ARTICLE 11. ADULT DAY HEALTH CARE FACILITIES

### R9-10-1101. Definitions

In addition to the definitions in A.R.S. § 36-401 and R9-10-101, the following applies in this Article, unless otherwise specified:

“Care plan” means a written program of action for a participant’s care based upon an assessment of the participant’s physical, nutritional, psychosocial, economic, and environmental strengths and needs and implemented according to established short- and long-term goals.

#### Historical Note

Adopted effective July 22, 1994 (Supp. 94-3). Section amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

### R9-10-1102. Supplemental Application Requirements

In addition to the license application requirements in A.R.S. § 36-422 and R9-10-105, an applicant for an initial license as an adult day health care facility shall include on the application the number of participants for whom the applicant is requesting authorization to provide adult day health services.

#### Historical Note

Adopted effective July 22, 1994 (Supp. 94-3). Section amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-1102 renumbered to Section R9-10-1103; new Section R9-10-1102 made by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

### R9-10-1103. Administration

#### A. A governing authority shall:

1. Consist of one or more individuals responsible for the organization, operation, and administration of an adult day health care facility;
2. Establish, in writing:
  - a. An adult day health care facility’s scope of services, and
  - b. Qualifications for an administrator;
3. Designate, in writing, an administrator who has the qualifications established in subsection (A)(2)(b);
4. Adopt a quality management program according to R9-10-1104;
5. Review and evaluate the effectiveness of the quality management program at least once every 12 months;
6. Designate, in writing, an acting administrator, who has the qualifications established in subsection (A)(2)(b) if the administrator is:
  - a. Expected not to be present on an adult day health care facility’s premises for more than 30 calendar days, or
  - b. Not present on an adult day health care facility’s premises for more than 30 calendar days; and
7. Except as provided in (A)(6), notify the Department according to A.R.S. § 36-425(I), when there is a change in an administrator and identify the name and qualifications of the new administrator.

#### B. An administrator:

1. Is 21 years of age or older;
2. Is directly accountable to the governing authority of an adult day health care facility for the daily operation of the adult day health care facility and all services provided by or at the adult day health care facility;

3. Has the authority and responsibility to manage the adult day health care facility; and
4. Except as provided in subsection (A)(6), designates, in writing, an individual who is 21 years of age or older and present on the adult day health care facility’s premises and accountable for the adult day health care facility when the administrator is not present on the adult day health care facility premises and participants are present on the adult day health care facility’s premises.

#### C. An administrator shall ensure that:

1. Policies and procedures are established, documented, and implemented to protect the health and safety of a participant that:
  - a. Cover job descriptions, duties, and qualifications, including required skills, knowledge, education, and experience for personnel members, employees, volunteers, and students;
  - b. Cover orientation and in-service education for personnel members, employees, volunteers, and students;
  - c. Cover certification in cardiopulmonary resuscitation and first aid training;
  - d. Include how a personnel member may submit a complaint relating to services provided to a participant;
  - e. Cover the requirements in A.R.S. Title 36, Chapter 4, Article 11;
  - f. Include a method to identify a participant to ensure that the participant receives the appropriate services;
  - g. Cover participant rights, including assisting a participant who does not speak English or who has a disability to become aware of participant rights;
  - h. Cover specific steps for:
    - i. A participant to file a complaint, and
    - ii. The adult day health care facility to respond to a participant complaint;
  - i. Cover medical records, including electronic medical records; and
  - j. Cover a quality management program, including incident reports and supporting documentation;
2. Policies and procedures for services provided by an adult day health care facility are established, documented, and implemented to protect the health and safety of a participant that:
  - a. Cover screening, enrollment, and discharge;
  - b. Cover the provision of the services in the adult day health care facility’s scope of services;
  - c. Cover dispensing, administering, and disposing of medications, including provisions for inventory control and preventing diversion of controlled substances;
  - d. Cover how personnel members will respond to a participant’s sudden, intense, or out-of-control behavior to prevent harm to the participant or another individual;
  - e. Cover food services;
  - f. Cover environmental services;
  - g. Cover infection control;
  - h. Cover contracted services;
  - i. Cover emergency treatment provided at the adult day health care facility; and
  - j. Designate which employees or personnel members are required to have current certification in cardiopulmonary resuscitation and first aid training;
3. Policies and procedures are:

- a. Available to personnel members, employees, volunteers, and students, and
- b. Reviewed at least once every three years and updated as needed; and
- 4. Unless otherwise stated:
  - a. Documentation required by this Article is provided to the Department within two hours after a Department request; and
  - b. When documentation or information is required by this Chapter to be submitted on behalf of an adult day health care facility, the documentation or information is provided to the unit in the Department that is responsible for licensing and monitoring the adult day health care facility.

**D. An administrator shall:**

- 1. Maintain, and make available to individuals upon request, a schedule of rates and charges;
- 2. Ensure that a monthly calendar of planned activities is:
  - a. Posted before the beginning of a month, and
  - b. Maintained on the premises for at least 90 calendar days after the end of the month;
- 3. Ensure that materials, supplies, and equipment are provided for the planned activities; and
- 4. Assist in the formation of a participants' council according to R9-10-1112.

**Historical Note**

Adopted effective July 22, 1994 (Supp. 94-3). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-1103 renumbered to Section R9-10-1104; new Section R9-10-1103 renumbered from Section R9-10-1102 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-1104. Quality Management**

An administrator shall ensure that:

- 1. A plan is established, documented, and implemented for an ongoing quality management program that, at a minimum, includes:
  - a. A method to identify, document, and evaluate incidents;
  - b. A method to collect data to evaluate services provided to participants;
  - c. A method to evaluate the data collected to identify a concern about the delivery of services related to participant care;
  - d. A method to make changes or take action as a result of the identification of a concern about the delivery of services related to participant care; and
  - e. The frequency of submitting a documented report required in subsection (2) to the governing authority;
- 2. A documented report is submitted to the governing authority that includes:
  - a. An identification of each concern about the delivery of services related to participant care, and
  - b. Any change made or action taken as a result of the identification of a concern about the delivery of services related to participant care; and
- 3. The report required in subsection (2) and the supporting documentation for the report are maintained for at least 12 months after the date the report is submitted to the governing authority.

**Historical Note**

Adopted effective July 22, 1994 (Supp. 94-3). Section repealed; new Section made by exempt rulemaking at 19

A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-1104 renumbered to Section R9-10-1105; new Section R9-10-1104 renumbered from Section R9-10-1103 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-1105. Contracted Services**

An administrator shall ensure that:

- 1. Contracted services are provided according to the requirements in this Article, and
- 2. Documentation of current contracted services is maintained that includes a description of the contracted services provided.

**Historical Note**

Adopted effective July 22, 1994 (Supp. 94-3). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-1105 renumbered to Section R9-10-1106; new Section R9-10-1105 renumbered from Section R9-10-1104 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-1106. Personnel**

A. An administrator shall ensure that:

- 1. The qualifications, skills, and knowledge required for each type of personnel member:
  - a. Are based on:
    - i. The type of physical health services or behavioral health services expected to be provided by the personnel member according to the established job description, and
    - ii. The acuity of the participants receiving physical health services or behavioral health services from the personnel member according to the established job description; and
  - b. Include:
    - i. The specific skills and knowledge necessary for the personnel member to provide the expected physical health services and behavioral health services listed in the established job description,
    - ii. The type and duration of education that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected physical health services or behavioral health services listed in the established job description, and
    - iii. The type and duration of experience that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected physical health services or behavioral health services listed in the established job description;
- 2. A personnel member's skills and knowledge are verified and documented:
  - a. Before the personnel member provides physical health services or behavioral health services, and
  - b. According to policies and procedures;
- 3. Sufficient personnel members are present on an adult day health care facility's premises when participants are present and have the qualifications, skills, and knowledge necessary to:
  - a. Provide the services in the adult day health care facility's scope of services,
  - b. Meet the needs of a participant, and



- c. Ensure the health and safety of a participant; and
- 4. A personnel member, or an employee or a volunteer who has or is expected to have direct interaction with a participant for more than eight hours a week, provides evidence of freedom from infectious tuberculosis:
  - a. On or before the date the individual begins providing services at or on behalf of the adult day health care facility, and
  - b. As specified in R9-10-113.
- B. An administrator shall ensure that a personnel member:
  - 1. Is 18 years of age or older, and
  - 2. Is not a participant of the adult day health care facility.
- C. An administrator shall ensure that a personnel record for each personnel member, employee, volunteer, or student:
  - 1. Includes:
    - a. The individual's name, date of birth, and contact telephone number;
    - b. The individual's starting date of employment or volunteer service and, if applicable, the ending date; and
    - c. Documentation of:
      - i. The individual's qualifications, including skills and knowledge applicable to the individual's job duties;
      - ii. The individual's education and experience applicable to the individual's job duties;
      - iii. The individual's completed orientation and in-service education as required by policies and procedures;
      - iv. The individual's license or certification, if the individual is required to be licensed or certified in this Article or policies and procedures;
      - v. Cardiopulmonary resuscitation training, if required for the individual according to this Article and policies and procedures;
      - vi. First aid training, if required for the individual according to this Article and policies and procedures; and
      - vii. Evidence of freedom from infectious tuberculosis, if required for the individual according to this Article or policies and procedures;
  - 2. Is maintained:
    - a. Throughout the individual's period of providing services in or for the adult day health care facility, and
    - b. For at least 24 months after the last date the individual provided service in or for the adult day health care facility; and
  - 3. For a personnel member who has not provided physical health services or behavioral health services at or for the adult day health care facility during the previous 12 months, is provided to the Department within 72 hours after the Department's request.
- D. An administrator shall ensure that:
  - 1. At least two personnel members are present on the premises whenever two or more participants are in the adult day health care facility;
  - 2. At least one personnel member with cardiopulmonary resuscitation and first-aid certification is on the premises at all times;
  - 3. A registered nurse manages the nursing services and provides direction for health-related services provided by the adult day health care facility; and
  - 4. A nurse is on the premises daily to:
    - a. Administer medications and treatments, and
    - b. Monitor a participant's health status.

**Historical Note**

Adopted effective July 22, 1994 (Supp. 94-3). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-1106 renumbered to Section R9-10-1107; new Section R9-10-1106 renumbered from Section R9-10-1105 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-1107. Enrollment**

- A. An administrator shall ensure that a participant provides evidence of freedom from infectious tuberculosis:
  - 1. Before or within seven calendar days after the participant's enrollment, and
  - 2. As specified in R9-10-113.
- B. Before or at the time of enrollment, an administrator shall ensure that a participant or the participant's representative signs a written agreement with the adult day health care facility that includes:
  - 1. The participant's name and date of birth,
  - 2. Enrollment requirements,
  - 3. A list of the customary services that the adult day health care facility provides,
  - 4. A list of services that are available at an additional cost,
  - 5. A list of fees and charges,
  - 6. Procedures for termination of the agreement,
  - 7. The requirements of the adult day health care facility,
  - 8. The names and telephone numbers of individuals designated by the participant to be notified in the event of an emergency, and
  - 9. A copy of the adult day health care facility's procedure on health care directives.
- C. An administrator shall give a copy of the agreement in subsection (B) to the participant or the participant's representative and keep the original in the participant's medical record.
- D. An administrator shall ensure that a participant has a signed written medical assessment that:
  - 1. Was completed by the participant's medical practitioner within 60 calendar days before enrollment; and
  - 2. Includes:
    - a. Information that addresses the participant's:
      - i. Physical health;
      - ii. Cognitive awareness of self, location, and time; and
      - iii. Deficits in cognitive awareness;
    - b. Physical, mental, and emotional problems experienced by the participant;
    - c. A schedule of the participant's medications;
    - d. A list of treatments the participant is receiving;
    - e. The participant's special dietary needs; and
    - f. The participant's known allergies.
- E. At the time of enrollment, an administrator shall ensure that the participant or participant's representative:
  - 1. Documents whether the participant may sign in and out of the adult day health care facility; and
  - 2. Provides the following:
    - a. The name and telephone number of the:
      - i. Participant's representative;
      - ii. Family member to be contacted in an emergency;
      - iii. Participant's medical practitioner; and
      - iv. Adult who provides the participant with supervision and assistance in the preparation of meals, housework, and personal grooming, if applicable; and

- b. If applicable, a copy of the participant's health care directive.
- F. An administrator shall ensure that a comprehensive assessment of the participant:
  - 1. Is completed by a registered nurse before the participant's tenth visit or within 30 calendar days after enrollment, whichever comes first;
  - 2. Documents the participant's:
    - a. Physical health,
    - b. Mental and emotional status, and
    - c. Social history; and
  - 3. Includes:
    - a. Medical practitioner orders,
    - b. Adult day health care services recommended for the participant's care plan, and
    - c. The signature of the registered nurse conducting the comprehensive assessment and date signed.

#### Historical Note

Adopted effective July 22, 1994 (Supp. 94-3). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-1107 renumbered to Section R9-10-1108; new Section R9-10-1107 renumbered from Section R9-10-1106 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-1108. Care Plan

An administrator shall ensure that a care plan for a participant:

- 1. Is developed within seven calendar days after the completion of the participant's comprehensive assessment;
- 2. Has input from:
  - a. The participant or participant's representative,
  - b. The registered nurse who performed the comprehensive assessment, and
  - c. Personnel who have provided services to the participant;
- 3. Is based on the participant's comprehensive assessment;
- 4. Includes:
  - a. A summary of the participant's medical or health problems, including physical, mental, and emotional disabilities or impairments;
  - b. Adult day health services to be provided;
  - c. Goals and objectives of care that are time-limited and measurable;
  - d. Interventions required to achieve objectives, including recommendations for therapy and referrals to other service providers; and
  - e. Discharge instructions according to R9-10-1109(B); and
- 5. Is reviewed and updated at least once every six months and whenever there is a significant change in the participant's condition.

#### Historical Note

Adopted effective July 22, 1994 (Supp. 94-3). Section amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-1108 renumbered to Section R9-10-1109; new Section R9-10-1108 renumbered from Section R9-10-1107 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-1109. Discharge

- A. An administrator may discharge a participant from an adult day health care facility by terminating the agreement in R9-10-1107(B):
  - 1. After giving the participant or participant's representative five working days written notice; and
  - 2. For any of the following reasons:
    - a. Evidence of repeated failure to comply with the requirements of the adult day health care facility,
    - b. Documented proof of failure to pay,
    - c. Behavior that is dangerous to self or that interferes with the physical or psychological well-being of other participants, or
    - d. The participant requires services not in the adult day health care facility's scope of services.
- B. An administrator shall ensure that discharge instructions for a participant are:
  - 1. Developed that:
    - a. Identify any specific needs of the participant after discharge,
    - b. Are completed before discharge occurs,
    - c. Include a description of the level of care that may meet the participant's assessed and anticipated needs after discharge, and
    - d. Are documented in the participant's medical record within 48 hours after the discharge instructions are completed; and
  - 2. Provided to the participant or the participant's representative before the discharge occurs.

#### Historical Note

Adopted effective July 22, 1994 (Supp. 94-3). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-1109 renumbered to Section R9-10-1110; new Section R9-10-1109 renumbered from Section R9-10-1108 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-1110. Participant Rights

- A. An administrator shall ensure that:
  - 1. The requirements in subsection (B) and the participant rights in subsection (C) are conspicuously posted on the premises;
  - 2. At the time of enrollment, a participant or the participant's representative receives a written copy of the requirements in subsection (B) and the participant rights in subsection (C); and
  - 3. Policies and procedures include:
    - a. How and when a participant or the participant's representative is informed of participant rights in subsection (C), and
    - b. Where participant rights are posted as required in subsection (A)(1).
- B. An administrator shall ensure that:
  - 1. A participant is treated with dignity, respect, and consideration;
  - 2. A participant is not subjected to:
    - a. Abuse;
    - b. Neglect;
    - c. Exploitation;
    - d. Coercion;
    - e. Manipulation;
    - f. Sexual abuse;
    - g. Sexual assault;
    - h. Seclusion;

- i. Restraint;
  - j. Retaliation for submitting a complaint to the Department or another entity; or
  - k. Misappropriation of personal and private property by the adult day health care facility's personnel members, employees, volunteers, or students; and
3. A participant or the participant's representative:
- a. Except in an emergency, either consents to or refuses treatment;
  - b. May refuse or withdraw consent for treatment before treatment is initiated;
  - c. Except in an emergency, is informed of proposed alternatives to the treatment, associated risks, and possible complications;
  - d. Is informed of the following:
    - i. The policy on health care directives,
    - ii. The participant complaint process,
    - iii. Rates and charges for participating at the adult day health care facility, and
    - iv. The process for contacting the local office of Adult Protective Services;
  - e. Consents to photographs of the participant before the participant is photographed, except that a participant may be photographed when enrolled at an adult day health care facility for identification and administrative purposes; and
  - f. Except as otherwise permitted by law, provides written consent to the release of information in the participant's:
    - i. Medical record, or
    - ii. Financial records.
- C. A participant has the following rights:
- 1. Not to be discriminated against based on race, national origin, religion, gender, sexual orientation, age, disability, marital status, or diagnosis;
  - 2. To receive treatment that supports and respects the participant's individuality, choices, strengths, and abilities;
  - 3. To communicate, associate, and meet privately with individuals of the participant's choice;
  - 4. To have access to a telephone, to make and receive calls, and to send and receive correspondence without interception or interference by the adult day health care facility;
  - 5. To arrive and depart from the adult day health care facility, consistent with the participant's care plan and personal safety;
  - 6. To receive privacy in treatment and care for personal needs;
  - 7. To review, upon written request, the participant's own records;
  - 8. To receive a referral to another health care institution if the adult day health care facility is not authorized or not able to provide physical health services or behavioral health services needed by the participant;
  - 9. To participate or have the participant's representative participate in the development of a care plan or decisions concerning treatment;
  - 10. To participate or refuse to participate in research or experimental treatment; and
  - 11. To receive assistance from a family member, the participant's representative, or other individual in understanding, protecting, or exercising the participant's rights.

#### Historical Note

New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-1110 renumbered to Section R9-10-1111; new

Section R9-10-1110 renumbered from Section R9-10-1109 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-1111. Medical Records

- A. An administrator shall ensure that:
- 1. A medical record is established and maintained for a participant according to A.R.S. Title 12, Chapter 13, Article 7.1;
  - 2. An entry in a participant's medical record is:
    - a. Recorded only by an individual authorized by policies and procedures to make the entry;
    - b. Dated, legible, and authenticated; and
    - c. Not changed to make the initial entry illegible;
  - 3. If a rubber-stamp signature or an electronic signature is used to authenticate an order, the individual whose signature the rubber-stamp signature or electronic signature represents is accountable for the use of the rubber-stamp signature or electronic signature;
  - 4. A participant's medical record is available to an individual:
    - a. Authorized according to policies and procedures to access the participant's medical record;
    - b. If the individual is not authorized according to policies and procedures, with the written consent of the participant or the participant's representative; or
    - c. As permitted by law; and
  - 5. A participant's medical record is protected from loss, damage, or unauthorized use.
- B. If an adult day health care facility maintains participant's medical records electronically, an administrator shall ensure that:
- 1. Safeguards exist to prevent unauthorized access, and
  - 2. The date and time of an entry in a participant's medical record is recorded by the computer's internal clock.
- C. An administrator shall ensure that a participant's medical record contains:
- 1. Participant information that includes:
    - a. The participant's name;
    - b. The participant's address;
    - c. The participant's date of birth; and
    - d. Any known allergies, including medication allergies;
  - 2. The name of the participant's medical practitioner or other individuals involved in the care of the participant;
  - 3. An enrollment agreement and date of the participant's first visit;
  - 4. If applicable, documented general consent and informed consent by the participant or the participant's representative;
  - 5. If applicable, the name and contact information of the participant's representative and:
    - a. The document signed by the participant consenting for the participant's representative to act on the participant's behalf; or
    - b. If the participant's representative:
      - i. Has a health care power of attorney established under A.R.S. § 36-3221 or a mental health care power of attorney executed under A.R.S. § 36-3282, a copy of the health care power of attorney or mental health care power of attorney; or
      - ii. Is a legal guardian, a copy of the court order establishing guardianship;
  - 6. Documentation of medical history;
  - 7. A copy of the participant's health care directive, if applicable;
  - 8. Orders;

9. The medical assessment required in R9-10-1107(D);
10. A care plan;
11. The comprehensive assessment required in R9-10-1107(F);
12. Progress notes;
13. If applicable, documentation of any actions taken to control the participant's sudden, intense, or out-of-control behavior to prevent harm to the participant or another individual;
14. Documentation of adult day health services provided to the participant;
15. The disposition of the participant upon discharge;
16. The discharge date, if applicable;
17. Documentation of a medication administered to the participant that includes:
  - a. The date and time of administration;
  - b. The name, strength, dosage, and route of administration;
  - c. The identification and signature of the individual administering, providing assistance in the self-administration of medication, or observing the participant's self-administration of the medication;
  - d. If medication for pain is administered on a PRN basis to a participant:
    - i. An identification of the participant's pain before administering the medication, and
    - ii. The effect of the medication administered; and
  - e. Any adverse reaction a participant has to the medication;
18. If applicable, documentation of:
  - a. A significant change in the participant's condition,
  - b. An injury or accident that occurred at the adult day health care facility and required medical services, and
  - c. Notification provided to the participant's medical practitioner or the participant's representative of the significant change in subsection (C)(18)(a) or the injury or accident in subsection (C)(18)(b);
19. Documentation of whether the participant may sign in or out of the adult day health care facility;
20. Documentation of freedom from infectious tuberculosis required in R9-10-1107(A); and
21. Names and telephone numbers of individuals to be notified in the event of an emergency.

#### Historical Note

Amended effective September 2, 1977 (Supp. 77-5). Repealed effective July 22, 1994 (Supp. 94-3). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-1111 renumbered to Section R9-10-1112; new Section R9-10-1111 renumbered from Section R9-10-1110 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-1112. Participant's Council

A. A participants' council:

1. Is composed of participants, who are willing to serve on the council and take part in scheduled meetings;
2. May develop guidelines that govern the council's activities;
3. May meet quarterly;
4. May record minutes of the meetings; and
5. May provide written input on planned activities and policies of the adult day health care facility.

- B. A participants' council may invite personnel or the administrator to attend their meetings.
- C. An administrator shall act as a liaison between the participants' council and personnel members, employees, and volunteers.

#### Historical Note

Amended effective September 2, 1977 (Supp. 77-5). Repealed effective July 22, 1994 (Supp. 94-3). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-1112 renumbered to Section R9-10-1113; new Section R9-10-1112 renumbered from Section R9-10-1111 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-1113. Adult Day Health Services

- A. An administrator shall ensure that a personnel member provides supervision for a participant, except during periods of the day when the participant signs out or is signed out according to policies and procedures.
- B. An administrator shall ensure that a personnel member provides assistance with activities of daily living and supervision of personal hygiene according to the participant's care plan and policies and procedures.
- C. An administrator shall ensure that a personnel member provides a participant with planned therapeutic individual and group activities:
  1. According to the:
    - a. Participant's care plan,
    - b. Policies and procedures, and
    - c. Monthly calendar of planned activities required in R9-10-1103(D)(2); and
  2. That include:
    - a. Physical activities,
    - b. Group discussion,
    - c. Techniques a participant may use to maintain or improve the participant's independence in performing activities of daily living,
    - d. Assessment of deficits in cognitive awareness and reinforcement of remaining cognitive awareness,
    - e. Activities of daily living,
    - f. Participants' council meetings, and
    - g. Leisure time.
- D. An administrator shall ensure that a nurse monitors the health status of a participant according to the participant's care plan and policies and procedures by:
  1. Observing the participant's mental and physical condition, including monthly monitoring of the participant's vital signs and nutritional status;
  2. Documenting changes in the participant's mental and physical condition in the participant's medical record; and
  3. Reporting any changes to the participant's representative or medical practitioner.
- E. If an adult day health care facility administers medication or provides assistance in the self-administration of medication, an administrator shall ensure that policies and procedures for medication administration or assistance in the self-administration of medication:
  1. Include:
    - a. A process for providing information to a participant about medication prescribed for the participant including:
      - i. The prescribed medication's anticipated results,

- ii. The prescribed medication's potential adverse reactions,
    - iii. The prescribed medication's potential side effects, and
    - iv. Potential adverse reactions that could result from not taking the medication as prescribed;
  - b. Procedures for preventing, responding to, and reporting:
    - i. A medication error,
    - ii. An adverse response to a medication, or
    - iii. A medication overdose; and
  - c. Procedures for documenting medication services and assistance in the self-administration of medication; and
2. Specify a process for review through the quality management program of:
    - a. A medication administration error, and
    - b. An adverse reaction to a medication.
- F.** An administrator shall ensure that:
1. Policies and procedures for medication administration:
    - a. Are reviewed and approved by a pharmacist, medical practitioner, or registered nurse; and
    - b. Ensure that medication is administered to a participant only as prescribed;
  2. Verbal orders for medication services are taken by a nurse, unless otherwise provided by law; and
  3. A medication administered to a participant:
    - a. Is administered in compliance with an order, and
    - b. Is documented in the participant's medical record.
- G.** If an adult day health care facility provides assistance in the self-administration of medication, an administrator shall ensure that:
1. A participant's medication is stored by the adult day health care facility;
  2. The following assistance is provided to a participant:
    - a. A reminder when it is time to take the medication;
    - b. Opening the medication container for the participant;
    - c. Observing the participant while the participant removes the medication from the container;
    - d. Verifying that the medication is taken as ordered by the participant's medical practitioner by confirming that:
      - i. The participant taking the medication is the individual stated on the medication container label,
      - ii. The participant is taking the dosage of the medication stated on the medication container label or according to an order from a medical practitioner dated later than the date on the medication container label, and
      - iii. The participant is taking the medication at the time stated on the medication container label or according to an order from a medical practitioner dated later than the date on the medication container label; or
    - e. Observing the participant while the participant takes the medication;
  3. Policies and procedures for assistance in the self-administration of medication are reviewed and approved by a pharmacist, medical practitioner, or registered nurse;
  4. Training for a personnel member, other than a medical practitioner or registered nurse, in assistance in the self-administration of medication:
    - a. Is provided by a medical practitioner or registered nurse or an individual trained by a medical practitioner or registered nurse; and
    - b. Includes:
      - i. A demonstration of the personnel member's skills and knowledge necessary to provide assistance in the self-administration of medication,
      - ii. Identification of medication errors and medical emergencies related to medication that require emergency medical intervention, and
      - iii. The process for notifying the appropriate entities when an emergency medical intervention is needed;
5. A personnel member, other than a medical practitioner or registered nurse, completes the training in subsection (G)(4) before the personnel member provides assistance in the self-administration of medication; and
  6. Assistance in the self-administration of medication provided to a participant:
    - a. Is in compliance with an order, and
    - b. Is documented in the participant's medical record.
- H.** An administrator shall ensure that:
1. A current drug reference guide is available for use by personnel members, and
  2. A current toxicology reference guide is available for use by personnel members.
- I.** When medication is stored at an adult day health care facility, an administrator shall ensure that:
1. Medication is stored in a separate locked room, closet, or self-contained unit used only for medication storage;
  2. Medication is stored according to the instructions on the medication container; and
  3. Policies and procedures are established, documented, and implemented to protect the health and safety of a participant for:
    - a. Receiving, storing, inventorying, tracking, dispensing, and discarding medication, including expired medication; and
    - b. Storing, inventorying, and dispensing controlled substances.
- J.** A medication error or a participant's refusal to take a medication is:
1. Reported to the participant's representative within 12 hours, and
  2. Documented in the participant's medical record within 24 hours.
- K.** An adverse reaction is:
1. Reported to the participant's representative and medical practitioner within 12 hours, and
  2. Documented in the participant's medical record within 24 hours.
- L.** An administrator shall:
1. Immediately notify a participant's representative and medical practitioner of an injury that may require medical services;
  2. Report an injury to Adult Protective Services according to A.R.S. § 46-454, when applicable;
  3. Prepare a written report on the day of occurrence or when any injury of unknown origin is detected that includes the:
    - a. Name of the participant;
    - b. Type of injury;
    - c. Names of witnesses, if applicable; and
    - d. Action taken;

4. Investigate the injury within 24 hours and documenting any corrective action in the report; and
  5. Retain the report for at least 12 months after the date of the injury.
- M.** For a participant whose care plan includes counseling on an individual or group basis, an administrator shall ensure that:
1. If the counseling needed by the participant is within the adult day health care facility's scope of services, a personnel member provides the counseling to the participant according to policies and procedures; or
  2. If the counseling needed by the participant is not within the adult day health care facility's scope of services, a personnel member assists the participant or the participant's representative to obtain counseling for the participant according to policies and procedures.

#### Historical Note

Amended effective September 2, 1977 (Supp. 77-5).  
 Repealed effective July 22, 1994 (Supp. 94-3). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-1113 renumbered to Section R9-10-1114; new Section R9-10-1113 renumbered from Section R9-10-1112 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-1114. Food Services

- A.** An administrator shall:
1. Designate a food service supervisor who is responsible for food service in an adult day health care facility; and
  2. If an adult day health care facility provides a therapeutic diet to participants, ensure that:
    - a. The therapeutic diet is prescribed in writing by:
      - i. The participant's medical practitioner; or
      - ii. A registered dietitian; and
    - b. A current therapeutic diet reference manual is available to the food service supervisor.
- B.** A food service supervisor shall ensure that:
1. A food menu:
    - a. Is prepared at least one week in advance,
    - b. Includes the foods to be served each day,
    - c. Is conspicuously posted at least one calendar day before the first meal on the food menu will be served,
    - d. Includes any food substitution no later than the morning of the day of meal service with a food substitution, and
    - e. Is maintained for at least 60 calendar days after the last day included in the food menu;
  2. Meals and snacks provided by the adult day health care facility are served according to posted menus;
  3. Meals and snacks for each day are planned using the applicable guidelines in <http://www.health.gov/dietaryguidelines/2010.asp>;
  4. A participant is provided a diet that meets the participant's nutritional needs as specified in the participant's comprehensive assessment, under R9-10-1107(F), or the participant's care plan;
  5. Water is available and accessible to participants at all times, unless otherwise stated by the participant's medical practitioner; and
  6. A participant requiring assistance to eat is provided with assistance that recognizes the participant's nutritional, physical, and social needs, including the use of adaptive eating equipment or utensils, such as a plate guard, rock-

ing fork, or assistive hand device, if not provided by the participant.

- C.** An administrator shall ensure that food is obtained, prepared, served, and stored as follows:
1. Food is free from spoilage, filth, or other contamination and is safe for human consumption;
  2. Food is protected from potential contamination;
  3. Food is prepared:
    - a. Using methods that conserve nutritional value, flavor, and appearance; and
    - b. In a form to meet the needs of a participant, such as cut, chopped, ground, pureed, or thickened;
  4. Potentially hazardous food is maintained as follows:
    - a. Foods requiring refrigeration are maintained at 41° F or below;
    - b. Foods requiring cooking are cooked to heat all parts of the food to a temperature of at least 145° F for 15 seconds, except that:
      - i. Ground beef and ground meats are cooked to heat all parts of the food to at least 155° F;
      - ii. Poultry, poultry stuffing, stuffed meats, and stuffing that contains meat are cooked to heat all parts of the food to at least 165° F;
      - iii. Pork and any food containing pork are cooked to heat all parts of the food to at least 155° F;
      - iv. Raw shell eggs for immediate consumption are cooked to at least 145° F for 15 seconds and any food containing raw shell eggs is cooked to heat all parts of the food to at least 155° F;
      - v. Roast beef and beef steak are cooked to an internal temperature of at least 155° F; and
      - vi. Leftovers are reheated to a temperature of at least 165° F;
  5. A refrigerator contains a thermometer, accurate to plus or minus 3° F, at the warmest part of the refrigerator;
  6. Frozen foods are stored at a temperature of 0° F or below; and
  7. Tableware, utensils, equipment, and food-contact surfaces are clean and in good repair.
- D.** An administrator shall ensure that:
1. If an adult day health care facility is licensed to provide adult day health services to more than 15 participants, the adult day health care facility:
    - a. Has a license or permit as a food establishment under 9 A.A.C. 8, Article 1; and
    - b. Maintains a copy of the adult day health care facility's food establishment license or permit;
  2. If the adult day health care facility contracts with a food establishment, as established in 9 A.A.C. 8, Article 1, to prepare and deliver food to the adult day health care facility, a copy of the contracted food establishment's license or permit under 9 A.A.C. 8, Article 1 is maintained by the adult day health care facility; and
  3. The adult day health care facility is able to store, refrigerate, and reheat food to meet the dietary needs of a participant.

#### Historical Note

Amended effective September 2, 1977 (Supp. 77-5).  
 Repealed effective July 22, 1994 (Supp. 94-3). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-1114 renumbered to Section R9-10-1115; new Section R9-10-1114 renumbered from Section R9-10-1113 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-1115. Emergency and Safety Standards****A.** An administrator shall ensure that:

1. A disaster plan is developed, documented, maintained in a location accessible to personnel members and employees, and, if necessary, implemented that includes:
  - a. Procedures for protecting the health and safety of participants and other individuals on the premises;
  - b. Assigned responsibilities for each personnel member and employee;
  - c. Instructions for the evacuation of participants, including:
    - i. When, how, and where participants will be relocated; and
    - ii. A plan for notifying the emergency contact for each participant;
  - d. A plan to ensure each participant's medications will be available to administer to the participant during a disaster; and
  - e. A plan for providing water, food, and needed services to participants present in the adult day health care facility or the adult day health care facility's relocation site during a disaster;
2. The disaster plan required in subsection (A)(1) is reviewed at least once every 12 months;
3. Documentation of a disaster plan review required in subsection (A)(2) is created, is maintained for at least 12 months after the date of the disaster plan review, and includes:
  - a. The date and time of the disaster plan review;
  - b. The name of each personnel member, employee, or volunteer participating in the disaster plan review;
  - c. A critique of the disaster plan review; and
  - d. If applicable, recommendations for improvement; and
4. A disaster drill for assigned personnel is conducted on each shift at least once every three months and documented.

**B.** An administrator shall ensure that:

1. A participant receives orientation to the exits from the adult day health care facility and the route to be used when evacuating participants within two visits after the participant's enrollment, and
2. A participant's orientation is documented in the participant's medical record.

**C.** An administrator shall ensure that:

1. An evacuation drill for employees and participants is conducted at least once every six months;
2. Documentation of an evacuation drill is created, is maintained for at least 12 months after the date of the evacuation drill, and includes:
  - a. The date and time of the evacuation drill;
  - b. The amount of time taken for all employees and participants to evacuate to a designated area;
  - d. Any problems encountered in conducting the evacuation drill; and
  - e. Recommendations for improvement, if applicable; and
3. An evacuation path is conspicuously posted on each hallway of each floor of the adult day health care facility.

**Historical Note**

Adopted effective September 2, 1977 (Supp. 77-5).  
 Repealed effective July 22, 1994 (Supp. 94-3). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-1115 renumbered to Section R9-10-1116; new Section

R9-10-1115 renumbered from Section R9-10-1114 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-1116. Environmental Standards****A.** An administrator shall ensure that:

1. The adult day health care facility's premises are:
  - a. Cleaned and disinfected according to policies and procedures to prevent, minimize, and control illness and infection; and
  - b. Free from a condition or situation that may cause a participant or an individual to suffer physical injury;
2. A pest control program is implemented and documented;
3. Windows and doors opening to the outside are screened if they are kept open at any time for ventilation or other purposes;
4. Biohazardous medical waste is identified, stored, and disposed of according to 18 A.A.C. 13, Article 14 and policies and procedures;
5. Equipment used at the adult day health care facility is:
  - a. Maintained in working order;
  - b. Tested and calibrated according to the manufacturer's recommendations or, if there are no manufacturer's recommendations, as specified in policies and procedures; and
  - c. Used according to the manufacturer's recommendations;
6. Documentation of equipment testing, calibration, and repair is maintained for at least 12 months after the date of the testing, calibration, or repair;
7. Garbage and refuse are:
  - a. Stored in covered containers lined with plastic bags, and
  - b. Removed from the premises at least once a week;
8. Heating and cooling systems maintain the adult day health care facility at a temperature between 70° F and 84° F;
9. The supply of hot and cold water is sufficient to meet the personal hygiene needs of participants and the cleaning and sanitation requirements in this Article;
10. Soiled linen and soiled clothing stored by the adult day health care facility are maintained separate from clean linen and clothing and stored in closed containers away from food storage, kitchen, and dining areas;
11. Oxygen containers are secured in an upright position;
12. Poisonous or toxic materials stored by the adult day health care facility are maintained in labeled containers in a locked area separate from food preparation and storage, dining areas, and medications and are inaccessible to participants;
13. Combustible or flammable liquids and hazardous materials stored by the adult day health care facility are stored in the original labeled containers or safety containers in a locked area inaccessible to participants; and
14. Pets or animals are:
  - a. Controlled to prevent endangering the participants and to maintain sanitation;
  - b. Not allowed in treatment, food storage, food preparation, or dining areas;
  - c. Licensed consistent with local ordinances; and
  - d. For a dog or cat, vaccinated against rabies.

**B.** If a swimming pool is located on the premises, an administrator shall ensure that:

1. On a day that a participant uses the swimming pool, an employee:

- a. Tests the swimming pool's water quality at least once for compliance with one of the following chemical disinfection standards:
  - i. A free chlorine residual between 1.0 and 3.0 ppm as measured by the N, N-Diethyl-p-phenylenediamine test;
  - ii. A free bromine residual between 2.0 and 4.0 ppm as measured by the N, N-Diethyl-p-phenylenediamine test; or
  - iii. An oxidation-reduction potential equal to or greater than 650 millivolts; and
- b. Records the results of the water quality tests in a log that includes the date tested and test result;
2. Documentation of the water quality test is maintained for at least 12 months after the date of the test;
3. A swimming pool is not used by a participant if a water quality test shows that the swimming pool water does not comply with subsection (B)(1)(a);
4. At least one personnel member with cardiopulmonary resuscitation training, required in R9-10-1106(D), is present in the pool area when a participant is in the pool area; and
5. At least two personnel members are present in the pool area if two or more participants are in the pool area.

#### Historical Note

Adopted effective September 2, 1977 (Supp. 77-5).  
 Repealed effective July 22, 1994 (Supp. 94-3). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-1116 renumbered to Section R9-10-1117; new Section R9-10-1116 renumbered from Section R9-10-1115 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-1117. Physical Plant Standards

- A. An administrator shall ensure that an adult day health care facility complies with the physical plant health and safety codes and standards applicable to existing educational occupancies in the Life Safety Code, incorporated by reference in A.A.C. R9-1-412(A)(2)(b), in effect on the date the adult day health care facility submitted architectural plans and specifications to the Department for approval, according to R9-10-104.
- B. An administrator shall ensure that the premises and equipment are sufficient to accommodate:
  1. The services stated in the adult day health care facility's scope of services, and
  2. An individual accepted as a participant by the adult day health care facility.
- C. An administrator shall ensure that an adult day health care facility has at least 40 square feet of indoor activity space for each participant, excluding bathrooms, halls, storage areas, kitchens, wall thicknesses, and rooms designated for use by individuals who are not participants.
- D. An administrator shall ensure that an outside activity space is provided and available that:
  1. Is on the premises,
  2. Has a hard-surfaced section for wheelchairs,
  3. Has an available shaded area, and
  4. Has a means of egress without entering the adult day health care facility.
- E. An administrator shall ensure that:
  1. There is at least one working toilet that flushes and has a seat and one sink with running water for each ten participants;

2. A bathroom for use by participants provides privacy when in use and contains in a location accessible to participants:
  - a. A mirror;
  - b. Toilet paper for each toilet;
  - c. Soap accessible from each sink;
  - d. Paper towels in a dispenser or an air hand dryer; and
  - e. Grab bars for the toilet and other assistive devices, if required, to provide for participant safety;
3. A bathroom has a window that opens or another means of ventilation;
4. If a bathing facility is provided:
  - a. The bathing facility provides privacy when in use,
  - b. Shower enclosures have nonporous surfaces,
  - c. Showers and tubs have grab bars for participant safety, and
  - d. Tub and shower floors have slip-resistant surfaces;
5. Dining areas are furnished with dining tables and chairs and large enough to accommodate participants;
6. There is a wall or other means of physical separation between dining facilities and food preparation areas;
7. If the adult day health care facility serves food, areas are designated for food preparation, storage, and handling and are not used as a passageway by participants; and
8. All flooring is slip-resistant.
- F. If the adult day health care facility has a swimming pool on the premises, an administrator shall ensure that:
  1. The swimming pool is equipped with the following:
    - a. An operational water circulation system that clarifies and disinfects the swimming pool water continuously and that includes at least:
      - i. A removable strainer,
      - ii. Two swimming pool inlets located on opposite sides of the swimming pool, and
      - iii. A drain located at the swimming pool's lowest point and covered by a grating that cannot be removed without using tools; and
    - b. An operational vacuum cleaning system;
  2. The swimming pool is enclosed by a wall or fence that:
    - a. Is at least five feet in height as measured on the exterior of the wall or fence;
    - b. Has no vertical openings greater than four inches across;
    - c. Has no horizontal openings, except as described in subsection (C)(2)(e);
    - d. Is not chain-link;
    - e. Does not have a space between the ground and the bottom fence rail that exceeds four inches in height; and
    - f. Has a self-closing, self-latching gate that:
      - i. Opens away from the swimming pool,
      - ii. Has a latch located at least 54 inches from the ground; and
      - iii. Is locked when the swimming pool is not in use;
  3. A life preserver or shepherd's crook is available and accessible in the pool area; and
  4. If the swimming pool is used by participants, pool safety requirements are conspicuously posted in the pool area.

#### Historical Note

Adopted effective September 2, 1977 (Supp. 77-5).  
 Repealed effective July 22, 1994 (Supp. 94-3). New Section R9-10-1117 renumbered from Section R9-10-1116 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).



**R9-10-1118. Repealed****Historical Note**

Adopted effective September 2, 1977 (Supp. 77-5).  
Repealed effective July 22, 1994 (Supp. 94-3).

**R9-10-1119. Repealed****Historical Note**

Adopted effective September 2, 1977 (Supp. 77-5).  
Repealed effective July 22, 1994 (Supp. 94-3).

**R9-10-1120. Repealed****Historical Note**

Adopted effective September 2, 1977 (Supp. 77-5).  
Repealed effective July 22, 1994 (Supp. 94-3).

**R9-10-1121. Repealed****Historical Note**

Adopted effective September 2, 1977 (Supp. 77-5).  
Repealed effective July 22, 1994 (Supp. 94-3).

**R9-10-1122. Repealed****Historical Note**

Adopted effective September 2, 1977 (Supp. 77-5).  
Repealed effective July 22, 1994 (Supp. 94-3).

**R9-10-1123. Repealed****Historical Note**

Adopted effective September 2, 1977 (Supp. 77-5).  
Repealed effective July 22, 1994 (Supp. 94-3).

**R9-10-1124. Repealed****Historical Note**

Adopted effective September 2, 1977 (Supp. 77-5).  
Repealed effective July 22, 1994 (Supp. 94-3).

**R9-10-1125. Repealed****Historical Note**

Adopted effective September 2, 1977 (Supp. 77-5).  
Repealed effective July 22, 1994 (Supp. 94-3).

**R9-10-1126. Repealed****Historical Note**

Adopted effective September 2, 1977 (Supp. 77-5).  
Repealed effective July 22, 1994 (Supp. 94-3).

**R9-10-1127. Repealed****Historical Note**

Adopted effective September 2, 1977 (Supp. 77-5).  
Repealed effective July 22, 1994 (Supp. 94-3).

**ARTICLE 12. HOME HEALTH AGENCIES****R9-10-1201. Definitions**

In addition to the definitions in A.R.S. § 36-401 and R9-10-101, the following apply in this Article, unless otherwise specified:

1. "Branch office" means a location other than a home health agency's main administrative office that:
  - a. Operates under the license of the home health agency, and
  - b. Is under the control of the home health agency's administrator.
2. "Home health services director" means an individual who provides direction for the home health services provided by or through a home health agency.
3. "Medical social services" means activities that assist a patient to cope with concerns about the patient's illness or

injury, and may include helping to find resources to address the patient's concerns.

**Historical Note**

Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-1202. Supplemental Application Requirements**

In addition to the license application requirements in A.R.S. § 36-422 and R9-10-105, an applicant for a license as a home health agency shall:

1. Include on the application:
  - a. The name and address of each proposed branch office, if applicable; and
  - b. The geographic region to be served by:
    - i. The proposed home health agency's administrative office, and
    - ii. Each proposed branch office; and
2. Submit to the Department a copy of a valid fingerprint clearance card issued according to A.R.S. Title 41, Chapter 12, Article 3.1 for:
  - a. The applicant, if the applicant is an individual; or
  - b. Each individual with a 10% or greater ownership of the business organization, if the applicant is a business organization.

**Historical Note**

Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-1203. Administration****A. A governing authority shall:**

1. Consist of one or more individuals responsible for the organization, operation, and administration of the home health agency;
2. Establish, in writing:
  - a. A home health agency's scope of services, and
  - b. Qualifications for an administrator;
3. Designate, in writing, an administrator who has the qualifications established in subsection (A)(2)(b);
4. Adopt a quality management program according to R9-10-1204;
5. Review and evaluate the effectiveness of the quality management program at least once every 12 months;
6. Designate, in writing, an acting administrator who has the qualifications established in subsection (A)(2)(b) if the administrator is:
  - a. Expected not to be present in a home health agency's administrative office for more than 30 calendar days, or
  - b. Not present in a home health agency's administrative office for more than 30 calendar days;
7. Except as provided in subsection (A)(6), notify the Department according to A.R.S. § 36-425(I) when there is a change in the administrator and identify the name and qualifications of the new administrator;
8. Appoint, according to A.R.S. § 36-151(5)(b), an advisory group that consists of four or more members that include:
  - a. A physician;
  - b. A registered nurse who has at least one year of experience as a registered nurse providing home health services; and
  - c. Two or more individuals who represent a medical, nursing, or health-related profession; and

9. Ensure that the advisory group appointed according to subsection (A)(8):
  - a. Meets at least once every 12 months;
  - b. Documents meetings; and
  - c. Assists in establishing and evaluating policies and procedures for the home health agency.
- B. An administrator:
  1. Is directly accountable to the governing authority of a home health agency for all services provided by the home health agency;
  2. Has the authority and responsibility to manage the home health agency;
  3. Except as provided in subsection (A)(6), designates, in writing, an individual who is present at the home health agency's administrative office and accountable for services provided by the home health agency when the administrator is not present at the home health agency's administrative office; and
  4. Ensures compliance with A.R.S. § 36-411.
- C. An administrator shall:
  1. Ensure that policies and procedures are established, documented, and implemented to protect the health and safety of a patient that:
    - a. Cover job descriptions, duties, and qualifications, including required skills, knowledge, education, and experience for personnel members, employees, and volunteers;
    - b. Cover orientation and in-service education for personnel members, employees, and volunteers;
    - c. Cover how a personnel member may submit a complaint relating to patient care;
    - d. Cover the requirements in A.R.S. Title 36, Chapter 4, Article 11;
    - e. Include a method to identify a patient to ensure the patient receives the appropriate services;
    - f. Cover patient rights, including assisting a patient who does not speak English or who has a disability to become aware of patient rights;
    - g. Cover specific steps for:
      - i. A patient to file a complaint, and
      - ii. The home health agency to respond to a patient complaint;
    - h. Cover health care directives;
    - i. Cover medical records, including electronic medical records;
    - j. Cover a quality management program, including incident reports and supporting documentation;
    - k. Cover contracted services; and
    - l. Cover and designate which personnel members or employees are required to have current certification in cardiopulmonary resuscitation and first aid training;
  2. Ensure that policies and procedures for services provided by a home health agency are established, documented, and implemented to protect the health and safety of a patient that:
    - a. Cover patient admission, discharge planning, and discharge;
    - b. Cover the provision of home health services and, if applicable, supportive services;
    - c. Include when general consent and informed consent are required;
    - d. Cover how personnel members will respond to a patient's sudden, intense, or out-of-control behavior to prevent harm to the patient or another individual;
    - e. Cover medication procurement, if applicable, and administration; and
    - f. Cover infection control;
3. Ensure that policies and procedures are:
  - a. Available to personnel members, employees, and volunteers; and
  - b. Reviewed at least once every three years and updated as needed;
4. Ensure that records of advisory group meetings are maintained for at least 24 months after the date of the meeting;
5. Designate, in writing, a home health services director who is:
  - a. A physician with at least 24 months of experience working for or with a home health agency; or
  - b. A registered nurse with at least three years of nursing experience, including at least 24 months of experience as a registered nurse providing home health services;
6. Ensure that:
  - a. Speech therapy or speech-language pathology services are provided by a speech-language pathologist or speech-language pathologist assistant licensed according to A.R.S. § 36-1940.04;
  - b. Nutritional services are provided by a registered dietitian;
  - c. Occupational therapy services are provided by an occupational therapist or occupational therapy assistant;
  - d. Physical therapy services are provided by a physical therapist or a physical therapist assistant;
  - e. Respiratory care services are provided by a respiratory therapist, respiratory therapy technician licensed according to A.R.S. Title 32, Chapter 35, or registered nurse;
  - f. Pharmacy services are provided by a pharmacist; and
  - g. Medical social services are provided:
    - i. By a personnel member qualified according to policies and procedures that coordinates medical social services; and
    - ii. For medical social services that require a license under A.R.S. Title 32, Chapter 33, Article 5, by a personnel member licensed under A.R.S. Title 32, Chapter 33, Article 5;
7. Ensure that the services specified in subsection (C)(6) are provided to a patient only under an order by the patient's physician, registered nurse practitioner, or podiatrist, as applicable; and
8. Unless otherwise stated, ensure that:
  - a. Documentation required by this Article is provided to the Department within two hours after a Department request; and
  - b. When documentation or information is required by this Chapter to be submitted on behalf of a home health agency, the documentation or information is provided to the unit in the Department that is responsible for licensing and monitoring the home health agency.

#### Historical Note

Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-1204. Quality Management

An administrator shall ensure that:

1. A plan for a quality management program for the home health agency is established, documented, and implemented that includes:
    - a. A method to identify, document, and evaluate incidents;
    - b. A method to collect data to evaluate the provision of services, including oversight of personnel members;
    - c. A method to evaluate the data collected to identify a concern about the provision of services;
    - d. A method to make changes or take action as a result of the identification of a concern about the provision of services;
    - e. A method to determine whether actions taken improved the provision of services; and
    - f. The frequency of submitting the documented report required in subsection (2) to the governing authority;
  2. A documented report is submitted to the governing authority that includes:
    - a. Each identified concern about the delivery of services related to patient care, and
    - b. Any change made or action taken as a result of the identification of a concern about the delivery of services related to patient care; and
  3. The report in subsection (2) and the supporting documentation for the report are maintained for at least 12 months after the date the report is submitted to the governing authority.
2. A personnel member's skills and knowledge are verified and documented:
    - a. Before the personnel member provides physical health services, and
    - b. According to policies and procedures;
  3. Sufficient personnel members are available with the qualifications, skills, and knowledge necessary to:
    - a. Provide the services in the home health agency's scope of services,
    - b. Meet the needs of a patient, and
    - c. Ensure the health and safety of a patient; and
  4. A personnel member, or an employee, a volunteer, or a student who has or is expected to have direct interaction with a patient, provides evidence of freedom from infectious tuberculosis:
    - a. On or before the date the individual begins providing services at or on behalf of the home health agency, and
    - b. As specified in R9-10-113.
- B.** An administrator shall ensure that a personnel record for each personnel member, employee, or volunteer:

#### Historical Note

Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-1205. Contracted Services

An administrator shall ensure that:

1. Contracted services are provided according to the requirements in this Article, and
2. Documentation of current contracted services is maintained that includes a description of the contracted services provided.

#### Historical Note

Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-1206. Personnel

**A.** An administrator shall ensure that:

1. The qualifications, skills, and knowledge required for each type of personnel member:
    - a. Are based on:
      - i. The type of services expected to be provided by the personnel member according to the established job description, and
      - ii. The acuity of the patients receiving services from the personnel member according to the established job description; and
    - b. Include:
      - i. The specific skills and knowledge necessary for the personnel member to provide the expected services listed in the established job description,
      - ii. The type and duration of education that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected services listed in the established job description, and
      - iii. The type and duration of experience that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected services listed in the established job description;
  2. A personnel member's skills and knowledge are verified and documented:
    - a. Before the personnel member provides physical health services, and
    - b. According to policies and procedures;
  3. Sufficient personnel members are available with the qualifications, skills, and knowledge necessary to:
    - a. Provide the services in the home health agency's scope of services,
    - b. Meet the needs of a patient, and
    - c. Ensure the health and safety of a patient; and
  4. A personnel member, or an employee, a volunteer, or a student who has or is expected to have direct interaction with a patient, provides evidence of freedom from infectious tuberculosis:
    - a. On or before the date the individual begins providing services at or on behalf of the home health agency, and
    - b. As specified in R9-10-113.
- B.** An administrator shall ensure that a personnel record for each personnel member, employee, or volunteer:
1. Includes:
    - a. The individual's name, date of birth, and contact telephone number;
    - b. The individual's starting date of employment or volunteer service, and if applicable, ending date; and
    - c. Documentation of:
      - i. The individual's qualifications, including skills and knowledge applicable to the individual's job duties;
      - ii. The individual's education and experience applicable to the individual's job duties;
      - iii. The individual's completed orientation and in-service education as required by policies and procedures;
      - iv. The individual's license or certification, if the individual is required to be licensed or certified in this Article or policies and procedures;
      - v. The individual's compliance with the requirements in A.R.S. § 36-411;
      - vi. Cardiopulmonary resuscitation training, if required for the individual according to this Article and policies and procedures;
      - vii. First aid training, if required for the individual according to this Article and policies and procedures; and
      - viii. Evidence of freedom from infectious tuberculosis, if required according to subsection (A)(4);
  2. Is maintained:
    - a. Throughout the individual's period of providing services in or for the home health agency; and
    - b. For at least 24 months after the last date the individual provided services in or for the home health agency; and
  3. For a personnel member who has not provided services for the home health agency during the previous 12 months, provided to the Department within 72 hours after the Department's request.

**Historical Note**

Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-1207. Care Plan**

**A.** An administrator shall ensure that a care plan is developed for each patient:

1. Based on an assessment of the patient as required in R9-10-1210(D)(1) or (F)(2)(e)(i);
2. With participation from:
  - a. The patient's physician, registered nurse practitioner, or podiatrist, as applicable; and
  - b. A registered nurse; and
3. That includes:
  - a. The patient's diagnosis;
  - b. Surgery dates relevant to home health services, if applicable;
  - c. The patient's cognitive awareness of self, location, and time;
  - d. Functional abilities and limitations;
  - e. Goals for functional rehabilitation, if applicable;
  - f. The type, duration, and frequency of each service to be provided;
  - g. Treatments the patient is receiving from a source other than the home health agency;
  - h. Medications and herbal supplements reported by the patient or the patient's representative as being used by the patient, and the dose, route of administration, and schedule for administration of each medication or herbal supplement;
  - i. Any known drug allergies;
  - j. Nutritional requirements and preferences;
  - k. Specific measures to improve the patient's safety and protect the patient against injury; and
  - l. A discharge plan for the patient including, if applicable, a plan for assessing the accomplishment of treatment or therapy goals for the patient.

**B.** An administrator shall ensure that:

1. Home health services are provided to a patient by the home health agency according to the patient's care plan;
2. The patient's care plan is reviewed and updated:
  - a. Whenever there is a change in the patient's condition that indicates a need for a change in the type, duration, or frequency of the services being provided;
  - b. If the patient's physician, registered nurse practitioner, or podiatrist, as applicable, orders a change in the care plan; and
  - c. At least every 60 calendar days; and
3. The patient's physician, registered nurse practitioner, or podiatrist, as applicable, authenticates the care plan with a signature within 30 calendar days after the care plan is initially developed and whenever the care plan is reviewed or updated.

**Historical Note**

Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-1208. Patient Rights**

**A.** An administrator shall ensure that:

1. The requirements in subsection (B) and the patient rights in subsection (C) are conspicuously posted at the home health agency's administrative office;

2. At the time of admission, a patient or the patient's representative receives a written copy of the requirements in subsection (B) and the patient rights in subsection (C); and
3. Policies and procedures include:
  - a. How and when a patient or the patient's representative is informed of patient rights in subsection (C); and
  - b. Where patient rights are posted as required in subsection (A)(1).

**B.** An administrator shall ensure that:

1. A patient is treated with dignity, respect, and consideration;
2. A patient is not subjected to:
  - a. Abuse;
  - b. Neglect;
  - c. Exploitation;
  - d. Coercion;
  - e. Manipulation;
  - f. Sexual abuse;
  - g. Sexual assault;
  - h. Seclusion;
  - i. Restraint;
  - j. Retaliation for submitting a complaint to the Department or another entity; or
  - k. Misappropriation of personal and private property by a home health agency's personnel members, employees, or volunteers; and
3. A patient or the patient's representative:
  - a. Except in an emergency, either consents to or refuses treatment;
  - b. May refuse or withdraw consent for treatment before treatment is initiated;
  - c. Except in an emergency, is informed of proposed alternatives to a psychotropic medication and the associated risks and possible complications of a psychotropic medication;
  - d. Is informed of the following:
    - i. The home health agency's policy on health care directives;
    - ii. The patient complaint process;
    - iii. Home health services provided by or through the home health agency; and
    - iv. The rates and charges for services before the services are initiated and before a change in rates, charges, or services;
  - e. Consents to photographs of the patient before the patient is photographed, except that a patient may be photographed when admitted to a home health agency for identification and administrative purposes; and
  - f. Except as otherwise permitted by law, provides written consent to the release of information in the patient's:
    - i. Medical record; or
    - ii. Financial records.

**C.** A patient has the following rights:

1. Not to be discriminated against based on race, national origin, religion, gender, sexual orientation, age, disability, marital status, or diagnosis;
2. To receive treatment that supports and respects the patient's individuality, choices, strengths, and abilities;
3. To receive privacy in treatment and care for personal needs;

4. To review, upon written request, the patient's own medical record according to A.R.S. §§ 12-2293, 12-2294, and 12-2294.01;
  5. To receive a referral to another health care institution if the home health agency is not authorized or not able to provide physical health services needed by the patient;
  6. To participate or have the patient's representative participate in the development of a care plan or decisions concerning treatment;
  7. To participate or refuse to participate in research or experimental treatment; and
  8. To receive assistance from a family member, the patient's representative, or other individual in understanding, protecting, or exercising the patient's rights.
- d. Any known allergies, including medication allergies;
  2. The date the patient began receiving services from the home health agency and, if applicable, the date the patient stopped receiving services from the home health agency;
  3. The name and telephone of the patient's physician or registered nurse practitioner;
  4. The name and telephone number of patient's podiatrist, if applicable;
  5. Documentation of general consent and, if applicable, informed consent;
  6. Documentation of medical history and current diagnoses;
  7. A copy of patient's health care directive, if applicable;
  8. If applicable, the name and contact information of the patient's representative and:
    - a. If the patient is 18 years of age or older or an emancipated minor, the document signed by the patient consenting for the patient's representative to act on the patient's behalf; or
    - b. If the patient's representative;
      - i. Is a legal guardian, a copy of the court order establishing guardianship; or
      - ii. Has a health care power of attorney established under A.R.S. § 36-3221 or a mental health care power of attorney executed under A.R.S. § 36-3282, a copy of the health care power of attorney or mental health care power of attorney;

#### Historical Note

Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-1209. Medical Records

##### A. An administrator shall ensure that:

1. A medical record is established and maintained for each patient according to A.R.S. Title 12, Chapter 13, Article 7.1;
  2. An entry in a patient's medical record is:
    - a. Recorded only by an individual authorized by a policies and procedures to make the entry;
    - b. Dated, legible, and authenticated; and
    - c. Not changed to make the initial entry illegible;
  3. An order is:
    - a. Dated when the order is entered in the patient's medical record and includes the time of the order;
    - b. Authenticated by a physician, registered nurse practitioner, or podiatrist according to policies and procedures; and
    - c. If the order is a verbal order, authenticated by the physician, registered nurse practitioner, or podiatrist issuing the order;
  4. If a rubber-stamp signature or an electronic signature is used to authenticate an order, the individual whose signature the rubber-stamp signature or electronic signature represents is accountable for the use of the rubber-stamp signature or electronic signature;
  5. A patient's medical record is available to personnel members, physicians, registered nurse practitioners, or podiatrists authorized by policies and procedures to access the patient's medical record;
  6. Information in a patient's medical record is disclosed to an individual not authorized under subsection (A)(5) only with the written consent of a patient or the patient's representative or as permitted by law; and
  7. A patient's medical record is protected from loss, damage, or unauthorized use.
- ##### B. If a home health agency maintains patients' medical records electronically, an administrator shall ensure that:
1. Safeguards exist to prevent unauthorized access, and
  2. The date and time of an entry in a patient's medical record is recorded by the computer's internal clock.
- ##### C. An administrator shall ensure that a patient's medical record contains:
1. Patient information that includes:
    - a. The patient's name;
    - b. The patient's address and telephone number;
    - c. The patient's date of birth; and
  2. The date the patient began receiving services from the home health agency and, if applicable, the date the patient stopped receiving services from the home health agency;
  3. The name and telephone of the patient's physician or registered nurse practitioner;
  4. The name and telephone number of patient's podiatrist, if applicable;
  5. Documentation of general consent and, if applicable, informed consent;
  6. Documentation of medical history and current diagnoses;
  7. A copy of patient's health care directive, if applicable;
  8. If applicable, the name and contact information of the patient's representative and:
    - a. Laboratory reports,
    - b. Radiologic reports,
    - c. Diagnostic reports, and
    - d. Consultation reports;
  9. Orders;
  10. Assessments;
  11. Care plan;
  12. Progress notes;
  13. If applicable, documentation of any actions taken to control the patient's sudden, intense or out-of-control behavior to prevent harm to the patient or another individual;
  14. Documentation of meetings with the patient to assess the home health services and supportive services provided to the patient;
  15. The disposition of the patient upon discharge;
  16. The discharge plan;
  17. Discharge instructions and discharge summary, if applicable;
  18. If applicable:
    - a. The date and time of administration;
    - b. The name, strength, dosage, and route of administration;
    - c. For a medication administered for pain:
      - i. An assessment of the patient's pain before administering the medication, and
      - ii. The effect of the medication administered;
    - d. For a psychotropic medication:
      - i. An assessment of the patient's behavior before administering the psychotropic medication, and
      - ii. The effect of the psychotropic medication administered;
    - e. The identification, signature, and professional designation of the individual administering or observing the self-administration of the medication; and
    - f. Any adverse reaction a patient has to the medication;
  19. Documentation of a medication administered to the patient that includes:
    - a. The date and time of administration;
    - b. The name, strength, dosage, and route of administration;
    - c. For a medication administered for pain:
      - i. An assessment of the patient's pain before administering the medication, and
      - ii. The effect of the medication administered;
    - d. For a psychotropic medication:
      - i. An assessment of the patient's behavior before administering the psychotropic medication, and
      - ii. The effect of the psychotropic medication administered;
    - e. The identification, signature, and professional designation of the individual administering or observing the self-administration of the medication; and
    - f. Any adverse reaction a patient has to the medication;
  20. Documentation of tasks assigned to a home health aide or other personnel member;

21. Documentation of coordination of patient care;
22. Copies of patient summary reports sent to the patient's physician, registered nurse practitioner, or podiatrist, as applicable; and
23. Documentation of contacts with the patient's physician, registered nurse practitioner, or podiatrist, as applicable, by a personnel member or the patient.

#### Historical Note

Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-1210. Home Health Services

- A. An administrator shall ensure that an individual admitted to the home health agency has an order from a physician, registered nurse practitioner, or podiatrist for home health services.
- B. An administrator shall ensure that the home health services director provides direction for home health services provided by or through the home health agency.
- C. A home health services director shall ensure that nursing services are provided by a registered nurse or practical nurse, according to policies and procedures.
- D. A home health services director shall ensure that a registered nurse:
  1. Unless a patient's physician or registered nurse practitioner orders only speech therapy, occupational therapy, or physical therapy for the patient, within 48 hours after the patient begins receiving home health services provided by or through the home health agency, conducts an initial assessment of the patient to determine:
    - a. The needs of the patient;
    - b. Resources available to address the patient's needs;
    - c. The patient's home and family environment;
    - d. Goals for patient care;
    - e. Medications used by the patient, including non-compliance, drug interactions, side effects, and contraindications; and
    - f. Medical supplies or equipment needed by the patient;
  2. Reviews a patient's health care directives at the time of the initial assessment;
  3. Implements a patient's care plan, developed as specified in R9-10-1207;
  4. Coordinates patient care with other individuals providing home health services or other services to the patient;
  5. Immediately informs the patient's physician or registered nurse practitioner of a change in a patient's condition that requires medical services; and
  6. At least every 60 calendar days until a patient is discharged:
    - a. Reassesses the patient based on the patient's care plan, needs, and medical condition; and
    - b. Summarizes the patient's condition and needs for the patient's physician, registered nurse practitioner, or podiatrist, as applicable.
- E. A home health services director shall ensure that:
  1. A patient's condition and the services provided to the patient are documented in the patient's medical record after each patient contact; and
  2. Verbal orders from a patient's physician, registered nurse practitioner, or podiatrist, as applicable, are:
    - a. Except as specified in subsection (F)(2)(d), received by a registered nurse and documented by the registered nurse in the patient's medical record; and
    - b. Authenticated by the patient's physician, registered nurse practitioner, or podiatrist, as applicable, with a signature, within 30 calendar days.
- F. A home health services director shall ensure that:
  1. A registered nurse:
    - a. Except as specified in subsection (F)(2)(b)(i) and (ii):
      - i. Assigns tasks in writing to a home health aide who is providing home health services to a patient; and
      - ii. Verifies the competency of the home health aide in performing assigned tasks;
    - b. Except as specified in subsection (F)(2)(b)(iii), provides direction for the home health aide services provided to a patient; and
    - c. Except as specified in subsection (F)(2)(e)(ii), meets with a patient who is receiving home health aide services to assess the home health services provided by the home health aide:
      - i. At least every two weeks when the patient is also receiving nursing services or therapy services, and
      - ii. At least every 60 calendar days when the patient is only receiving home health aide services;
  2. When a patient's physician or registered nurse practitioner orders speech therapy, occupational therapy, or physical therapy for the patient, an individual specified in R9-10-1203(C)(6)(a), (c), or (d), as applicable:
    - a. Provides the applicable therapy service to the patient according to the patient's care plan;
    - b. If a home health aide is assigned to assist the patient in performing activities related to the therapy service:
      - i. Assigns tasks in writing to the home health aide who is assisting the patient;
      - ii. Verifies the competency of the home health aide in performing assigned tasks; and
      - iii. Provides direction to the home health aide in performing the assigned tasks related to the therapy service;
    - c. Coordinates the provision of the therapy service to the patient with the registered nurse providing direction for other home health services for the patient;
    - d. Documents in the patient's medical record any orders by the patient's physician or registered nurse practitioner received concerning the therapy service; and
    - e. If the only home health services ordered for the patient are speech therapy, occupational therapy, or physical therapy:
      - i. Within 48 hours after the patient begins receiving home health services provided by or through the home health agency, conducts an initial assessment of the patient as specified in subsections (D)(1)(a) through (f); and
      - ii. Meets with a patient who is receiving home health services from a home health aide every two weeks to assess the home health services provided by the home health aide; and
  3. A home health aide:
    - a. Is only assigned to provide services the home health aide can competently perform; and
    - b. Only performs tasks assigned to the home health aide in writing by a registered nurse or as specified in subsection (F)(2)(b)(i).

**Historical Note**

Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-1211. Supportive Services**

- A.** A governing authority may include supportive services, including personal care services, in the scope of services for a home health agency.
- B.** An administrator:
1. May allow:
    - a. Supportive services to be provided to a patient without an order from a physician, registered nurse practitioner, or podiatrist; and
    - b. A personnel member who is not a home health aide to perform personal care services; and
  2. Shall ensure that:
    - a. Supportive services are provided to a patient according to policies and procedures;
    - b. A registered nurse:
      - i. Assesses a patient's need for supportive services,
      - ii. Assigns specific tasks in writing to a home health aide providing supportive services other than personal care services,
      - iii. Assigns specific tasks in writing to a personnel member providing personal care services,
      - iv. Provides direction for supportive services, and
      - v. Includes supportive services in the reassessment of a patient required in R9-10-1210(D)(6); and
    - c. Supportive services are documented in a patient's medical record.

**Historical Note**

Adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 3721, effective August 9, 2002 (Supp. 02-3). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-1212. Repealed****Historical Note**

Adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 3721, effective August 9, 2002 (Supp. 02-3).

**R9-10-1213. Repealed****Historical Note**

Adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 3721, effective August 9, 2002 (Supp. 02-3).

**R9-10-1214. Repealed****Historical Note**

Adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 3721, effective August 9, 2002 (Supp. 02-3).

**R9-10-1215. Repealed****Historical Note**

Adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 3721, effective August 9, 2002 (Supp. 02-3).

**R9-10-1216. Repealed****Historical Note**

Adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 3721, effective August 9, 2002 (Supp. 02-3).

**R9-10-1217. Repealed****Historical Note**

Adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 3721, effective August 9, 2002 (Supp. 02-3).

**R9-10-1218. Repealed****Historical Note**

Adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 3721, effective August 9, 2002 (Supp. 02-3).

**R9-10-1219. Repealed****Historical Note**

Adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 3721, effective August 9, 2002 (Supp. 02-3).

**R9-10-1220. Repealed****Historical Note**

Adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 3721, effective August 9, 2002 (Supp. 02-3).

**R9-10-1221. Repealed****Historical Note**

Adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 3721, effective August 9, 2002 (Supp. 02-3).

**R9-10-1222. Repealed****Historical Note**

Adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 3721, effective August 9, 2002 (Supp. 02-3).

**R9-10-1223. Repealed****Historical Note**

Adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 3721, effective August 9, 2002 (Supp. 02-3).

**R9-10-1224. Repealed****Historical Note**

Adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 3721, effective August 9, 2002 (Supp. 02-3).

**R9-10-1225. Reserved****R9-10-1226. Repealed****Historical Note**

Adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 3721, effective August 9, 2002 (Supp. 02-3).

**R9-10-1227. Repealed****Historical Note**

Adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 3721, effective

August 9, 2002 (Supp. 02-3).

#### **R9-10-1228. Repealed**

##### **Historical Note**

Adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 3721, effective August 9, 2002 (Supp. 02-3).

#### **R9-10-1229. Reserved**

#### **R9-10-1230. Repealed**

##### **Historical Note**

Adopted effective February 4, 1981 (Supp. 81-1). Section repealed by final rulemaking at 8 A.A.R. 3721, effective August 9, 2002 (Supp. 02-3).

### **ARTICLE 13. BEHAVIORAL HEALTH SPECIALIZED TRANSITIONAL FACILITY**

#### **R9-10-1301. Definitions**

Definitions in A.R.S. § 36-401 and R9-10-101 apply in this Article unless otherwise specified.

##### **Historical Note**

Emergency rule adopted effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency rule adopted again effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency rule adopted again effective August 27, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Adopted with changes effective November 25, 1992 (Supp. 92-4). Reference in paragraph (24) corrected (Supp. 94-2). Section R9-10-1301 repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2).

#### **R9-10-1302. Administration**

**A.** The governing authority for a behavioral health specialized transitional facility:

1. Is the superintendent of the state hospital; and
2. Shall:
  - a. Establish, in writing:
    - i. A behavioral health specialized transitional facility's scope of services, and
    - ii. Qualifications for an administrator;
  - b. Designate, in writing, an administrator who has the qualifications established in subsection (A)(2)(a)(ii);
  - c. Adopt a quality management program according to R9-10-1303;
  - d. Review and evaluate the effectiveness of the quality management program at least once every 12 months;
  - e. Designate an acting administrator, in writing, who has the qualifications established in subsection (A)(2)(a)(ii), if the administrator is:
    - i. Expected not to be present on the behavioral health specialized transitional facility's premises for more than 30 calendar days, or
    - ii. Not present on the behavioral health specialized transitional facility's premises for more than 30 calendar days; and
  - f. Except as provided in subsection (A)(2)(e), notify the Department according to A.R.S. § 36-425(I)

when there is a change in the administrator and identify the name and qualifications of the new administrator.

**B.** An administrator:

1. Is directly accountable to the superintendent of the state hospital for the daily operation of the behavioral health specialized transitional facility and for all services provided by or at the behavioral health specialized transitional facility;
2. Has the authority and responsibility to manage the behavioral health specialized transitional facility; and
3. Except as provided in subsection (A)(2)(e), designates, in writing, an individual who is present on the behavioral health specialized transitional facility's premises and accountable for the behavioral health specialized transitional facility when the administrator is not present on the behavioral health specialized transitional facility's premises.

**C.** An administrator shall ensure that:

1. Policies and procedures are established, documented, and implemented to protect the health and safety of a patient that:
  - a. Cover job descriptions, duties, and qualifications, including required skills, knowledge, education, and experience for personnel members, employees, volunteers, and students;
  - b. Cover orientation and in-service education for personnel members, employees, volunteers, and students;
  - c. Cover patient admission, assessment, treatment plan, transfer, discharge planning, discharge, and recordkeeping;
  - d. Cover patient rights, including assisting a patient who does not speak English or who has a physical or other disability to become aware of patient rights;
  - e. Cover the requirements in A.R.S. §§ 36-3708, 36-3709, and 36-3714;
  - f. Establish the process for warning an identified or identifiable individual, as described in A.R.S. § 36-517.02 (B) through (C), if a patient communicates to a personnel member a threat of imminent serious physical harm or death to the identified or identifiable individual and the patient has the apparent intent and ability to carry out the threat;
  - g. Cover when informed consent is required and how informed consent is obtained;
  - h. Cover the criteria and process for conducting research using patients or patients' medical records;
  - i. Include the establishment of, disbursing from, and recordkeeping for a patient personal funds account;
  - j. Include a method of patient identification to ensure a patient receives the services ordered for the patient;
  - k. Cover contracted services;
  - l. Cover health care directives;
  - m. Cover medical records, including electronic medical records;
  - n. Cover medication procurement, storage, inventory monitoring and control, and disposal;
  - o. Cover infection control;
  - p. Cover and designate which personnel members or employees are required to have current certification in cardiopulmonary resuscitation and first aid training;
  - q. Cover environmental services that affect patient care;



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- r. Cover reporting suspected or alleged abuse, neglect, exploitation, or other criminal activity;
  - s. Cover quality management, including incident reports and supporting documentation;
  - t. Cover emergency treatment and disaster plan;
  - u. Cover how personnel members will respond to a patient's sudden, intense, or out-of-control behavior to prevent harm to the patient or another individual;
  - v. Include security of the facility, patients and their possessions, personnel members, and visitors at the behavioral health specialized transitional facility;
  - w. Include preventing unauthorized patient absences;
  - x. Cover transportation of patients, including the criteria for using a locking mechanism to restrict a patient's movement during transportation;
  - y. Cover specific steps for:
    - i. A patient to file a complaint, and
    - ii. The behavioral health specialized transitional facility to respond to a patient's complaint;
  - z. Cover visitation, telephone usage, sending or receiving mail, computer usage, and other recreational activities; and
  - aa. Include equipment inspection and maintenance;
2. Policies and procedures are available to each personnel member;
  3. Laboratory services are provided by a laboratory that holds a certificate of accreditation or certificate of compliance issued by the U.S. Department of Health and Human Services under the 1988 amendments to the Clinical Laboratories Improvement Act of 1967;
  4. Food services are provided as specified in R9-10-1314;
  5. The following individuals have access to a patient:
    - a. The patient's representative,
    - b. An individual assigned by a court of law to provide services to the patient, and
    - c. An attorney hired by the patient or patient's family;
  6. Labor performed by a patient for the behavioral health specialized transitional facility is consistent with A.R.S. § 36-510 and applicable state and federal law; and
  7. The following information is posted in an area easily viewed by a patient or an individual entering or leaving the behavioral health specialized transitional facility:
    - a. Patient rights,
    - b. Telephone number for the Department and the Office of Human Rights,
    - c. Location of inspection reports,
    - d. Complaint procedures, and
    - e. Visitation hours and procedures;
- D.** An administrator shall:
1. Provide written notification to the Department of a patient's:
    - a. Death, if the patient's death is required to be reported according to A.R.S. § 11-593, within one working day after the patient's death;
    - b. Self-injury, within two working days after the patient inflicts a self-injury that requires immediate intervention by an emergency medical service provider; and
    - c. Absence, within one working day after an unauthorized patient absence from the behavioral health specialized transitional facility is discovered;
  2. Maintain the documentation required in subsection (D)(1) for at least 12 months after the date of the notification; and
3. Ensure that sufficient personnel are present at the behavioral health specialized transitional facility at all times to maintain safe and secure conditions.
- E.** If an administrator has a reasonable basis, according to A.R.S. § 46-454, to believe abuse, neglect, or exploitation has occurred on the premises or while the patient is receiving services from an employee or personnel member of the behavioral health specialized transitional facility, the administrator shall:
1. If applicable, take immediate action to stop the suspected abuse, neglect, or exploitation;
  2. Report the suspected abuse, neglect, or exploitation of the patient according to A.R.S. § 46-454;
  3. Document:
    - a. The suspected abuse, neglect, or exploitation of the patient;
    - b. Any action taken according to subsection (E)(1); and
    - c. The report in subsection (E)(2);
  4. Maintain the documentation required in subsections (E)(1) and (E)(2) for at least 12 months after the date of the report;
  5. Initiate an investigation of the suspected abuse, neglect, or exploitation and document the following information within five working days after the report required in subsection (E)(2):
    - a. The dates, times, and description of the suspected abuse, neglect, or exploitation;
    - b. A description of any injury to the patient related to the abuse or neglect and any change to the patient's physical, cognitive, functional, or emotional condition;
    - c. The names of witnesses to the suspected abuse, neglect, or exploitation; and
    - d. The actions taken by the administrator to prevent the suspected abuse, neglect, or exploitation from occurring in the future; and
  6. Maintain a copy of the documented information required in subsection (C)(10)(e) and any other information obtained during the investigation for at least 12 months after the date the investigation was initiated.
- F.** An administrator shall:
1. Unless otherwise stated, ensure that:
    - a. Documentation required by this Article is provided to the Department within two hours after a Department request; and
    - b. When documentation or information is required by this Chapter to be submitted on behalf of a behavioral health specialized transitional facility, the documentation or information is provided to the unit in the Department that is responsible for licensing and monitoring the behavioral health specialized transitional facility;
  2. Appoint a medical director, to direct the medical and nursing services provided by or at the behavioral health specialized transitional facility, who:
    - a. Is a medical staff member, and
    - b. Has at least two years of experience providing services in an organized psychiatric services unit of a hospital or in a behavioral health facility; and
  3. Appoint a clinical director, to provide direction for the behavioral health services provided by or at the behavioral health specialized transitional facility, who:
    - a. Is a psychiatrist or a psychologist;
    - b. Has at least two years of experience providing services in an organized psychiatric services unit of a hospital or in a behavioral health facility; and

- c. May, if qualified, also serve as the medical director.
- G. A medical director:**
  - 1. Is responsible for the medical services, nursing services, and physical health-related services provided to patients consistent with the patients behavioral treatment plan; and
  - 2. Shall ensure that policies and procedures are established, documented, and implemented to protect the health and safety of a patient that cover:
    - a. Restraint, according to R9-10-224;
    - b. The process for patient assessments, including the identification of and criteria for the on-going monitoring of a patient's physical health conditions;
    - c. Dispensing and administration of medications, including the process and criteria for determining whether a patient is capable of and eligible to self-administer medication;
    - d. The process by which emergency medical treatment will be provided to a patient; and
    - e. The requirements for completion of medication records and recording of adverse events.
- H. A clinical director:**
  - 1. Is responsible for the behavioral health services provided to patients;
  - 2. Shall ensure that policies and procedures are established, documented, and implemented to protect the health and safety of a patient that cover:
    - a. Assessing the competency and proficiency of a behavioral health personnel member for each type of service the personnel member provides and each type of patient to which the personnel member is assigned;
    - b. Providing:
      - i. Supervision to behavioral health paraprofessionals, according to R9-10-115(1); and
      - ii. Clinical oversight to behavioral health technicians, according to R9-10-115(2);
    - c. The qualifications for personnel members who provide clinical oversight;
    - d. The process for patient assessments, including the identification of and criteria for the on-going monitoring of a patient's behavioral health issues;
    - e. The process for developing and implementing a patient's treatment plan;
    - f. The frequency of and process for reviewing and modifying a patient's treatment plan, based on the ongoing monitoring of the patient's response to treatment; and
    - g. The process for determining whether a patient is eligible for discharge or conditional release to a less restrictive alternative;
  - 3. Shall ensure that patient services are provided by personnel competent and proficient in providing the services; and
  - 4. Shall ensure that clinical oversight of personnel members is provided according to the policies and procedures.

#### Historical Note

Emergency rule adopted effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency rule adopted again effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency rule adopted again effective August 27, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3).

Adopted with changes effective November 25, 1992 (Supp. 92-4). Section R9-10-1302 repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-1303. Quality Management

An administrator shall ensure that:

- 1. A plan is established, documented, and implemented for an ongoing quality management program that, at a minimum, includes:
  - a. A method to identify, document, and evaluate incidents;
  - b. A method to collect data to evaluate services provided to patients;
  - c. A method to evaluate the data collected to identify a concern about the delivery of services related to patient care;
  - d. A method to make changes or take action as a result of the identification of a concern about the delivery of services related to patient care; and
  - e. The frequency of submitting a documented report required in subsection (2) to the governing authority;
- 2. A documented report is submitted to the governing authority that includes:
  - a. An identification of each concern about the delivery of services related to patient care, and
  - b. Any change made or action taken as a result of the identification of a concern about the delivery of services related to patient care; and
- 3. The report required in subsection (2) and the supporting documentation for the report are maintained for at least 12 months after the date the report is submitted to the governing authority.

#### Historical Note

Emergency rule adopted effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency rule adopted again effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency rule adopted again effective August 27, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Adopted with changes effective November 25, 1992 (Supp. 92-4). Section R9-10-1303 repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-1304. Contracted Services

An administrator shall ensure that:

- 1. Contracted services are provided according to the requirements in this Article, and
- 2. Documentation of current contracted services is maintained that includes a description of the contracted services provided.

**Historical Note**

Emergency rule adopted effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency rule adopted again effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency rule adopted again effective August 27, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Adopted without change effective November 25, 1992 (Supp. 92-4). Section R9-10-1304 repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-1305. Personnel Requirements and Records****A.** An administrator shall ensure that a personnel member:

1. Is at least 21 years of age; and
2. Either:
  - a. Holds a valid fingerprint clearance card issued under A.R.S. Title 41, Chapter 12, Article 3.1; or
  - b. Submits to the administrator a copy of a fingerprint clearance card application showing that the personnel member submitted the application to the fingerprint division of the Department of Public Safety under A.R.S. § 41-1758.02 within seven working days after becoming a personnel member.

**B.** An administrator shall ensure that each personnel member submits to the administrator a copy of the individual's valid fingerprint clearance card:

1. Except as provided in subsection (A)(2)(b), before the personnel member's starting date of employment; and
2. Each time the fingerprint clearance card is issued or renewed.

**C.** If a personnel member holds a fingerprint clearance card that was issued before the individual became a personnel member, an administrator shall:

1. Contact the Department of Public Safety within seven working days after the individual becomes a personnel member to determine whether the fingerprint clearance card is valid; and
2. Make a record of this determination, including the name of the personnel member, the date of the contact with the Department of Public Safety, and whether the fingerprint clearance card is valid.

**D.** An administrator shall ensure that:

1. The qualifications, skills, and knowledge required for each type of personnel member:
  - a. Are based on:
    - i. The type of physical health services or behavioral health services expected to be provided by the personnel member according to the established job description, and
    - ii. The acuity of the patients receiving physical health services or behavioral health services from the personnel member according to the established job description; and
  - b. Include:
    - i. The specific skills and knowledge necessary for the personnel member to provide the expected physical health services and behavioral health

services listed in the established job description,

- ii. The type and duration of education that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected physical health services or behavioral health services listed in the established job description, and
- iii. The type and duration of experience that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected physical health services or behavioral health services listed in the established job description;

**2.** A personnel member's skills and knowledge are verified and documented:

- a. Before the personnel member provides physical health services or behavioral health services, and
- b. According to policies and procedures; and

**3.** Personnel members are present on a behavioral health specialized transitional facility's premises with the qualifications, skills, and knowledge necessary to:

- a. Provide the services in the behavioral health specialized transitional facility's scope of services,
- b. Meet the needs of a patient, and
- c. Ensure the health and safety of a patient.

**E.** An administrator shall comply with the requirements for behavioral health technicians and behavioral health paraprofessionals in R9-10-115.**F.** An administrator shall ensure that a personnel member or an employee or volunteer who has or is expected to have direct interaction with a patient for more than eight hours a week, provides evidence of freedom from infectious tuberculosis:

1. On or before the date the individual begins providing service at or on behalf of the behavioral health specialized transition facility, and
2. As specified in R9-10-113.

**G.** An administrator shall ensure that a personnel record is maintained for each personnel member, employee, volunteer, or student that includes:

1. The individual's name, date of birth, and contact telephone number;
2. The individual's starting date of employment or volunteer service and, if applicable, ending date;
3. A copy of the individual's fingerprint clearance card; and
4. Documentation of:
  - a. The individual's qualifications including skills and knowledge applicable to the individual's job duties;
  - b. The individual's education and experience applicable to the individual's job duties;
  - c. The individual's orientation and in-service education as required by policies and procedures;
  - d. The individual's license or certification, if the individual is required to be licensed or certified in this Article or policies and procedures;
  - e. If the individual is a behavioral health technician, clinical oversight required in R9-10-115;
  - f. Cardiopulmonary resuscitation training, if required for the individual according to this Article or policies and procedures;
  - g. First aid training, if required for the individual according to this Article or policies and procedures; and
  - h. Evidence of freedom from infectious tuberculosis, if required for the individual according to subsection (F).

- H.** An administrator shall ensure that personnel records are maintained:
1. Throughout an individual's period of providing services in or for the behavioral health specialized transitional facility; and
  2. For at least 24 months after the last date the individual provided services in or for the behavioral health specialized transitional facility.
- I.** An administrator shall ensure that:
1. A plan to provide orientation specific to the duties of a personnel member, an employee, a volunteer, and a student is developed, documented, and implemented;
  2. A personnel member completes orientation before providing behavioral health services or physical health services;
  3. An individual's orientation is documented, to include:
    - a. The individual's name,
    - b. The date of the orientation, and
    - c. The subject or topics covered in the orientation;
  4. A plan to provide in-service education specific to the duties of a personnel member is developed, documented and implemented; and
  5. A personnel member's in-service education is documented, to include:
    - a. The personnel member's name,
    - b. The date of the training, and
    - c. The subject or topics covered in the training.

#### Historical Note

Emergency rule adopted effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency rule adopted again effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency rule adopted again effective August 27, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Adopted with changes effective November 25, 1992 (Supp. 92-4). Section R9-10-1305 repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-1306. Admission Requirements

- A.** An administrator shall ensure that, before a patient is admitted to the behavioral health specialized transitional facility, a court of competent jurisdiction has ordered the patient to be:
1. Detained under A.R.S. § 36-3705(B) or § 36-3713(B); or
  2. Committed under A.R.S. § 36-3707.
- B.** An administrator shall ensure that, at the time a patient is admitted to the behavioral health specialized transitional facility:
1. The administrator receives a copy of the court order for the patient to be detained at or committed to the behavioral health specialized transitional facility,
  2. The patient's possessions are taken to the bedroom to which the patient has been assigned, and
  3. The patient is provided with a written list and verbal explanation of the patient's rights and responsibilities.

- C.** Within seven calendar days after a patient is admitted to the behavioral health specialized transitional facility, a medical director shall ensure that:
1. A medical history is taken from and a physical examination performed on the patient;
  2. Except as specified in subsection (C)(3), a patient provides evidence of freedom from infectious tuberculosis as required in R9-10-113;
  3. A patient is not required to be retested for tuberculosis or provide another written statement by a physician, physician assistant, or registered nurse practitioner as specified in R9-10-113(1) if:
    - a. Fewer than 12 months have passed since the patient was tested for tuberculosis or since the date of the written statement, and
    - b. The documentation of freedom from infectious tuberculosis required in subsection (C)(2) accompanies the patient at the time of the patient's admission to the behavioral health specialized transitional facility; and
  4. An assessment for the patient is completed:
    - a. According to the behavioral health specialized transitional facility's policies and procedures;
    - b. That includes the patient's:
      - i. Legal history, including criminal justice record;
      - ii. Behavioral health treatment history;
      - iii. Medical conditions and history; and
      - iv. Symptoms reported by the patient and referrals needed by the patient, if any; and
    - c. That includes:
      - i. Recommendations for further assessment or examination of the patient's needs,
      - ii. The physical health services or ancillary services that will be provided to the patient until the patient's treatment plan is completed; and
      - iii. The signature of the personnel member conducting the assessment and the date signed.

#### Historical Note

Emergency rule adopted effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency rule adopted again effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency rule adopted again effective August 27, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Adopted with changes effective November 25, 1992 (Supp. 92-4). Section R9-10-1306 repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-1307. Discharge or Conditional Release to a Less Restrictive Alternative

- A.** An administrator shall ensure that annual written notice is given to a patient of the patient's right to petition for:
1. Conditional release to a less restrictive alternative under A.R.S. § 36-3709, or
  2. Discharge under A.R.S. § 36-3714.

- B. An administrator shall ensure that a patient who is detained at or committed to the behavioral health specialized transitional facility is transported to a hearing to determine the patient's continued detention at or commitment to the behavioral health specialized transitional facility.
- C. An administrator shall ensure that a patient is not discharged or conditionally released to a less restrictive alternative before the behavioral health specialized transitional facility receives documentation from a court of competent jurisdiction of the patient's:
  - 1. Conditional release to a less restrictive alternative, or
  - 2. Discharge including the disposition of the patient upon discharge.
- D. A clinical director shall ensure that before a patient is discharged or conditionally released to a less restrictive alternative:
  - 1. The clinical director or the clinical director's designee, as specified in the behavioral health specialized transitional facility's discharge policies and procedures, receives the name of the health care provider or behavioral health professional to whom a copy of the patient's discharge summary will be sent; and
  - 2. The patient receives:
    - a. Written follow-up instructions including as applicable to the patient:
      - i. On-going behavioral health issues and physical health conditions;
      - ii. A list of the patient's medications and, for each medication, directions for taking the medication, possible side-effects, and possible results of not taking the medication; and
      - iii. Counseling goals; and
    - b. A supply of medications sufficient to last the patient for at least 14 calendar days.
- 2. Documentation of current vehicle insurance and a record of maintenance performed or a repair of the vehicle is maintained;
- 3. A driver of the vehicle:
  - a. Is 21 years of age or older,
  - b. Has a valid driver license,
  - c. Operates the vehicle in a manner that does not endanger a patient in the vehicle,
  - d. Does not leave a patient in the vehicle unattended, and
  - e. Ensures the safe and hazard-free loading and unloading of patients; and
- 4. Transportation safety is maintained as follows:
  - a. Each individual in the vehicle is sitting in a seat and wearing a working seat belt while the vehicle is in motion, and
  - b. Each seat in the vehicle is securely fastened to the vehicle and provides sufficient space for a patient's body.

#### Historical Note

Emergency rule adopted effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency rule adopted again effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency rule adopted again effective August 27, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Adopted with changes effective November 25, 1992 (Supp. 92-4). Section R9-10-1308 repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### Historical Note

Emergency rule adopted effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency rule adopted again effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency rule adopted again effective August 27, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Adopted with changes effective November 25, 1992 (Supp. 92-4). Section R9-10-1307 repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2).

#### R9-10-1308. Transportation

An administrator of a behavioral health specialized transitional facility that uses a vehicle owned or leased by the behavioral health specialized transitional facility to provide transportation to a patient shall ensure that:

- 1. The vehicle:
  - a. Is safe and in good repair,
  - b. Contains a locked first aid kit,
  - c. Contains a working heating and air conditioning system, and
  - d. Contains drinking water sufficient to meet the needs of each patient present in the vehicle;
- 2. Documentation of current vehicle insurance and a record of maintenance performed or a repair of the vehicle is maintained;
- 3. A driver of the vehicle:
  - a. Is 21 years of age or older,
  - b. Has a valid driver license,
  - c. Operates the vehicle in a manner that does not endanger a patient in the vehicle,
  - d. Does not leave a patient in the vehicle unattended, and
  - e. Ensures the safe and hazard-free loading and unloading of patients; and
- 4. Transportation safety is maintained as follows:
  - a. Each individual in the vehicle is sitting in a seat and wearing a working seat belt while the vehicle is in motion, and
  - b. Each seat in the vehicle is securely fastened to the vehicle and provides sufficient space for a patient's body.

#### R9-10-1309. Patient Rights

An administrator shall ensure that:

- 1. A patient:
  - a. Has privacy in treatment and personal care needs;
  - b. Has the opportunity for and privacy in correspondence, communications, and visitation unless:
    - i. Restricted by court order; or
    - ii. Contraindicated on the basis of clinical judgment, as documented in the patient's medical record;
  - c. Is given the opportunity to seek, speak to, and be assisted by legal counsel:
    - i. Whom the court assigns to the patient, or
    - ii. Whom the patient obtains at the patient's own expense; and
  - d. Is not subjected to:
    - i. Abuse;
    - ii. Neglect;
    - iii. Exploitation;
    - iv. Coercion;
    - v. Manipulation;
    - vi. Seclusion;
    - vii. Restraint, if not necessary to prevent imminent harm to self or others;
    - viii. Sexual abuse according to A.R.S. § 13-1404; or

- ix. Sexual assault according to A.R.S. § 13-1406; and
- 2. A patient or the patient's representative:
  - a. Is provided with the opportunity to participate in the development of the patient's treatment plan and in treatment decisions before the treatment is initiated, except in a medical emergency;
  - b. Is provided with information about proposed treatments, alternatives to treatments, associated risks, and possible complications;
  - c. Is allowed to control the patient's finances and have access to the patient's personal funds account according to the behavioral health specialized transitional facility's policies and procedures specified in R9-10-1302(C)(1)(i);
  - d. Has an opportunity to review the medical record for the patient according to the behavioral health specialized transitional facility's policies and procedures; and
  - e. Receives information about the behavioral health specialized transitional facility's policies and procedures for:
    - i. Health care directives;
    - ii. Filing complaints, including the telephone number of an individual at the behavioral health specialized transitional facility to contact about a complaint and the Department's telephone number; and
    - iii. Petitioning a court for a patient's discharge or conditional release to a less restrictive alternative.

#### Historical Note

Emergency rule adopted effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency rule adopted again effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency rule adopted again effective August 27, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Adopted with changes effective November 25, 1992 (Supp. 92-4). Section R9-10-1309 repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-1310. Behavioral Health Services

- A. A clinical director shall ensure that:
  - 1. A treatment plan is developed and implemented for the patient:
    - a. According to the behavioral health specialized transitional facility's policies and procedures;
    - b. Based on the assessment conducted under R9-10-1306(C)(4) and on-going changes to the assessment of the patient's behavioral health issues, mental disorders, and physical health conditions, as applicable; and
    - c. Including:
      - i. The physical health services, behavioral health services, and ancillary services to be provided

- to the patient until completion of the treatment plan;
- ii. The type, frequency, and duration of counseling or other treatment ordered for the patient;
- iii. The name of each individual who ordered medication, counseling, or other treatment for the patient;
- iv. The signature of the patient or the patient's representative and dated signed, or documentation of the refusal to sign;
- v. The date when the patient's treatment plan will be reviewed;
- vi. If a discharge date has been determined, the treatment needed after discharge; and
- vii. The signature of the personnel member who developed the treatment plan and the date signed; and
- 2. A patient's treatment plan is reviewed and updated:
  - a. According to the review date specified in the treatment plan,
  - b. When a treatment goal is accomplished or changes,
  - c. When additional information that affects the patient's assessment is identified, and
  - d. When a patient has a significant change in condition or experiences an event that affects treatment.

- B. A clinical director shall ensure that treatment is:
  - 1. Offered to a patient according to the patient's treatment plan;
  - 2. Except for a patient obtaining treatment under A.R.S. § 36-512, only provided after obtaining informed consent to the treatment from the patient; and
  - 3. Documented in the patient's medical record as specified in R9-10-1312.
- C. The clinical director shall ensure that restraint is used, performed, and documented according to the behavioral health specialized transitional facility's policies and procedures.
- D. A clinical director shall ensure that:
  - 1. A patient receives the annual examination required by A.R.S. § 36-3708, and
  - 2. A report of the patient's annual examination is prepared according to the behavioral health specialized transitional facility's policies and procedures.

#### Historical Note

Emergency rule adopted effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency rule adopted again effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency rule adopted again effective August 27, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Adopted with changes effective November 25, 1992 (Supp. 92-4). Section R9-10-1310 repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-1311. Physical Health Services

- A. A medical director shall ensure that:

1. A patient's physical health is assessed during the physical examination specified in R9-10-1306(C)(1), and
  2. Any physical health conditions identified through the assessment are addressed in the patient's treatment plan.
- B.** A medical director shall ensure that on-going assessment or treatment of a patient's physical health condition is:
1. Offered to a patient according to the patient's treatment plan;
  2. Except for a patient obtaining treatment under A.R.S. § 36-512, only provided after obtaining informed consent to the assessment or treatment from the patient; and
  3. Documented in the patient's medical record as specified in R9-10-1312.
- C.** An administrator shall ensure that, if a patient requires assessment or treatment not available at the behavioral health specialized transitional facility, the patient is provided with transportation to the location where assessment or treatment may be provided to the patient.

#### Historical Note

Emergency rule adopted effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency rule adopted again effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency rule adopted again effective August 27, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Adopted with changes effective November 25, 1992 (Supp. 92-4). Section R9-10-1311 repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-1312. Medical Records

- A.** An administrator shall ensure that:
1. A medical record is established and maintained for each patient according to A.R.S. Title 12, Chapter 13, Article 7.1;
  2. An entry in a patient's medical record is:
    - a. Recorded only by an individual authorized by facility policies and procedures to make the entry;
    - b. Dated, legible, and authenticated; and
    - c. Not changed to make the initial entry illegible;
  3. An order is:
    - a. Dated when the order is entered in the patient's medical record and includes the time of the order;
    - b. Authenticated by a medical practitioner or behavioral health professional according to facility policies and procedures; and
    - c. If the order is a verbal order, authenticated by the medical practitioner or behavioral health professional issuing the order;
  4. If a rubber-stamp signature or an electronic signature is used to authenticate an order, the individual whose signature the rubber-stamp signature or electronic signature represents is accountable for the use of the rubber-stamp signature or the electronic signature;
  5. A patient's medical record is available to an individual:
    - a. Authorized according to policies and procedures to access the patient's medical record;
    - b. If the individual is not authorized according to policies and procedures, with the written consent of the patient or the patient's representative; or
    - c. As permitted by law;
  6. A patient's medical record is available to the patient or patient's representative upon request at a time agreed upon by the patient or patient's representative and the administrator; and
  7. A patient's medical record is protected from loss, damage, or unauthorized use.
- B.** If a behavioral health specialized transitional facility maintains patient's medical records electronically, an administrator shall ensure that:
1. Safeguards exist to prevent unauthorized access, and
  2. The date and time of an entry in a patient's medical record is recorded by the computer's internal clock.
- C.** An administrator shall ensure that a patient's medical record contains:
1. A copy of the court order requiring the patient to be detained at or committed to the behavioral health specialized transitional facility;
  2. The date the patient was detained at or committed to the behavioral health specialized transitional facility;
  3. Patient information that includes:
    - a. The patient's name;
    - b. The patient's address;
    - c. The patient's date of birth; and
    - d. Any known allergies, including medication allergies;
  4. Documentation of the patient's freedom from infectious tuberculosis as required in R9-10-1306(C)(2);
  5. Documentation of general consent and, if applicable, informed consent for treatment by the patient or the patient's representative, except in an emergency;
  6. If applicable, the name and contact information of the patient's representative and:
    - a. The document signed by the patient consenting for the patient's representative to act on the patient's behalf; or
    - b. If the patient's representative:
      - i. Is a legal guardian, a copy of the court order establishing guardianship; or
      - ii. Has a health care power of attorney established under A.R.S. § 36-3221 or a mental health care power of attorney executed under A.R.S. § 36-3282, a copy of the health care power of attorney or mental health care power of attorney;
  7. Documentation of medical history and physical examination of the patient;
  8. A copy of patient's health care directives, if applicable;
  9. Orders;
  10. The patient's assessment including updates;
  11. The patient's treatment plan including updates;
  12. Progress notes;
  13. Documentation of transportation provided to the patient;
  14. Documentation of behavioral health services and physical health services provided to the patient;
  15. Documentation of patient's annual examination and report required by A.R.S. § 36-3708;
  16. Documentation of the annual written notice of the patient of the patient's right to petition for:
    - a. Conditional release to a less restrictive alternative as required by A.R.S. § 36-3709, or
    - b. Discharged as required by A.R.S. § 36-3714;
  17. A copy of any petition for discharge or conditional release to a less restrictive alternative filed by the patient

- and provided to the behavioral health specialized transitional facility and the outcome of the petition;
18. Documentation of the patient's, if applicable;
    - a. Conditional release to a less restrictive alternative; or
    - b. Discharge, including the disposition of the patient upon discharge;
  19. If a patient has been discharged, a discharge summary that includes:
    - a. A summary of the treatment provided to the patient;
    - b. The patient's progress in meeting treatment goals, including treatment goals that were and were not achieved;
    - c. The name, dosage, and frequency of each medication for the patient ordered at the time of the patient's discharge from the behavioral health specialized transitional facility;
    - d. A description of the disposition of the patient's possessions, funds, or medications; and
    - e. The date the patient was discharged from the behavioral health specialized transitional facility;
  20. If applicable:
    - a. Laboratory reports,
    - b. Radiologic reports,
    - c. Diagnostic reports,
    - d. Documentation of restraint,
    - e. Patient follow-up instructions, and
    - f. Consultation reports; and
  21. Documentation of a medication administered to the patient that includes:
    - a. The date and time of administration;
    - b. The name, strength, dosage, and route of administration;
    - c. For a medication administered for pain:
      - i. An assessment of the patient's pain before administering the medication, and
      - ii. The effect of the medication administered;
    - d. For a psychotropic medication:
      - i. An assessment of the patient's behavior before administering the psychotropic medication, and
      - ii. The effect of the psychotropic medication administered;
    - e. The identification, signature, and professional designation of the individual administering or observing the self-administration of the medication;
    - f. Any adverse reaction a patient has to the medication; and
    - g. If applicable, a patient's refusal to take medication ordered for the patient.

#### Historical Note

Emergency rule adopted effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency rule adopted again effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency rule adopted again effective August 27, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Adopted with changes effective November 25, 1992 (Supp. 92-4). Section R9-10-1312 repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). New Section made by exempt rulemaking at 19 A.A.R. 2015,

effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-1313. Medication Services

- A. An administrator shall ensure that policies and procedures for medication services:
  1. Include:
    - a. A process for providing information to a patient about medication prescribed for the patient, including:
      - i. The prescribed medication's anticipated results,
      - ii. The prescribed medication's potential adverse reactions,
      - iii. The prescribed medication's potential side effects, and
      - iv. Potential adverse reactions that could result from not taking the medication as prescribed;
    - b. Procedures for preventing, responding to, and reporting:
      - i. A medication error,
      - ii. An adverse response to a medication, or
      - iii. A medication overdose;
    - c. Procedures for documenting medication services and assistance in the self-administration of medication; and
    - d. If applicable, procedures for providing medication administration or assistance in the self-administration of medication off the premises; and
  2. Specify a process for review through the quality management program of:
    - a. A medication administration error, and
    - b. An adverse reaction to a medication.
- B. A medical director shall ensure that:
  1. Policies and procedures for medication administration:
    - a. Are reviewed and approved by a medical practitioner;
    - b. Specify the individuals who may:
      - i. Order medication, and
      - ii. Administer medication; and
    - c. Ensure that medication is administered to a patient only as prescribed;
  2. A patient's refusal to take prescribed medication is documented in the patient's medical record;
  3. Verbal orders for medication services are taken by a nurse, unless otherwise provided by law;
  4. A medication administered to a patient:
    - a. Is administered in compliance with an order, and
    - b. Is documented in the patient's medical record; and
  5. If pain medication is administered to a patient on a PRN basis, documentation in the patient's medical record includes:
    - a. An identification of the patient's pain before administering the medication, and
    - b. The effect of the pain medication administered.
- C. If a behavioral health specialized transitional facility provides assistance in the self-administration of medication, a medical director shall ensure that:
  1. A patient's medication is stored by the behavioral health specialized transitional facility;
  2. The following assistance is provided to a patient:
    - a. A reminder when it is time to take the medication;
    - b. Opening the medication container for the patient;
    - c. Observing the patient while the patient removes the medication from the container;



- d. Verifying that the medication is taken as ordered by the patient's medical practitioner by confirming that:
    - i. The patient taking the medication is the individual stated on the medication container label,
    - ii. The dosage of the medication is the same as stated on the medication container label, and
    - iii. The medication is being taken by the patient at the time stated on the medication container label; or
  - e. Observing the patient while the patient takes the medication;
  - 3. Policies and procedures for assistance in the self-administration of medication are reviewed and approved by a medical practitioner or registered nurse;
  - 4. Training for a personnel member, other than a medical practitioner or nurse, in assistance in the self-administration of medication:
    - a. Is provided by a medical practitioner or registered nurse or an individual trained by a medical practitioner or registered nurse; and
    - b. Includes:
      - i. A demonstration of the personnel member's skills and knowledge necessary to provide assistance in the self-administration of medication,
      - ii. Identification of medication errors and medical emergencies related to medication that require emergency medical intervention, and
      - iii. Process for notifying the appropriate entities when an emergency medical intervention is needed;
  - 5. A personnel member, other than a medical practitioner or nurse, completes the training in subsection (C)(4) before the personnel member provides assistance in the self-administration of medication; and
  - 6. Assistance in the self-administration of medication provided to a patient:
    - a. Is in compliance with an order, and
    - b. Is documented in the patient's medical record.
- D.** An administrator shall ensure that:
- 1. A current drug reference guide is available for use by personnel members;
  - 2. A current toxicology reference guide is available for use by personnel members; and
  - 3. If pharmaceutical services are provided:
    - a. The pharmaceutical services are provided under the direction of a pharmacist;
    - b. The pharmaceutical services comply with A.R.S. Title 36, Chapter 27; A.R.S. Title 32, Chapter 18; and 4 A.A.C. 23; and
    - c. A copy of the pharmacy license is provided to the Department upon request.
- E.** When medication is stored at a behavioral health specialized transitional facility, an administrator shall ensure that:
- 1. Medication is stored in a separate locked room, closet, or self-contained unit used only for medication;
  - 2. Medication is stored according to the instructions on the medication container; and
  - 3. Policies and procedures are established, documented, and implemented for:
    - a. Receiving, storing, inventorying, tracking, dispensing, and discarding medication including expired medication;
    - b. Discarding or returning prepackaged and sample medication to the manufacturer if the manufacturer requests the discard or return of the medication;
    - c. A medication recall and notification of patients who received recalled medication;
    - d. Storing, inventorying, and dispensing controlled substances; and
    - e. Documenting the maintenance of a medication requiring refrigeration.
- F.** An administrator shall ensure that a personnel member immediately reports a medication error or a patient's adverse reaction to a medication to the medical practitioner who ordered the medication and, if applicable, the behavioral health specialized transitional facility's medical director.

#### Historical Note

Emergency rule adopted effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency rule adopted again effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency rule adopted again effective August 27, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Adopted with changes effective November 25, 1992 (Supp. 92-4). Section R9-10-1313 repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-1314. Food Services

- A.** An administrator shall ensure that:
- 1. The behavioral health specialized transitional facility has a license or permit as a food establishment under 9 A.A.C. 8, Article 1;
  - 2. A copy of the behavioral health specialized transitional facility's food establishment license is maintained;
  - 3. If a behavioral health specialized transitional facility contracts with a food establishment, as defined in 9 A.A.C. 8, Article 1, to prepare and deliver food to the behavioral health specialized transitional facility:
    - a. A copy of the food establishment's license or permit under 9 A.A.C. 8, Article 1 is maintained by the behavioral health specialized transitional facility; and
    - b. The behavioral health specialized transitional facility is able to store, refrigerate, and reheat food to meet the dietary needs of a patient;
  - 4. A registered dietitian is employed full-time, part-time, or as a consultant; and
  - 5. If a registered dietitian is not employed full-time, an individual is designated as a director of food services who consults with a registered dietitian as often as necessary to meet the nutritional needs of the patients.
- B.** A registered dietitian or director of food services shall ensure that:
- 1. A food menu:
    - a. Is prepared at least one week in advance,
    - b. Includes the foods to be served each day,
    - c. Is conspicuously posted at least one day before the first meal on the food menu will be served,
    - d. Includes any food substitution no later than the morning of the day of meal service with a food substitution, and

- e. Is maintained for at least 60 calendar days after the last day included in the food menu;
- 2. Meals and snacks provided by the behavioral health specialized transitional facility are served according to posted menus;
- 3. Meals for each day are planned using the applicable guidelines in <http://www.health.gov/dietaryguidelines/2010.asp>;
- 4. A patient is provided:
  - a. A diet that meets the patient's nutritional needs as specified in the patient's assessment plan;
  - b. Three meals a day with not more than 14 hours between the evening meal and breakfast except as provided in subsection (B)(4)(d);
  - c. The option to have a daily evening snack identified in subsection (B)(4)(d)(ii) or other snack; and
  - d. The option to extend the time span between the evening meal and breakfast from 14 hours to 16 hours if:
    - i. A patient group agrees; and
    - ii. The patient is offered an evening snack that includes meat, fish, eggs, cheese, or other protein, and a serving from either the fruit and vegetable food group or the bread and cereal food group;
- 5. A patient requiring assistance to eat is provided with assistance that recognizes the patient's nutritional, physical, and social needs, including the use of adaptive eating equipment or utensils; and
- 6. Water is available and accessible to a patient at all times, unless otherwise specified in the patient's treatment plan.
- C. An administrator shall ensure that food is obtained, prepared, served, and stored as follows:
  - 1. Food is free from spoilage, filth, or other contamination and is safe for human consumption;
  - 2. Food is protected from potential contamination;
  - 3. Food is prepared:
    - a. Using methods that conserve nutritional value, flavor, and appearance; and
    - b. In a form to meet the needs of a patient such as cut, chopped, ground, pureed, or thickened;
  - 4. Potentially hazardous food is maintained as follows:
    - a. Foods requiring refrigeration are maintained at 41° F or below; and
    - b. Foods requiring cooking are cooked to heat all parts of the food to a temperature of at least 145° F for 15 seconds, except that:
      - i. Ground beef and ground meats are cooked to heat all parts of the food to at least 155° F;
      - ii. Poultry, poultry stuffing, stuffed meats, and stuffing that contains meat are cooked to heat all parts of the food to at least 165° F;
      - iii. Pork and any food containing pork are cooked to heat all parts of the food to at least 155° F;
      - iv. Raw shell eggs for immediate consumption are cooked to at least 145° F for 15 seconds and any food containing raw shell eggs is cooked to heat all parts of the food to at least 155° F;
      - v. Roast beef and beef steak are cooked to an internal temperature of at least 155° F; and
      - vi. Leftovers are reheated to a temperature of at least 165° F;
  - 5. A refrigerator contains a thermometer, accurate to plus or minus 3° F, placed at the warmest part of the refrigerator;
  - 6. Frozen foods are stored at a temperature of 0° F or below; and

- 7. Tableware, utensils, equipment, and food-contact surfaces are clean and in good repair.

#### Historical Note

Emergency rule adopted effective November 29, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency rule adopted again effective February 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-1). Emergency rule adopted again effective May 28, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-2). Emergency rule adopted again effective August 27, 1992, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 92-3). Adopted with changes effective November 25, 1992 (Supp. 92-4). Section R9-10-1314 repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). New Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-1315. Emergency and Safety Standards

- A. A medical director shall ensure that policies and procedures for providing medical emergency treatment to a patient are established, documented, and implemented and include:
  - 1. The medications, supplies, and equipment required on the premises for the medical emergency treatment provided by the behavioral health specialized transitional facility;
  - 2. A system to ensure all medications, supplies, and equipment are available, have not been tampered with, and, if applicable, have not expired;
  - 3. A requirement that a cart or container is available for medical emergency treatment that contains all of the medication, supplies, and equipment specified in the behavioral health specialized transitional facility's policies and procedures;
  - 4. A method to verify and document that the contents of the cart or container in subsection (A)(3) are available for medical emergency treatment; and
  - 5. A method for ensuring a patient may be transported to a hospital or other health care institution to receive treatment for a medical emergency that the behavioral health specialized transitional facility is not able or not authorized to provide.
- B. An administrator shall ensure that medical emergency treatment is provided to a patient admitted to the behavioral health specialized transitional facility according to the behavioral health specialized transitional facility's policies and procedures.
- C. An administrator shall ensure that the behavioral health specialized transitional facility has:
  - 1. A fire alarm system installed according to the National Fire Protection Association 72: National Fire Alarm and Signaling Code, incorporated by reference in A.A.C. R9-1-412, that is in working order; and a sprinkler system installed according to the National Fire Protection Association 13 Standard for the Installation of Sprinkler Systems, incorporated by reference in A.A.C. R9-1-412, that is in working order; or
  - 2. An alternative method to ensure a patient's safety, documented and approved by the local jurisdiction.
- D. An administrator shall ensure that:

1. A disaster plan is developed, documented, maintained in a location accessible to personnel members and other employees, and, if necessary, implemented that includes:
    - a. Procedures for protecting the health and safety of patients and other individuals at the behavioral health specialized transitional facility;
    - b. When, how, and where patients will be relocated;
    - c. How each patient's medical record will be available to personnel providing services to the patient during a disaster;
    - d. A plan to ensure each patient's medication will be available to administer to the patient during a disaster; and
    - e. A plan for obtaining food and water for individuals present in the behavioral health specialized transitional facility or the behavioral health specialized transitional facility's relocation site during a disaster;
  2. The disaster plan required in subsection (D)(1) is reviewed at least once every 12 months;
  3. A disaster drill is performed on each shift at least once every 12 months;
  4. Documentation of a disaster plan review required in subsection (D)(2) and a disaster drill required in subsection (D)(3) is created, is maintained for at least 12 months after the date of the disaster plan review or disaster drill, and includes:
    - a. The date and time of the disaster plan review or disaster drill;
    - b. The name of each personnel member, employee, or volunteer participating in the disaster plan review or disaster drill;
    - c. A critique of the disaster plan review or disaster drill; and
    - d. If applicable, recommendations for improvement;
  5. An evacuation drill is conducted on each shift at least once every three months;
  6. Documentation of an evacuation drill is created, is maintained for at least 12 months after the date of the evacuation drill, and includes:
    - a. The date and time of the evacuation drill;
    - b. The amount of time taken for all employees and patients to evacuate the behavioral health specialized transitional facility;
    - c. If applicable, an identification of patients needing assistance for evacuation;
    - d. Any problems encountered in conducting the evacuation drill; and
    - e. Recommendations for improvement, if applicable; and
  7. An evacuation path is conspicuously posted on each hallway of each floor of the behavioral health specialized transitional facility.
- E.** An administrator shall:
1. Obtain a fire inspection conducted according to the time-frame established by the local fire department or the State Fire Marshal,
  2. Make any repairs or corrections stated on the fire inspection report, and
  3. Maintain documentation of a current fire inspection.

#### Historical Note

Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-1316. Environmental Standards

- A.** An administrator shall ensure that:
1. The premises and equipment are:
    - a. Cleaned and, if applicable, disinfected according to policies and procedures designed to prevent, minimize, and control illness or infection; and
    - b. Free from a condition or situation that may cause a patient or other individual to suffer physical injury;
  2. A pest control program is implemented and documented;
  3. Biohazardous medical wastes are identified, stored, and disposed of according to 18 A.A.C. 13, Article 14;
  4. Equipment used at the behavioral health specialized transitional facility is:
    - a. Maintained in working order;
    - b. Tested and calibrated according to the manufacturer's recommendations or, if there are no manufacturer's recommendations, as specified in policies and procedures; and
    - c. Used according to the manufacturer's recommendations;
  5. Documentation of equipment testing, calibration, and repair is maintained for at least 12 months after the date of the testing, calibration, or repair;
  6. Garbage and refuse are:
    - a. Stored in covered containers, and
    - b. Removed from the premises at least once a week;
  7. Heating and cooling systems maintain the behavioral health specialized transitional facility at a temperature between 70° F and 84° F;
  8. Common areas:
    - a. Are lighted to assure the safety of patients, and
    - b. Have lighting sufficient to allow personnel members to monitor patient activity;
  9. Hot water temperatures are maintained between 95° F and 120° F in the areas of a behavioral health specialized transitional facility used by patients;
  10. The supply of hot and cold water is sufficient to meet the personal hygiene needs of patients and the cleaning and sanitation requirements in this Article;
  11. Soiled linen and soiled clothing stored by the behavioral health specialized transitional facility are maintained separate from clean linen and clothing and stored in closed containers away from food storage, kitchen, and dining areas; and
  12. Pets and animals, except for service animals, are prohibited on the premises.
- B.** An administrator shall ensure that smoking or tobacco products are not permitted within or on the premises of the facility.
- C.** An administrator shall ensure that:
1. Poisonous or toxic materials stored by the behavioral health specialized transitional facility are maintained in labeled containers in a locked area separate from food preparation and storage, dining areas, and medications and are inaccessible to patients;
  2. Combustible or flammable liquids and hazardous materials stored by a behavioral health specialized transitional facility are stored in the original labeled containers or safety containers in an area inaccessible to patients; and
  3. Poisonous, toxic, combustible, or flammable medical supplies in use for a patient are stored in a locked area according to the behavioral health specialized transitional facility's policies and procedures.
- D.** An administrator shall ensure that:
1. A patient's bedroom is provided with:
    - a. An individual storage space, such as a dresser or chest;

- b. A bed that:
  - i. Consists of at least a mattress and frame, and
  - ii. Is at least 36 inches wide and 72 inches long; and
- c. A pillow and linens that include:
  - i. A mattress pad;
  - ii. A top sheet and a bottom sheet are large enough to tuck under the mattress;
  - iii. A pillow case;
  - iv. A waterproof mattress cover, if needed; and
  - v. A blanket or bedspread sufficient to ensure the patient's warmth;
- 2. Clean linens and bath towels are provided to a patient as needed and at least once every seven calendar days; and
- 3. A patient's clothing may be cleaned according to policies and procedures.

#### Historical Note

Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-1317. Physical Plant Standards

- A. An administrator shall ensure that a behavioral health specialized transitional facility complies with the applicable physical plant health and safety codes and standards for secure residential facilities, incorporated by reference in A.A.C. R9-1-412, in effect on the date the behavioral health specialized transitional facility submitted architectural plans and specifications to the Department for approval according to R9-10-104.
- B. An administrator shall ensure that the premises and equipment are sufficient to accommodate:
  - 1. The services stated in the behavioral health specialized transitional facility's scope of services, and
  - 2. An individual accepted as a patient by the behavioral health specialized transitional facility.
- C. An administrator shall ensure that:
  - 1. A behavioral health specialized transitional facility has:
    - a. An area in which a patient may meet with a visitor,
    - b. Areas where patients may receive individual treatment,
    - c. Areas where patients may receive group counseling or other group treatment,
    - d. An area for community dining; and
    - e. Sufficient space in one or more common areas for individual and group activities.
- D. An administrator shall ensure that the behavioral health specialized transitional facility has:
  - 1. A bathroom adjacent to a common area for use by patients and visitors that:
    - a. Provides privacy to the user; and
    - b. Contains:
      - i. A working sink with running water,
      - ii. A working toilet that flushes and has a seat,
      - iii. Toilet tissue dispenser,
      - iv. Dispensed soap for hand washing,
      - v. Single use paper towels or a mechanical air hand dryer,
      - vi. Lighting, and
      - vii. A means of ventilation;
  - 2. An indoor common area that is not used as a sleeping area and that has:
    - a. A working telephone that allows a patient to make a private telephone call;
    - b. A distortion-free mirror;
    - c. A current calendar and an accurate clock;

- d. A variety of books, current magazines and newspapers, and arts and crafts supplies appropriate to the age, educational, cultural, and recreational needs of patients; and
- e. A working television and access to a radio;
- 3. A dining room or dining area that:
  - a. Is lighted and ventilated,
  - b. Contains tables and seats, and
  - c. Is not used as a sleeping area;
- 4. An outdoor area that:
  - a. Is accessible to patients,
  - b. Has sufficient space to accommodate the social and recreational needs of patients, and
  - c. Has shaded and unshaded areas;
- 5. For every ten patients, at least one working toilet that flushes and has a seat and dispensed toilet tissue;
- 6. For every 12 patients, at least one sink with running water, dispensed soap for hand washing, and single use paper towels or a mechanical air hand dryer;
- 7. For every 12 patients, at least one working bathtub or shower with a slip resistant surface; and
- 8. For each patient, a private bedroom that:
  - a. Contains at least 60 square feet of floor space, not including the closet;
  - b. Has walls from floor to ceiling;
  - c. Has a door that opens into a hallway or common area;
  - d. Is constructed and furnished to provide unimpeded access to the door;
  - e. Is not used as a passageway to another bedroom or a bathroom, unless the bathroom is for the exclusive use of a the patient occupying the bedroom; and
  - f. Has sufficient lighting for a patient to read.

#### Historical Note

Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### ARTICLE 14. SUBSTANCE ABUSE TRANSITIONAL FACILITIES

##### R9-10-1401. Definitions

In addition to the definitions in A.R.S. § 36-401 and R9-10-101, the following applies in this Article unless otherwise specified: "Emergency medical care technician" has the same meaning as in A.R.S. § 36-2201.

#### Historical Note

Adopted effective February 1, 1994 (Supp. 94-1). Amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

##### R9-10-1402. Administration

- A. A governing authority shall:
  - 1. Consist of one or more individuals accountable for the organization, operation, and administration of a substance abuse transitional facility;
  - 2. Establish, in writing:
    - a. A substance abuse transitional facility's scope of services, and
    - b. Qualifications for an administrator;
  - 3. Designate, in writing, an administrator who meets the qualifications established in subsection (A)(2)(b);
  - 4. Adopt a quality management program according to R9-10-1403;

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5. Review and evaluate the effectiveness of the quality management program at least once every 12 months;
  6. Designate, in writing, an acting administrator who has the qualifications established in subsection (A)(2)(b) if the administrator is:
    - a. Expected not to be present on a substance abuse transitional facility's premises for more than 30 calendar days, or
    - b. Not present on a substance abuse transitional facility's premises for more than 30 calendar days; and
  7. Except as provided in subsection (A)(6), notify the Department according to A.R.S. § 36-425(I) when there is a change in the administrator and identify the name and qualifications of the new administrator.
- B. An administrator:**
1. Is directly accountable to the governing authority for the daily operation of the substance abuse transitional facility and all services provided by or at the substance abuse transitional facility;
  2. Has the authority and responsibility to manage the substance abuse transitional facility; and
  3. Except as provided in subsection (A)(6), designates, in writing, an individual who is present on a substance abuse transitional facility's premises and accountable for the substance abuse transitional facility when the administrator is not present on the substance abuse transitional facility's premises.
- C. An administrator shall ensure that:**
1. Policies and procedures are established, documented, and implemented to protect the health and safety of a participant that:
    - a. Cover job descriptions, duties, and qualifications, including required skills, knowledge, education, and experience for personnel members, employees, volunteers, and students;
    - b. Cover orientation and in-service education for personnel members, employees, volunteers, and students;
    - c. Include how a personnel member may submit a complaint relating to services provided to a participant;
    - d. Cover the requirements in A.R.S. Title 36, Chapter 4, Article 11;
    - e. Cover cardiopulmonary resuscitation training, including:
      - i. The method and content of cardiopulmonary resuscitation training, which includes a demonstration of the individual's ability to perform cardiopulmonary resuscitation;
      - ii. The qualifications for an individual to provide cardiopulmonary resuscitation training;
      - iii. The time-frame for renewal of cardiopulmonary resuscitation training; and
      - iv. The documentation that verifies that the individual has received cardiopulmonary resuscitation training;
    - f. Include a method to identify a participant to ensure the participant receives physical health services and behavioral health services as ordered;
    - g. Cover first aid training;
    - h. Cover participant rights, including assisting a participant who does not speak English or who has a physical or other disability to become aware of participant rights;
    - i. Cover specific steps for:
      - ii. The substance abuse transitional facility to respond to a participant's complaint;
  - j. Cover medical records, including electronic medical records;
  - k. Cover quality management, including incident reports and supporting documentation;
  - l. Cover contracted services; and
  - m. Cover when an individual may visit a participant in the substance abuse transitional facility;
2. Policies and procedures for services are established, documented, and implemented to protect the health and safety of a participant that:
    - a. Cover participant screening, admission, assessment, transfer, discharge planning, and discharge;
    - b. Include when general consent and informed consent are required;
    - c. Cover the provision of behavioral health services and physical health services;
    - d. Cover medication administration, assistance in the self-administration of medication, and disposing of medication, including provisions for inventory control and preventing diversion of controlled substances;
    - e. Cover infection control;
    - f. Cover environmental services that affect participant care;
    - g. Cover the process for receiving a fee from and refunding a fee to a participant or the participant's representative;
    - h. Cover the security of a participant's possessions that are allowed on the premises;
    - i. Cover smoking tobacco products on the premises;
    - j. Cover how the facility will respond to a participant's sudden, intense, or out-of-control behavior to prevent harm to the participant or another individual; and
    - k. Cover how often periodic monitoring occurs based on a participant's condition;
  3. Policies and procedures are reviewed at least once every three years and updated as needed;
  4. Policies and procedures are available to employees; and
  5. Unless otherwise stated:
    - a. Documentation required by this Article is provided to the Department within two hours after a Department request; and
    - b. When documentation or information is required by this Chapter to be submitted on behalf of a substance abuse transitional facility, the documentation or information is provided to the unit in the Department that is responsible for licensing and monitoring the substance abuse transitional facility.
- D. An administrator shall provide written notification to the Department of a participant's:**
1. Death, if the participant's death is required to be reported according to A.R.S. § 11-593, within one working day after the participant's death; and
  2. Self-injury, within two working days after the participant inflicts a self-injury that requires immediate intervention by an emergency medical services provider.
- E. If abuse, neglect, or exploitation of a participant is alleged or suspected to have occurred before the participant was admitted or while the participant is not on the premises and not receiving services from a substance abuse transitional facility's employee or personnel member, an administrator shall immediately report the alleged or suspected abuse, neglect, or exploitation of the participant according to A.R.S. § 46-454.**

- F.** If an administrator has a reasonable basis, according to A.R.S. § 46-454, to believe that abuse, neglect, or exploitation has occurred on the premises or while a participant is receiving services from a substance abuse transitional facility's employee or personnel member, the administrator shall:
1. If applicable, take immediate action to stop the suspected abuse, neglect, or exploitation;
  2. Report the suspected abuse, neglect, or exploitation of the participant according to A.R.S. § 46-454;
  3. Document:
    - a. The suspected abuse, neglect, or exploitation;
    - b. Any action taken according to subsection (F)(1); and
    - c. The report in subsection (F)(2);
  4. Maintain the documentation in subsection (F)(3) for at least 12 months after the date of the report in subsection (F)(2);
  5. Initiate an investigation of the suspected abuse, neglect, or exploitation and document the following information within five working days after the report required in subsection (F)(2):
    - a. The dates, times, and description of the suspected abuse, neglect, or exploitation;
    - b. A description of any injury to the participant and any change to the participant's physical, cognitive, functional, or emotional condition;
    - c. The names of witnesses to the suspected abuse, neglect, or exploitation; and
    - d. The actions taken by the administrator to prevent the suspected abuse, neglect, or exploitation from occurring in the future; and
  6. Maintain a copy of the documented information required in subsection (F)(5) and any other information obtained during the investigation for at least 12 months after the date the investigation was initiated.
- G.** An administrator shall establish, document, and implement a process for responding to a participant's need for immediate and unscheduled behavioral health services or physical health services.
- H.** An administrator shall ensure that the following information or documents are conspicuously posted on the premises and are available upon request to a personnel member, an employee, a participant, or a participant's representative:
1. The participant rights listed in R9-10-1409,
  2. The facility's current license,
  3. The location at which inspection reports are available for review or can be made available for review, and
  4. The days and times when a participant may accept visitors and make telephone calls.

#### Historical Note

Adopted effective February 1, 1994 (Supp. 94-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-1402 repealed; new Section R9-10-1402 renumbered from Section R9-10-1403 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-1403. Quality Management

An administrator shall ensure that:

1. A plan is established, documented, and implemented for an ongoing quality management program that, at a minimum, includes:
  - a. A method to identify, document, and evaluate incidents;
  - b. A method to collect data to evaluate services provided to participants;

- c. A method to evaluate the data collected to identify a concern about the delivery of services related to participant care;
  - d. A method to make changes or take action as a result of the identification of a concern about the delivery of services related to participant care; and
  - e. The frequency of submitting a documented report required in subsection (2) to the governing authority;
2. A documented report is submitted to the governing authority that includes:
    - a. An identification of each concern about the delivery of services related to participant care, and
    - b. Any change made or action taken as a result of the identification of a concern about the delivery of services related to participant care; and
  3. The report required in subsection (2) and the supporting documentation for the report are maintained for at least 12 months after the date the report is submitted to the governing authority.

#### Historical Note

Adopted effective February 1, 1994 (Supp. 94-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-1403 renumbered to R9-10-1402; new Section R9-10-1403 renumbered from R9-10-1404 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-1404. Contracted Services

An administrator shall ensure that:

1. Contracted services are provided according to the requirements in this Article, and
2. Documentation of current contracted services is maintained that includes a description of the contracted services provided.

#### Historical Note

Adopted effective February 1, 1994 (Supp. 94-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-1404 renumbered to R9-10-1403; new Section R9-10-1404 renumbered from R9-10-1405 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-1405. Personnel

**A.** An administrator shall ensure that:

1. A personnel member is:
  - a. At least 21 years old, or
  - b. Licensed or certified under A.R.S. Title 32 and providing services within the personnel member's scope of practice;
2. An employee is at least 18 years old;
3. A student is at least 18 years old; and
4. A volunteer is at least 21 years old.

**B.** An administrator shall ensure that:

1. The qualifications, skills, and knowledge required for each type of personnel member:
  - a. Are based on:
    - i. The type of behavioral health services or physical health services expected to be provided by the personnel member according to the established job description, and
    - ii. The acuity of participants receiving behavioral health services or physical health services from

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- the personnel member according to the established job description;
- b. Include:
    - i. The specific skills and knowledge necessary for the personnel member to provide the expected behavioral health services and physical health services listed in the established job description,
    - ii. The type and duration of education that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected behavioral health services or physical health services listed in the established job description, and
    - iii. The type and duration of experience that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected behavioral health services or physical health services listed in the established job description;
  2. A personnel member's skills and knowledge are verified and documented:
    - a. Before the personnel member provides behavioral health services or physical health services, and
    - b. According to policies and procedures;
  3. An emergency medical care technician complies with the requirements in 9 A.A.C. 25 for certification and medical direction;
  4. A substance abuse transitional facility has sufficient personnel members with the qualifications, education, experience, skills, and knowledge necessary to:
    - a. Provide the behavioral health services and physical health services in the substance abuse transitional facility's scope of services,
    - b. Meet the needs of a participant, and
    - c. Ensure the health and safety of a participant;
  5. A written plan is developed and implemented to provide orientation specific to the duties of a personnel member;
  6. A personnel member's orientation is documented, to include:
    - a. The personnel member's name,
    - b. The date of the orientation, and
    - c. The subject or topics covered in the orientation;
  7. In addition to the training required in subsections (B)(1) and (B)(5), a written plan is developed and implemented to provide a personnel member with in-service education specific to the duties of the personnel member;
  8. A personnel member receives training in how to respond to a participant's sudden, intense, or out-of-control behavior to prevent harm to the participant or another individual:
    - a. Before providing services related to participant care, and
    - b. At least once every 12 months after the date the personnel member begins providing services related to participant care; and
  9. An individual's in-service education and, if applicable, training in how to respond to a participant's sudden, intense, or out-of-control behavior is documented, to include:
    - a. The personnel member's name,
    - b. The date of the training, and
    - c. The subject or topics covered in the training.
- C.** An administrator shall ensure that an individual who is licensed under A.R.S. Title 32, Chapter 33 as a baccalaureate social worker, master social worker, associate marriage and family therapist, associate counselor, or associate substance abuse counselor receives direct supervision as defined in A.A.C. R4-6-101.
- D.** An administrator shall ensure that a personnel member, or an employee, a volunteer, or a student who has or is expected to have direct interaction with a participant for more than eight hours in a week, provides evidence of freedom from infectious tuberculosis:
1. On or before the date the individual begins providing services at or on behalf of the substance abuse transitional facility, and
  2. As specified in R9-10-113.
- E.** An administrator shall comply with the requirements for behavioral health technicians and behavioral health paraprofessionals in R9-10-115.
- F.** An administrator shall ensure that a personnel record is maintained for a personnel member, employee, volunteer, or student that contains:
1. The individual's name, date of birth, and contact telephone number;
  2. The individual's starting date of employment or volunteer service and, if applicable, the ending date; and
  3. Documentation of:
    - a. The individual's qualifications including skills and knowledge applicable to the individual's job duties;
    - b. The individual's education and experience applicable to the individual's job duties;
    - c. The individual's completed orientation and in-service education as required by policies and procedures;
    - d. The individual's license or certification, if the individual is required to be licensed or certified in this Article or policies and procedures;
    - e. The individual's completion of the training required in subsection (B)(8), if applicable;
    - f. If the individual is a behavioral health technician, clinical oversight required in R9-10-115;
    - g. Cardiopulmonary resuscitation training, if required for the individual according to subsection (H) or policies and procedures;
    - h. First aid training, if required for the individual according to subsection (H) or policies and procedures; and
    - i. Evidence of freedom from infectious tuberculosis, if required for the individual according to subsection (D).
- G.** An administrator shall ensure that personnel records are:
1. Maintained:
    - a. Throughout an individual's period of providing services at or for a substance abuse transitional facility, and
    - b. For at least 24 months after the last date the individual provided services at or for a substance abuse transitional facility; and
  2. For a personnel member who has not provided physical health services or behavioral health services at or for the substance abuse transitional facility during the previous 12 months, provided to the Department within 72 hours after the Department's request.
- H.** An administrator shall ensure at least one personnel member who is present at the substance abuse transitional facility during hours of facility operation has first-aid and cardiopulmonary resuscitation training certification specific to the populations served by the facility.
- I.** An administrator shall ensure that:

1. At least one personnel member is present and awake at a substance abuse transitional facility at all times when a participant is on the premises;
2. In addition to the personnel member in subsection (I)(1), at least one personnel member is on-call and available to come to the substance abuse transitional facility if needed;
3. A substance abuse transitional facility has sufficient personnel members to provide general participant supervision and treatment and sufficient personnel members or employees to provide ancillary services to meet the scheduled and unscheduled needs of each participant;
4. There is a daily staffing schedule that:
  - a. Indicates the date, scheduled work hours, and name of each individual assigned to work, including on-call individuals;
  - b. Includes documentation of the employees who work each day and the hours worked by each employee; and
  - c. Is maintained for at least 12 months after the last date on the documentation;
5. A behavioral health professional is present on the substance abuse transitional facility's premises or on-call; and
6. A registered nurse is present on the substance abuse transitional facility's premises or on-call.

#### Historical Note

Adopted effective February 1, 1994 (Supp. 94-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-1405 renumbered to R9-10-1404; new Section R9-10-1405 renumbered from R9-10-1406 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-1406. Admission; Assessment

An administrator shall ensure that:

1. A participant is admitted based upon the participant's presenting behavioral health issue and treatment needs and the substance abuse transitional facility's ability and authority to provide behavioral health services or physical health services consistent with the participant's needs;
2. General consent is obtained from a participant or the participant's representative before or at the time of admission;
3. The general consent obtained in subsection (2) is documented in the participant's medical record;
4. An assessment of a participant is completed or updated by an emergency medical care technician or a registered nurse;
5. If an assessment is completed or updated by an emergency medical care technician, a registered nurse reviews the assessment within 24 hours after the completion of the assessment to ensure that the assessment identifies the behavioral health services and physical health services needed by the participant;
6. If an assessment that complies with the requirements in this Section is received from a behavioral health provider other than the substance abuse transitional facility or the substance abuse transitional facility has a medical record for the participant that contains an assessment that was completed within 12 months before the date of the participant's current admission:

- a. The participant's assessment information is reviewed and updated if additional information that affects the participant's assessment is identified, and
  - b. The review and update of the participant's assessment information is documented in the participant's medical record within 48 hours after the review is completed;
7. An assessment:
    - a. Documents a participant's:
      - i. Presenting issue;
      - ii. Substance abuse history;
      - iii. Co-occurring disorder;
      - iv. Medical condition and history;
      - v. Behavioral health treatment history;
      - vi. Symptoms reported by the participant; and
      - vii. Referrals needed by the participant, if any;
    - b. Includes:
      - i. Recommendations for further assessment or examination of the participant's needs,
      - ii. The behavioral health services and physical health services that will be provided to the participant, and
      - iii. The signature and date signed of the personnel member conducting the assessment; and
    - c. Is documented in participant's medical record;
  8. A participant is referred to a medical practitioner if a determination is made that the participant requires immediate physical health services or the participant's behavioral health issue may be related to the participant's medical condition;
  9. If a participant requires behavioral health services that the substance abuse transitional facility is not authorized or not able to provide, a personnel member arranges for the participant to be provided transportation to transfer to another health care institution where the behavioral health services can be provided;
  10. A request for participation in a participant's assessment is made to the participant or the participant's representative;
  11. An opportunity for participation in the participant's assessment is provided to the participant or the participant's representative;
  12. Documentation of the request in subsection (10) and the opportunity in subsection (11) is in the participant's medical record; and
  13. A participant's assessment information is:
    - a. Documented in the medical record within 48 hours after completing the assessment, and
    - b. Reviewed and updated when additional information that affects the participant's assessment is identified.

#### Historical Note

Adopted effective February 1, 1994 (Supp. 94-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-1406 renumbered to R9-10-1405; new Section R9-10-1406 renumbered from R9-10-1407 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-1407. Discharge

A. An administrator shall ensure that:

1. If a participant is not being transferred to another health care institution, before discharging the participant from a substance abuse transitional facility, a personnel member:



- a. Identifies the specific needs of the participant after discharge necessary to assist the participant to address the participant's substance abuse issues;
    - b. Identifies any resources, including family members, community social services, peer support services, and Regional Behavioral Health Agency staff, that may be available to assist the participant; and
    - c. Documents the information in subsection (A)(1)(a) and the resources in subsection (A)(1)(b) in the participant's medical record; and
  - 2. When an individual is discharged, a personnel member:
    - a. Provides the participant with discharge information that includes:
      - i. The identified specific needs of the participant after discharge, and
      - ii. Resources that may be available for the participant; and
    - b. Contacts any resources identified as required in subsection (A)(1)(b).
  - B.** An administrator shall ensure that there is a documented discharge order by a medical practitioner before a participant is discharged unless the participant leaves the facility against a medical practitioner's advice.
  - C.** An administrator shall ensure that, at the time of discharge, a participant receives a referral for behavioral health services that the participant may need after discharge, if applicable.
  - D.** An administrator shall ensure that a discharge summary:
    - 1. Is entered into the participant's medical record within 10 working days after a participant's discharge; and
    - 2. Includes the following information completed by an individual authorized by policies and procedures:
      - a. The participant's presenting issue and other behavioral health and physical health issues identified in the participant's assessment;
      - b. A summary of the behavioral health services and physical health services provided to the participant;
      - c. The name, dosage, and frequency of each medication for the participant ordered at the time of the participant's discharge by a medical practitioner at the facility; and
      - d. A description of the disposition of the participant's possessions, funds, or medications brought to the facility by the participant.
  - E.** An administrator shall ensure that a participant who is dependent upon a prescribed medication is offered a written referral to detoxification services or opioid treatment before the participant is discharged.
- b. Information in the participant's medical record, including orders that are in effect at the time of the transfer, is provided to a receiving health care institution; and
  - c. A personnel member explains risks and benefits of the transfer to the participant or the participant's representative; and
- 3. Documentation in the participant's medical record includes:
    - a. Communication with an individual at a receiving health care institution;
    - b. The date and time of the transfer;
    - c. The mode of transportation; and
    - d. If applicable, the name of the personnel member accompanying the participant during a transfer.

#### Historical Note

Adopted effective February 1, 1994 (Supp. 94-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-1408 renumbered to R9-10-1407; new Section R9-10-1408 renumbered from R9-10-1409 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-1409. Participant Rights

- A.** An administrator shall ensure that:
  - 1. The requirements in subsection (B) and the participant rights in subsection (C) are conspicuously posted on the premises;
  - 2. At the time of admission, a participant or the participant's representative receives a written copy of the requirements in subsection (B) and the participant rights in subsection (C); and
  - 3. Policies and procedures are established, documented, and implemented to protect the health and safety of a participant that include:
    - a. How and when a participant or the participant's representative is informed of participant rights in subsection (C), and
    - b. Where participant rights are posted as required in subsection (A)(1).
- B.** An administrator shall ensure that:
  - 1. A participant is treated with dignity, respect, and consideration;
  - 2. A participant is not subjected to:
    - a. Abuse;
    - b. Neglect;
    - c. Exploitation;
    - d. Coercion;
    - e. Manipulation;
    - f. Sexual abuse;
    - g. Sexual assault;
    - h. Seclusion;
    - i. Restraint;
    - j. Retaliation for submitting a complaint to the Department or another entity;
    - k. Misappropriation of personal and private property by the substance abuse transitional facility's personnel members, employees, volunteers, or students; or
  - l. Discharge or transfer, or threat of discharge or transfer, for reasons unrelated to the participant's treatment needs, except as established in a fee agreement signed by the participant or the participant's representative; and
  - 3. A participant or the participant's representative:

#### Historical Note

Adopted effective February 1, 1994 (Supp. 94-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-1407 renumbered to R9-10-1406; new Section R9-10-1407 renumbered from R9-10-1408 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-1408. Transfer

Except for a transfer of a participant due to an emergency, an administrator shall ensure that:

- 1. A personnel member coordinates the transfer and the services provided to the participant;
- 2. According to policies and procedures:
  - a. An evaluation of the participant is conducted before the transfer;

- a. Except in an emergency, either consents to or refuses treatment;
  - b. May refuse or withdraw consent for treatment before treatment is initiated;
  - c. Except in an emergency, is informed of alternatives to a proposed psychotropic medication, associated risks, and possible complications;
  - d. Is informed of the participant complaint process; and
  - e. Except as otherwise permitted by law, provides written consent to the release of information in the participant's:
    - i. Medical record, or
    - ii. Financial records.
- C.** A participant has the following rights:
1. Not to be discriminated against based on race, national origin, religion, gender, sexual orientation, age, disability, marital status, or diagnosis;
  2. To receive treatment that:
    - a. Supports and respects the participant's individuality, choices, strengths, and abilities;
    - b. Supports the participant's personal liberty and only restricts the participant's personal liberty according to a court order, by the participant's or the participant's representative's general consent, or as permitted in this Chapter; and
    - c. Is provided in the least restrictive environment that meets the participant's treatment needs;
  3. To receive privacy in treatment and care for personal needs, including the right not to be fingerprinted, photographed, or recorded without consent, except:
    - a. A participant may be photographed when admitted to a substance abuse transitional facility for identification and administrative purposes;
    - b. For a participant receiving treatment according to A.R.S. Title 36, Chapter 37; or
    - c. For video recordings used for security purposes that are maintained only on a temporary basis;
  4. To review, upon written request, the participant's own medical record according to A.R.S. §§ 12-2293, 12-2294, and 12-2294.01;
  5. To receive a referral to another health care institution if the substance abuse transitional facility is not authorized or not able to provide behavioral health services or physical health services needed by the participant;
  6. To participate or have the participant's representative participate in the development of or decisions concerning treatment;
  7. To receive assistance from a family member, the participant's representative, or other individual in understanding, protecting, or exercising the participant's rights;
  8. To be provided locked storage space for the participant's belongings while the participant receives services; and
  9. To be informed of the requirements necessary for the participant's discharge.
- Historical Note**
- Adopted effective February 1, 1994 (Supp. 94-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-1409 renumbered to R9-10-1408; new Section R9-10-1409 renumbered from R9-10-1410 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).
- R9-10-1410. Medical Records**
- A.** An administrator shall ensure that:
1. A medical record is established and maintained for each participant according to A.R.S. Title 12, Chapter 13, Article 7.1;
  2. An entry in a participant's medical record is:
    - a. Recorded only by a personnel member authorized by policies and procedures to make the entry;
    - b. Dated, legible, and authenticated; and
    - c. Not changed to make the initial entry illegible;
  3. An order is:
    - a. Dated when the order is entered in the participant's medical record and includes the time of the order;
    - b. Authenticated by a medical practitioner or behavioral health professional according to policies and procedures; and
    - c. If the order is a verbal order, authenticated by the medical practitioner or behavioral health professional issuing the order;
  4. If a rubber-stamp signature or an electronic signature is used to authenticate an order, the individual whose signature the rubber-stamp signature or electronic signature represents is accountable for the use of the rubber-stamp signature or electronic signature;
  5. A participant's medical record is available to an individual:
    - a. Authorized according to policies and procedures to access the participant's medical record;
    - b. If the individual is not authorized according to policies and procedures, with the written consent of the participant or the participant's representative; or
    - c. As permitted by law; and
  6. A participant's medical record is protected from loss, damage, or unauthorized use.
- B.** If a substance abuse transitional agency maintains participants' medical records electronically, an administrator shall ensure that:
1. Safeguards exist to prevent unauthorized access, and
  2. The date and time of an entry in a medical record is recorded by the computer's internal clock.
- C.** An administrator shall ensure that a participant's medical record contains:
1. Participant information that includes:
    - a. The participant's name;
    - b. The participant's address;
    - c. The participant's date of birth; and
    - d. Any known allergies, including medication allergies;
  2. A participant's presenting behavioral health issue;
  3. Documentation of general consent and, if applicable, informed consent for treatment by the participant or the participant's representative, except in an emergency;
  4. If applicable, the name and contact information of the participant's representative and:
    - a. The document signed by the participant consenting for the participant's representative to act on the participant's behalf; or
    - b. If the participant's representative:
      - i. Has a health care power of attorney established under A.R.S. § 36-3221 or a mental health care power of attorney executed under A.R.S. § 36-3282, a copy of the health care power of attorney or mental health care power of attorney; or
      - ii. Is a legal guardian, a copy of the court order establishing guardianship;
  5. Documentation of medical history and results of a physical examination;

6. The date of admission and, if applicable, date of discharge;
7. Orders;
8. Assessment;
9. Progress notes;
10. Documentation of substance abuse transitional agency services provided to the participant;
11. If applicable, documentation of any actions taken to control the participant's sudden, intense, or out-of-control behavior to prevent harm to the participant or another individual;
12. The disposition of the participant upon discharge;
13. The discharge plan;
14. A discharge summary, if applicable; and
15. Documentation of a medication administered to a participant that includes:
  - a. The date and time of administration;
  - b. The name, strength, dosage, and route of administration;
  - c. For a medication administered for pain:
    - i. An evaluation of the participant's pain before administering the medication, and
    - ii. The effect of the medication administered;
  - d. For a psychotropic medication:
    - i. An evaluation of the participant's behavior before administering the psychotropic medication, and
    - ii. The effect of the psychotropic medication administered;
  - e. The signature of the individual administering the medication; and
  - f. Any adverse reaction a participant has to the medication.

#### Historical Note

Adopted effective February 1, 1994 (Supp. 94-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-1410 renumbered to R9-10-1409; new Section R9-10-1410 renumbered from R9-10-1411 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-1411. Behavioral Health Services

- A. An administrator shall ensure that counseling is:
  1. Offered as described in the substance abuse transitional facility's scope of services,
  2. Provided according to the frequency and number of hours identified in the participant's assessment, and
  3. Provided by a behavioral health professional.
- B. An administrator shall ensure that:
  1. A behavioral health professional providing counseling that addresses a specific type of behavioral health issue has the skills and knowledge necessary to provide the counseling that addresses the specific type of behavioral health issue; and
  2. Each counseling session is documented in a participant's medical record to include:
    - a. The date of the counseling session;
    - b. The amount of time spent in the counseling session;
    - c. Whether the counseling was individual counseling, family counseling, or group counseling;
    - d. The treatment goals addressed in the counseling session; and
    - e. The signature of the personnel member who provided the counseling and the date signed.

#### Historical Note

Adopted effective February 1, 1994 (Supp. 94-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-1411 renumbered to R9-10-1410; new Section R9-10-1411 renumbered from R9-10-1412 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-1412. Medication Services

- A. If a facility provides medication administration or assistance in the self-administration of medication, an administrator shall ensure that policies and procedures for medication services:
  1. Include:
    - a. A process for providing information to a participant about medication prescribed for the participant including:
      - i. The prescribed medication's anticipated results,
      - ii. The prescribed medication's potential adverse reactions,
      - iii. The prescribed medication's potential side effects, and
      - iv. Potential adverse reactions that could result from not taking the medication as prescribed;
    - b. Procedures for preventing, responding to, and reporting:
      - i. A medication error,
      - ii. An adverse reaction to a medication, or
      - iii. A medication overdose;
    - c. Procedures to ensure that a participant's medication regimen is reviewed by a medical practitioner to ensure the medication regimen meets the participant's needs;
    - d. Procedures for documenting medication administration and assistance in the self-administration of medication;
    - e. Procedures for assisting a participant in obtaining medication; and
    - f. If applicable, procedures for providing medication administration or assistance in the self-administration of medication off the premises; and
  2. Specify a process for review through the quality management program of:
    - a. A medication administration error, and
    - b. An adverse reaction to a medication.
- B. If a substance abuse transitional facility provides medication administration, an administrator shall ensure that:
  1. Policies and procedures for medication administration:
    - a. Are reviewed and approved by a medical practitioner;
    - b. Specify the individuals who may:
      - i. Order medication, and
      - ii. Administer medication;
    - c. Ensure that medication is administered to a participant only as prescribed;
    - d. Cover the documentation of a participant's refusal to take prescribed medication in the participant's medical record;
  2. Verbal orders for medication services are taken by a nurse, unless otherwise provided by law; and
  3. A medication administered to a participant:
    - a. Is administered in compliance with an order, and
    - b. Is documented in the participant's medical record.
- C. If a substance abuse transitional facility provides assistance in the self-administration of medication, an administrator shall ensure that:

1. A participant's medication is stored by the substance abuse transitional facility;
  2. The following assistance is provided to a participant:
    - a. A reminder when it is time to take the medication;
    - b. Opening the medication container for the participant;
    - c. Observing the participant while the participant removes the medication from the container;
    - d. Verifying that the medication is taken as ordered by the participant's medical practitioner by confirming that:
      - i. The participant taking the medication is the individual stated on the medication container label,
      - ii. The participant is taking the dosage of the medication stated on the medication container label or according to an order from a medical practitioner dated later than the date on the medication container label, and
      - iii. The participant is taking the medication at the time stated on the medication container label or according to an order from a medical practitioner dated later than the date on the medication container label; or
    - e. Observing the participant while the participant takes the medication;
  3. Policies and procedures for assistance in the self-administration of medication are reviewed and approved by a medical practitioner or registered nurse;
  4. Training for a personnel member, other than a medical practitioner or registered nurse, in assistance in the self-administration of medication:
    - a. Is provided by a medical practitioner or registered nurse or an individual trained by a medical practitioner or registered nurse;
    - b. Includes:
      - i. A demonstration of the personnel member's skills and knowledge necessary to provide assistance in the self-administration of medication,
      - ii. Identification of medication errors and medical emergencies related to medication that require emergency medical intervention, and
      - iii. The process for notifying the appropriate entities when an emergency medical intervention is needed;
  5. A personnel member, other than a medical practitioner or registered nurse, completes the training in subsection (C)(4) before the personnel member provides assistance in the self-administration of medication; and
  6. Assistance in the self-administration of medication provided to a participant:
    - a. Is in compliance with an order, and
    - b. Is documented in the participant's medical record.
- D.** An administrator shall ensure that:
1. A current drug reference guide is available for use by personnel members, and
  2. A current toxicology reference guide is available for use by personnel members.
- E.** When medication is stored at the substance abuse transitional facility, an administrator shall ensure that:
1. Medication is stored in a separate locked room, closet, or self-contained unit used only for medication storage;
  2. Medication is stored according to the instructions of the medication container; and
3. Policies and procedures are established, documented, and implemented for:
    - a. Receiving, storing, inventorying, tracking, dispensing, and discarding medication, including expired medication;
    - b. Discarding or returning prepackaged and sample medication to the manufacturer if the manufacturer requests the discard or return of the medication;
    - c. A medication recall and notification of participants who received recalled medication;
    - d. Storing, inventorying, and dispensing controlled substances; and
    - e. Documenting the maintenance of a medication requiring refrigeration.
- F.** An administrator shall ensure that a personnel member immediately reports a medication error or a participant's adverse reaction to a medication to the medical practitioner who ordered the medication and the registered nurse required in R9-10-1405(I)(6).

#### Historical Note

Adopted effective February 1, 1994 (Supp. 94-1). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-1412 renumbered to R9-10-1411; new Section R9-10-1412 renumbered from R9-10-1413 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-1413. Food Services

- A.** An administrator shall ensure that:
1. If a substance abuse transitional facility has a licensed capacity of more than 10 participants:
    - a. Food services are provided in compliance with 9 A.A.C. 8, Article 1; and
    - b. A copy of the substance abuse transitional facility's food establishment license or permit required according to subsection (A)(1) is maintained;
  2. If a substance abuse transitional facility contracts with a food establishment, as established in 9 A.A.C. 8, Article 1, to prepare and deliver food to the facility:
    - a. A copy of the contracted food establishment's license or permit is maintained by the substance abuse transitional facility; and
    - b. The substance abuse transitional facility is able to store, refrigerate, and reheat food to meet the dietary needs of a participant;
  3. A registered dietitian is employed full-time, part-time, or as a consultant; and
  4. If a registered dietitian is not employed full-time, an individual is designated as a director of food services who consults with a registered dietitian as often as necessary to meet the nutritional needs of the participants.
- B.** A registered dietitian or director of food services shall ensure that:
1. Food is prepared:
    - a. Using methods that conserve nutritional value, flavor, and appearance; and
    - b. In a form to meet the needs of a participant such as cut, chopped, ground, pureed, or thickened;
  2. A food menu is:
    - a. Prepared at least one week in advance,
    - b. Conspicuously posted, and
    - c. Maintained for at least 60 calendar days after the last day included in the food menu;

3. If there is a change to a posted food menu, the change is noted on the posted menu no later than the morning of the day the change occurs;
  4. Meals and snacks provided by the substance abuse transitional facility are served according to posted menus;
  5. Meals and snacks for each day are planned using the applicable guidelines in <http://www.health.gov/dietaryguidelines/2010.asp>;
  6. A participant is provided:
    - a. A diet that meets the participant's nutritional needs as specified in the participant's assessment;
    - b. Three meals a day with not more than 14 hours between the evening meal and breakfast, except as provided in subsection (B)(6)(d);
    - c. The option to have a daily evening snack identified in subsection (B)(6)(d)(ii) or other snack; and
    - d. The option to extend the time span between the evening meal and breakfast from 14 hours to 16 hours if:
      - i. The participant agrees; and
      - ii. The participant is offered an evening snack that includes meat, fish, eggs, cheese, or other protein, and a serving from either the fruit and vegetable food group or the bread and cereal food group;
  7. A participant requiring assistance to eat is provided with assistance that recognizes the participant's nutritional, physical, and social needs, including the use of adaptive eating equipment or utensils; and
  8. Water is available and accessible to participants at all times, unless otherwise stated in a participant's assessment.
- C.** An administrator shall ensure that food is obtained, prepared, served, and stored as follows:
1. Food is free from spoilage, filth, or other contamination and is safe for human consumption;
  2. Food is protected from potential contamination;
  3. Potentially hazardous food is maintained as follows:
    - a. Foods requiring refrigeration are maintained at 41° F or below; and
    - b. Foods requiring cooking are cooked to heat all parts of the food to a temperature of at least 145° F for 15 seconds, except that:
      - i. Ground beef and any food containing ground beef are cooked to heat all parts of the food to at least 155° F;
      - ii. Poultry, poultry stuffing, stuffed meats, and stuffing that contains meat are cooked to heat all parts of the food to at least 165° F;
      - iii. Pork and any food containing pork are cooked to heat all parts of the food to at least 155° F;
      - iv. Raw shell eggs for immediate consumption are cooked to at least 145° F for 15 seconds and any food containing raw shell eggs is cooked to heat all parts of the food to at least 155° F;
      - v. If the facility serves a population that is not a highly susceptible population, rare roast beef may be served cooked to an internal temperature of at least 145° F for at least three minutes and a whole muscle intact beef steak may be served cooked on both top and bottom to a surface temperature of at least 145° F; and
      - vi. Leftovers are reheated to a temperature of at least 165° F;
  4. A refrigerator contains a thermometer, accurate to plus or minus 3° F, placed at the warmest part of the refrigerator;
  5. Frozen foods are stored at a temperature of 0° F or below; and
  6. Tableware, utensils, equipment, and food-contact surfaces are clean and in good repair.
- Historical Note**
- Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-1413 renumbered to R9-10-1412; new Section R9-10-1413 renumbered from R9-10-1414 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).
- R9-10-1414. Emergency and Safety Standards**
- A.** An administrator shall ensure that:
1. An evacuation drill for employees and participants on the premises is conducted at least once every six months on each shift;
  2. Documentation of each evacuation drill is created, is maintained for at least 12 months after the date of the evacuation drill, and includes:
    - a. The date and time of the drill;
    - b. The amount of time taken for all employees and participants to evacuate the substance abuse transitional facility;
    - c. Any problems encountered in conducting the drill; and
    - d. Recommendations for improvement, if applicable;
  3. An evacuation path is conspicuously posted on each hallway of each floor of the facility;
  4. A disaster plan is developed, documented, maintained in a location accessible to personnel members, and, if necessary, implemented that includes:
    - a. When, how, and where participants will be relocated;
    - b. How a participant's medical record will be available to individuals providing services to the participant during a disaster;
    - c. A plan to ensure a participant's medication will be available to administer to the participant during a disaster; and
    - d. A plan for obtaining food and water for individuals present in the substance abuse transitional facility or the substance abuse transitional facility's relocation site during a disaster;
  5. The disaster plan required in subsection (A)(4) is reviewed at least once every 12 months;
  6. Documentation of a disaster plan review required in subsection (A)(5) is created, is maintained for at least 12 months after the date of the disaster plan review, and includes:
    - a. The date and time of the disaster plan review;
    - b. The name of each employee or volunteer participating in the disaster plan review;
    - c. A critique of the disaster plan review; and
    - d. If applicable, recommendations for improvement; and
  7. A disaster drill for employees is conducted on each shift at least once every three months and documented.
- B.** An administrator shall ensure that:
1. A fire inspection is conducted by a local fire department or the State Fire Marshal before initial licensing and according to the time-frame established by the local fire department or the State Fire Marshal,
  2. Any repairs or corrections stated on the fire inspection report are made, and
  3. Documentation of a current fire inspection is maintained.

**Historical Note**

Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-1414 renumbered to R9-10-1413; new Section R9-10-1414 renumbered from R9-10-1415 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-1415. Environmental Standards****A.** An administrator shall ensure that:

1. The premises and equipment are sufficient to accommodate the activities, treatment, and ancillary services stated in the substance abuse transitional facility's scope of services;
2. The premises and equipment are:
  - a. Maintained in a condition that allows the premises and equipment to be used for the original purpose of the premises and equipment,
  - b. Clean, and
  - c. Free from a condition or situation that may cause a participant or other individual to suffer physical injury or illness;
3. A pest control program is implemented and documented;
4. Biohazardous waste and hazardous waste are identified, stored, used, and disposed of according to 18 A.A.C. 13, Article 14 and policies and procedures;
5. Equipment used at the substance abuse transitional facility is:
  - a. Maintained in working order;
  - b. Tested and calibrated according to the manufacturer's recommendations or, if there are no manufacturer's recommendations, as specified in policies and procedures; and
  - c. Used according to the manufacturer's recommendations;
6. Documentation of equipment testing, calibration, and repair is maintained for at least 12 months after the date of the testing, calibration, or repair;
7. Garbage and refuse are:
  - a. Stored in plastic bags in covered containers, and
  - b. Removed from the premises at least once a week;
8. Heating and cooling systems maintain the facility at a temperature between 70° F and 84° F at all times;
9. A space heater is not used;
10. Common areas:
  - a. Are lighted to assure the safety of participants, and
  - b. Have lighting sufficient to allow personnel members to monitor participant activity;
11. Hot water temperatures are maintained between 95° F and 120° F in the areas of the substance abuse transitional facility used by participants;
12. The supply of hot and cold water is sufficient to meet the personal hygiene needs of participants and the cleaning and sanitation requirements in this Article;
13. Soiled linen and soiled clothing stored by the substance abuse transitional facility are maintained separate from clean linen and clothing and stored in closed containers away from food storage, kitchen, and dining areas;
14. Oxygen containers are secured in an upright position;
15. Poisonous or toxic materials stored by the substance abuse transitional facility are maintained in labeled containers in a locked area separate from food preparation and storage, dining areas, and medications and are inaccessible to participants;
16. Combustible or flammable liquids and hazardous materials stored by the substance abuse transitional facility are

stored in the original labeled containers or safety containers in a locked area inaccessible to participants;

17. If a water source that is not regulated under 18 A.A.C. 4 by the Arizona Department of Environmental Quality is used:
  - a. The water source is tested at least once every 12 months for total coliform bacteria and fecal coliform or *E. coli* bacteria;
  - b. If necessary, corrective action is taken to ensure the water is safe to drink; and
  - c. Documentation of testing is retained for at least 12 months after the date of the test; and
18. If a non-municipal sewage system is used, the sewage system is in working order and is maintained according to all applicable state laws and rules.

**B.** An administrator shall ensure that:

1. Smoking tobacco products is not permitted within a substance abuse transitional facility; and
2. Smoking tobacco products may be permitted on the premises outside a substance abuse transitional facility if:
  - a. Signs designating smoking areas are conspicuously posted, and
  - b. Smoking is prohibited in areas where combustible materials are stored or in use.

**Historical Note**

Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-1415 renumbered to R9-10-1414; new Section R9-10-1415 renumbered from R9-10-1416 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-1416. Physical Plant Standards****A.** An administrator shall ensure that a substance abuse transitional facility has:

1. A fire alarm system installed according to the National Fire Protection Association 72: National Fire Alarm and Signaling Code, incorporated by reference in A.A.C. R9-1-412, that is in working order; and a sprinkler system installed according to the National Fire Protection Association 13 Standard for the Installation of Sprinkler Systems, incorporated by reference in A.A.C. R9-1-412, that is in working order; or
2. An alternative method to ensure participant safety that is documented and approved by the local jurisdiction.

**B.** An administrator shall ensure that:

1. If a participant has a mobility, sensory, or other physical impairment, modifications are made to the premises to ensure that the premises are accessible to and usable by the participant; and
2. A substance abuse transitional facility has:
  - a. A room that provides privacy for a participant to receive treatment or visitors; and
  - b. A common area and a dining area that:
    - i. Are not converted, partitioned, or otherwise used as a sleeping area; and
    - ii. Contain furniture and materials to accommodate the recreational and socialization needs of the participants and other individuals in the facility.

**C.** An administrator shall ensure that:

1. For every six participants, there is at least one working toilet that flushes and one sink with running water;
2. For every eight participants, there is at least one working bathtub or shower;

3. A participant bathroom provides privacy when in use and contains:
  - a. A shatter-proof mirror;
  - b. Toilet tissue for each toilet;
  - c. Soap accessible from each sink;
  - d. Paper towels in a dispenser or a mechanical air hand dryer for a bathroom that is used by more than one participant;
  - e. A window that opens or another means of ventilation; and
  - f. Nonporous surfaces for shower enclosures, clean usable shower curtains, and slip-resistant surfaces in tubs and showers;
4. Each participant is provided a bedroom for sleeping; and
5. A participant bedroom complies with the following:
  - a. Is not used as a common area;
  - b. Except as provided in subsection (D):
    - i. Contains a door that opens into a hallway, common area, or outdoors; and
    - ii. In addition to the door in subsection (C)(5)(b)(i), contains another means of egress;
  - c. Is constructed and furnished to provide unimpeded access to the door;
  - d. Has window or door covers that provide participant privacy;
  - e. Except as provided in subsection (D), is not used as a passageway to another bedroom or bathroom unless the bathroom is for the exclusive use of an individual occupying the bedroom;
  - f. Has floor to ceiling walls;
  - g. Is a:
    - i. Private bedroom that contains at least 60 square feet of floor space, not including the closet; or
    - ii. Shared bedroom that, except as provided in subsection (D):
      - (1) Is shared by no more than eight participants;
      - (2) Contains at least 60 square feet of floor space, not including a closet, for each individual occupying the bedroom; and
      - (3) Provides at least three feet of floor space between beds or bunk beds;
  - h. Except as provided in subsection (D), contains for each participant occupying the bedroom:
    - i. A bed that is at least 36 inches wide and at least 72 inches long, and consists of at least a frame and mattress and linens; and
    - ii. Individual storage space for personnel effects and clothing such as a dresser or chest; and
  - i. Has sufficient lighting for participant occupying the bedroom to read.
- D. An administrator of a substance abuse transitional facility that uses a building that was licensed as a rural substance abuse transitional center before October 1, 2013 shall ensure that:
  1. A bedroom has a door that allows egress from the bedroom,
  2. A shared bedroom contains enough space to allow each participant occupying the bedroom to freely move about the bedroom,
  3. A bed is of a sufficient size to accommodate a participant using the bed and provide space for all parts of the participant's body on the bed's mattress, and
  4. A participant is provided storage space on a substance abuse transitional facility's premises that is accessible to the participant.

**Historical Note**

Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-1416 renumbered to R9-10-1415; new Section R9-10-1416 renumbered from R9-10-1417 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-1417. Renumbered****Historical Note**

Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-1417 renumbered to R9-10-1416 by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

*Editor's Note: The following Article was adopted under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1999, Ch. 311, which means these rules were not reviewed by the Governor's Regulatory Review Council or approved by the Attorney General's Office.*

**ARTICLE 15. ABORTION CLINICS**

*Editor's Note: The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act, which means these rules were not reviewed by the Governor's Regulatory Review Council or approved by the Attorney General's Office.*

**R9-10-1501. Definitions**

In addition to the definitions in A.R.S. §§ 36-401, 36-449.01, 36-449.03, and R9-10-101, the following definitions apply in this Article, unless otherwise specified:

1. "Admission" means documented acceptance by a hospital of an individual as an inpatient as defined in R9-10-201 on the order of a physician.
2. "Admitting privileges" means permission extended by a hospital to a physician to allow admission of a patient:
  - a. By the patient's own physician, or
  - b. Through a written agreement between the patient's physician and another physician that states that the other physician has permission to personally admit the patient to a hospital in this state and agrees to do so.
3. "Conspicuously posted" means placed at a location within an abortion clinic that is accessible and visible to patients and the public.
4. "Course" means hands-on practice under the supervision of a physician, training, or education.
5. "Discharge" means a patient no longer requires the medical services, nursing services, or health-related services provided by the abortion clinic.
6. Emergency means a potentially life-threatening occurrence that requires an immediate response or medical treatment.
7. "Employee" means an individual who receives compensation from a licensee, but does not provide medical services, nursing services, or health-related services.
8. "First trimester" means 1 through 14 weeks as measured from the first day of the last menstrual period or 1 through 12 weeks as measured from the date of fertilization.
9. "Incident" means an abortion related patient death or serious injury to a patient or viable fetus.
10. "Licensee" means an individual, a partnership, an association, a limited liability company, or corporation authorized by the Department to operate an abortion clinic.

11. “Local” means under the jurisdiction of a city or county in Arizona.
12. “Medical director” means a physician who is responsible for the direction of the medical services, nursing services, and health-related services provided to patients at an abortion clinic.
13. “Medical evaluation” means obtaining a patient’s medical history, performing a physical examination of a patient’s body, and conducting laboratory tests as provided in R9-10-1508.
14. “Monitor” means to observe and document, continuously or intermittently, the values of certain physiologic variables on a patient such as pulse, blood pressure, oxygen saturation, respiration, and blood loss.
15. “Nationally recognized medical journal” means any publication distributed nationally that contains peer-reviewed medical information, such as the *American Journal of Radiology* or the *Journal of Ultrasound in Medicine*.
16. “Patient” means a female receiving medical services, nursing services, or health-related services related to an abortion.
17. “Patient care staff” means a physician, registered nurse practitioner, nurse, physician assistant, or surgical assistant who provides medical services, nursing services, or health-related services to a patient.
18. “Patient’s representative” means a patient’s legal guardian, an individual acting on behalf of a patient with the written consent of the patient, or a surrogate according to A.R.S. § 36-3201.
19. “Patient transfer” means relocating a patient requiring medical services from an abortion clinic to another health care institution.
20. “Personally identifiable patient information” means:
  - a. The name, address, telephone number, e-mail address, Social Security number, and birth date of:
    - i. The patient,
    - ii. The patient’s representative,
    - iii. The patient’s emergency contact,
    - iv. The patient’s children,
    - v. The patient’s spouse,
    - vi. The patient’s sexual partner, and
    - vii. Any other individual identified in the patient’s medical record other than patient care staff;
  - b. The patient’s place of employment;
  - c. The patient’s referring physician;
  - d. The patient’s insurance carrier or account;
  - e. Any “individually identifiable health information” as proscribed in 45 CFR 164-514; and
  - f. Any other information in the patient’s medical record that could reasonably lead to the identification of the patient.
21. “Personnel” means patient care staff, employees, and volunteers.
22. “Physical facilities” means property that is:
  - a. Designated on an application for a license by the applicant; and
  - b. Licensed to provide services by the Department according to A.R.S. Title 36, Chapter 4.
23. “Surgical assistant” means an individual who is not licensed as a physician, physician assistant, registered nurse practitioner, or nurse who performs duties as directed by a physician, physician assistant, registered nurse practitioner or nurse.
24. “Volunteer” means an individual who, without compensation, performs duties as directed by a member of the patient care staff at an abortion clinic.

**Historical Note**

Adopted effective August 6, 1993, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1993, Ch. 163, § 3(B). Amended effective May 2, 1997, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 329, § 5 (Supp. 97-2). Repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). New Section adopted effective April 1, 2000, under an exemption from the provisions of the Arizona Administrative Procedure Act pursuant to Laws 1999, Chapter 311; filed with the Office of the Secretary of State December 23, 1999 at 6 A.A.R. 351 (Supp. 99-4). Amended by exempt rulemaking at 6 A.A.R. 3755, effective January 1, 2001 (Supp. 00-3). Amended by final rulemaking at 16 A.A.R. 688, effective November 1, 2010 (Supp. 10-2). Amended by exempt rulemaking at 20 A.A.R. 448, effective April 1, 2014 (Supp. 14-1).

**Editor’s Note:** *The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act, which means these rules were not reviewed by the Governor’s Regulatory Review Council or approved by the Attorney General’s Office.*

**R9-10-1502. Application Requirements**

An applicant shall submit an application for licensure that meets the requirements in A.R.S. § 36-422 and 9 A.A.C. 10, Article 1.

**Historical Note**

Adopted effective August 6, 1993, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1993, Ch. 163, § 3(B). Amended effective May 2, 1997, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 329, § 5 (Supp. 97-2). Repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). New Section adopted effective April 1, 2000, under an exemption from the provisions of the Arizona Administrative Procedure Act pursuant to Laws 1999, Chapter 311; filed with the Office of the Secretary of State December 23, 1999 at 6 A.A.R. 351 (Supp. 99-4). Amended by exempt rulemaking at 20 A.A.R. 448, effective April 1, 2014 (Supp. 14-1).

**Editor’s Note:** *The following Exhibit was adopted and subsequently repealed under an exemption from the provisions of the Administrative Procedure Act, which means that this rule was not reviewed by the Governor’s Regulatory Review Council; the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department was not required to hold public hearings on the rule; and the Attorney General has not certified this rule.*

**Exhibit A. Repealed****Historical Note**

Adopted effective August 6, 1993, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1993, Ch. 163, Section 3(B). Repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pur-



suant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4).

**Editor's Note:** *The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act, which means these rules were not reviewed by the Governor's Regulatory Review Council or approved by the Attorney General's Office.*

#### **R9-10-1503. Administration**

- A. A licensee is responsible for the organization and management of an abortion clinic.
- B. A licensee shall:
  - 1. Adopt policies and procedures for the administration and operation of an abortion clinic;
  - 2. Designate a medical director who is licensed according to A.R.S. Title 32, Chapter 13, 17, or 29. The licensee and the medical director may be the same individual; and
  - 3. Ensure the following documents are conspicuously posted at the physical facilities:
    - a. Current abortion clinic license issued by the Department;
    - b. Current telephone number and address of the unit in the Department responsible for licensing the abortion clinic;
    - c. Evacuation map; and
    - d. Signs that comply with A.R.S. § 36-2153(G).
- C. A medical director shall ensure written policies and procedures are established, documented, and implemented for:
  - 1. Personnel qualifications, duties, and responsibilities;
  - 2. Individuals qualified to provide counseling in the abortion clinic and the amount and type of training required for an individual to provide counseling;
  - 3. Verification of the competency of the physician performing an abortion according to R9-10-1505;
  - 4. The storage, administration, accessibility, disposal, and documentation of a medication, and a controlled substance;
  - 5. Accessibility and security of patient medical records;
  - 6. Abortion procedures including recovery and follow-up care; and the minimum length of time a patient remains in the recovery room or area based on:
    - a. The type of abortion performed;
    - b. The estimated gestational age of the fetus;
    - c. The type and amount of medication administered; and
    - d. The physiologic signs including vital signs and blood loss;
  - 7. Infection control including methods of sterilizing equipment and supplies;
  - 8. Medical emergencies; and
  - 9. Patient discharge and patient transfer.

#### **Historical Note**

Adopted effective August 6, 1993, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1993, Ch. 163, § 3(B). Amended effective May 2, 1997, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 329, § 5 (Supp. 97-2). Repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). New Section adopted effective April 1, 2000, under an exemption from the provisions of the Arizona Administrative Procedure Act pursuant to Laws 1999, Chapter 311; filed with the Office of the Secretary of State December 23,

1999 at 6 A.A.R. 351 (Supp. 99-4). Amended by final rulemaking at 16 A.A.R. 688, effective November 1, 2010 (Supp. 10-2). Amended by exempt rulemaking at 20 A.A.R. 448, effective April 1, 2014 (Supp. 14-1). Amended by exempt rulemaking at 20 A.A.R. 2078, effective July 24, 2014 (Supp. 14-3).

**Editor's Note:** *The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act, which means these rules were not reviewed by the Governor's Regulatory Review Council or approved by the Attorney General's Office.*

#### **R9-10-1504. Incident Reporting**

- A. A licensee shall ensure that the Department is notified of an incident as follows:
  - 1. For the death of a patient, verbal notification the next working day; and
  - 2. For a serious injury, written notification within 10 calendar days after the date of the serious injury.
- B. A medical director shall conduct an investigation of an incident and document an incident report that includes:
  - 1. The date and time of the incident;
  - 2. The name of the patient;
  - 3. A description of the incident;
  - 4. Names of individuals who observed the incident;
  - 5. Action taken by patient care staff and employees during the incident and immediately following the incident; and
  - 6. Action taken by the patient care staff and employees to prevent the incident from occurring in the future.
- C. A medical director shall ensure that the incident report is:
  - 1. Submitted to the Department and, if the incident involved a licensed individual, the applicable professional licensing board within 10 calendar days after the date of the notification in subsection (A); and
  - 2. Maintained in the physical facilities for at least two years after the date of the incident.

#### **Historical Note**

Adopted effective August 6, 1993, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1993, Ch. 163, § 3(B). Amended effective May 2, 1997, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 329, § 5 (Supp. 97-2). Repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). New Section adopted effective April 1, 2000, under an exemption from the provisions of the Arizona Administrative Procedure Act pursuant to Laws 1999, Chapter 311; filed with the Office of the Secretary of State December 23, 1999 at 6 A.A.R. 351 (Supp. 99-4). Amended by exempt rulemaking at 20 A.A.R. 448, effective April 1, 2014 (Supp. 14-1).

**Editor's Note:** *The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act, which means these rules were not reviewed by the Governor's Regulatory Review Council or approved by the Attorney General's Office.*

#### **R9-10-1505. Personnel Qualifications and Records**

A licensee shall ensure that:

- 1. A physician who performs an abortion demonstrates to the medical director that the physician is competent to perform an abortion by:

- a. The submission of documentation of education and experience; and
  - b. Observation by or interaction with the medical director;
2. Surgical assistants and volunteers who provide counseling and patient advocacy receive training in these specific responsibilities and any other responsibilities assigned and that documentation is maintained in the individual's personnel file of the training received;
3. An individual who performs an ultrasound provides documentation that the individual is:
  - a. A physician;
  - b. A physician assistant, registered nurse practitioner, or nurse who completed a hands-on course in performing ultrasounds under the supervision of a physician; or
  - c. An individual who:
    - i. Completed a hands-on course in performing ultrasounds under the supervision of a physician, and
    - ii. Is not otherwise precluded by law from performing an ultrasound;
4. An individual has completed a course for the type of ultrasound the individual performs;
5. A personnel file for each member of the patient care staff and each volunteer is maintained either electronically or in writing and includes:
  - a. The individual's name and position title;
  - b. The first and, if applicable, the last date of employment or volunteer service;
  - c. Verification of qualifications, training, or licensure, as applicable;
  - d. Documentation of cardiopulmonary resuscitation certification, as applicable;
  - e. Documentation of verification of competency, as required in subsection (1), and signed and dated by the medical director;
  - f. Documentation of training for surgical assistants and volunteers; and
  - g. Documentation of completion of a course as required in subsection (3), for an individual performing ultrasounds; and
6. Personnel files are maintained in the physical facilities for at least two years from the ending date of employment or volunteer service.

#### Historical Note

Adopted effective August 6, 1993, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1993, Ch. 163, Section 3(B). Repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). New Section adopted effective April 1, 2000, under an exemption from the provisions of the Arizona Administrative Procedure Act pursuant to Laws 1999, Chapter 311; filed with the Office of the Secretary of State December 23, 1999 at 6 A.A.R. 351 (Supp. 99-4). Amended by exempt rulemaking at 6 A.A.R. 3755, effective January 1, 2001 (Supp. 00-3). Amended by final rulemaking at 16 A.A.R. 688, effective November 1, 2010 (Supp. 10-2). Amended by exempt rulemaking at 20 A.A.R. 448, effective April 1, 2014 (Supp. 14-1).

**Editor's Note:** The following Section was adopted under an exemption from the provisions of the Administrative Procedure

**Act, which means these rules were not reviewed by the Governor's Regulatory Review Council or approved by the Attorney General's Office.**

#### R9-10-1506. Staffing Requirements

- A. A licensee shall ensure that there is a sufficient number of patient care staff and employees to:
  1. Meet the requirements of this Article;
  2. Ensure the health and safety of a patient; and
  3. Meet the needs of a patient based on the patient's medical evaluation.
- B. A licensee shall ensure that:
  1. A member of the patient care staff, except for a surgical assistant, who is current in cardiopulmonary resuscitation certification is in the physical facilities until all patients are discharged;
  2. A physician, with admitting privileges at a health care institution that is classified by the director as a hospital according to A.R.S. § 36-405(B), remains on the premises of the abortion clinic until all patients who received a medication abortion are stable and ready to leave;
  3. A physician, with admitting privileges at a health care institution that is classified by the director as a hospital according to A.R.S. § 36-405(B) and that is within 30 miles of the abortion clinic by road, as defined in A.R.S. § 17-451, remains on the abortion clinic's premises until all patients who received a surgical abortion are stable and ready to leave the recovery room; and
  4. A physician, a nurse, a registered nurse practitioner, a physician assistant, or, if a physician is able to provide direct supervision as defined in A.R.S. § 32-1401 or A.R.S. § 32-1800 as applicable, a medical assistant under the direct supervision of the physician:
    - a. Monitors each patient during the patient's recovery following the abortion; and
    - b. Remains in the abortion clinic until each patient is discharged by a physician.

#### Historical Note

Adopted effective August 6, 1993, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1993, Ch. 163, § 3(B). Amended effective May 2, 1997, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 329, § 5 (Supp. 97-2). Repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). New Section adopted effective April 1, 2000, under an exemption from the provisions of the Arizona Administrative Procedure Act pursuant to Laws 1999, Chapter 311; filed with the Office of the Secretary of State December 23, 1999 at 6 A.A.R. 351 (Supp. 99-4). Amended by exempt rulemaking at 6 A.A.R. 3755, effective January 1, 2001 (Supp. 00-3). Amended by final rulemaking at 16 A.A.R. 688, effective November 1, 2010 (Supp. 10-2). Amended by exempt rulemaking at 20 A.A.R. 448, effective April 1, 2014 (Supp. 14-1).

**Editor's Note:** The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act, which means these rules were not reviewed by the Governor's Regulatory Review Council or approved by the Attorney General's Office.

**R9-10-1507. Patient Rights**

A licensee shall ensure that a patient is afforded the following rights, and is informed of these rights:

1. To refuse treatment, or withdraw consent for treatment;
2. To have medical records kept confidential; and
3. To be informed of:
  - a. Billing procedures and financial liability before abortion services are provided;
  - b. Proposed medical or surgical procedures, associated risks, possible complications, and alternatives;
  - c. Counseling services that are provided in the physical facilities; and
  - d. The right to review the ultrasound results with a physician, a physician assistant, a registered nurse practitioner, or a registered nurse before the abortion procedure.

**Historical Note**

Adopted effective August 6, 1993, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1993, Ch. 163, § 3(B). Amended effective May 2, 1997, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 329, § 5 (Supp. 97-2). Repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). New Section adopted effective April 1, 2000, under an exemption from the provisions of the Arizona Administrative Procedure Act pursuant to Laws 1999, Chapter 311; filed with the Office of the Secretary of State December 23, 1999 at 6 A.A.R. 351 (Supp. 99-4). Amended by exempt rulemaking at 6 A.A.R. 3755, effective January 1, 2001 (Supp. 00-3). Amended by final rulemaking at 16 A.A.R. 688, effective November 1, 2010 (Supp. 10-2). Amended by exempt rulemaking at 20 A.A.R. 448, effective April 1, 2014 (Supp. 14-1).

**Editor's Note:** *The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act, which means these rules were not reviewed by the Governor's Regulatory Review Council or approved by the Attorney General's Office.*

**R9-10-1508. Abortion Procedures**

**A.** A medical director shall ensure that a medical evaluation of a patient is conducted before the patient's abortion is performed that includes:

1. A medical history including:
  - a. Allergies to medications, antiseptic solutions, or latex;
  - b. Obstetrical and gynecological history;
  - c. Past surgeries;
  - d. Medication the patient is currently taking; and
  - e. Other medical conditions;
2. A physical examination performed by a physician that includes a bimanual examination to estimate uterine size and palpation of adnexa; and
3. The following laboratory tests:
  - a. A urine or blood test to determine pregnancy;
  - b. Rh typing unless the patient provides written documentation of blood type acceptable to the physician;
  - c. Anemia screening; and
  - d. Other laboratory tests recommended by the physician or medical director on the basis of the physical examination.

**B.** If the medical evaluation indicates a patient is Rh negative, a medical director shall ensure that:

1. The patient receives information from a physician on this condition;
2. The patient is offered RhO(d) immune globulin within 72 hours after the abortion procedure;
3. If a patient refuses RhO(d) immune globulin, the patient signs and dates a form acknowledging the patient's condition and refusing the RhO(d) immune globulin;
4. The form in subsection (B)(3) is maintained in the patient's medical record; and
5. If a patient refuses RhO(d) immune globulin or if a patient refuses to sign and date an acknowledgment and refusal form, the physician documents the patient's refusal in the patient's medical record.

**C.** A physician estimates the gestational age of the fetus, and records the estimated age in the patient's medical record. The estimated age is based upon:

1. Ultrasound measurements of the biparietal diameter, length of femur, abdominal circumference, visible pregnancy sac, or crown-rump length or a combination of these; or
2. The date of the last menstrual period or the date of fertilization and a bimanual examination of the patient.

**D.** A medical director shall ensure that:

1. An ultrasound of a patient is performed by an individual who meets the requirements in R9-10-1505(3);
2. An ultrasound estimate of gestational age of a fetus is performed using methods and tables or charts published in a nationally recognized medical journal;
3. An original patient ultrasound print is:
  - a. Interpreted by a physician; and
  - b. Maintained in the patient's medical record in either electronic or paper form; and
4. If requested by the patient, the ultrasound is reviewed with the patient by a physician, physician assistant, registered nurse practitioner, or registered nurse.

**E.** A medical director shall ensure that before an abortion is performed on a patient:

1. Written consent is signed and dated by the patient or the patient's legal guardian; and
2. Information is provided to the patient on the abortion procedure including alternatives, risks, and potential complications.

**F.** A medical director shall ensure that an abortion is performed according to the abortion clinic's policies and procedures and this Article.

**G.** A medical director shall ensure that any medication, drug, or substance used to induce an abortion is administered in compliance with the protocol authorized by the United States Food and Drug Administration and that is outlined in the final printing labeling instructions for that medication, drug, or substance.

**H.** A medical director shall ensure that:

1. Patient care staff monitor the patient's vital signs throughout an abortion procedure to ensure the patient's health and safety;
2. Intravenous access is established and maintained on a patient undergoing an abortion after the first trimester unless the physician determines that establishing intravenous access is not appropriate for the particular patient and documents that fact in the patient's medical record; and
3. If a viable fetus shows signs of life:
  - a. Resuscitative measures are used to support life;

- b. The viable fetus is transferred as required in R9-10-1509; and
  - c. Resuscitative measures and the transfer are documented.
- I. A medical director shall ensure that following the abortion procedure:
  - 1. A patient's vital signs and bleeding are monitored by a physician, nurse, registered nurse practitioner, physician assistant, or, if a physician is able to provide direct supervision as defined in A.R.S. § 32-1401 or A.R.S. § 32-1800, as applicable, a medical assistant under the direct supervision of the physician to ensure the patient's health and safety; and
  - 2. A patient remains in the recovery room or recovery area until a physician, physician assistant, registered nurse practitioner or nurse examines the patient and determines that the patient's medical condition is stable and the patient is ready to leave the recovery room or recovery area.
- J. A medical director shall ensure that follow-up care includes:
  - 1. With a patient's consent, a telephone call to the patient by a member of the patient care staff, except a surgical assistant, within 24 hours after the patient's discharge following a surgical abortion to assess the patient's recovery. If the patient care staff is unable to speak with the patient, for any reason, the attempt to contact the patient is documented in the patient's medical record;
  - 2. Following a surgical abortion, a follow-up visit offered and scheduled, if requested, no more than 21 days after the abortion. The follow-up visit shall include:
    - a. A physical examination;
    - b. A review of all laboratory tests as required in R9-10-1508(A)(3); and
    - c. A urine pregnancy test; and
  - 3. Following a medication abortion, a follow-up visit offered and scheduled between seven and 21 days after the initial dose of a substance used to induce an abortion. The follow-up visit shall include:
    - a. A urine pregnancy test; and
    - b. An assessment of the degree of bleeding.
- K. If a continuing pregnancy is suspected as a result of the follow-up visit required in subsection (J)(2) or (J)(3), a physician who performs abortions shall be consulted.

#### Historical Note

Adopted effective August 6, 1993, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1993, Ch. 163, § 3(B). Amended effective May 2, 1997, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1996, Ch. 329, § 5 (Supp. 97-2). Repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). New Section adopted effective April 1, 2000, under an exemption from the provisions of the Arizona Administrative Procedure Act pursuant to Laws 1999, Chapter 311; filed with the Office of the Secretary of State December 23, 1999 at 6 A.A.R. 351 (Supp. 99-4). Amended by exempt rulemaking at 6 A.A.R. 3755, effective January 1, 2001 (Supp. 00-3). Amended by final rulemaking at 16 A.A.R. 688, effective November 1, 2010 (Supp. 10-2). Amended by exempt rulemaking at 20 A.A.R. 448, effective April 1, 2014 (Supp. 14-1).

*Editor's Note: The following Section was adopted under an*

*exemption from the provisions of the Administrative Procedure Act, which means these rules were not reviewed by the Governor's Regulatory Review Council or approved by the Attorney General's Office.*

#### R9-10-1509. Patient Transfer and Discharge

- A. A medical director shall ensure that:
  - 1. A patient is transferred to a hospital for an emergency involving the patient;
  - 2. A viable fetus requiring emergency care is transferred to a hospital;
  - 3. A patient transfer is documented in the patient's medical record; and
  - 4. Documentation of a medical evaluation, treatment given, and laboratory and diagnostic information is transferred with a patient.
- B. A medical director shall ensure that before a patient is discharged:
  - 1. A physician signs the patient's discharge order; and
  - 2. A patient receives follow-up instructions at discharge that include:
    - a. Signs of possible complications;
    - b. When to access medical services in response to complications;
    - c. A telephone number of an individual or entity to contact for medical emergencies;
    - d. Information and precautions for resuming vaginal intercourse after the abortion; and
    - e. Information specific to the patient's abortion or condition.

#### Historical Note

Adopted effective August 6, 1993, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1993, Ch. 163, Section 3(B). Repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). New Section adopted effective April 1, 2000, under an exemption from the provisions of the Arizona Administrative Procedure Act pursuant to Laws 1999, Chapter 311; filed with the Office of the Secretary of State December 23, 1999 at 6 A.A.R. 351 (Supp. 99-4). Amended by exempt rulemaking at 20 A.A.R. 448, effective April 1, 2014 (Supp. 14-1).

*Editor's Note: The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act, which means these rules were not reviewed by the Governor's Regulatory Review Council or approved by the Attorney General's Office.*

#### R9-10-1510. Medications and Controlled Substances

- A medical director shall ensure that:
  - 1. The abortion clinic complies with the requirements for medications and controlled substances in A.R.S. Title 32, Chapter 18, and A.R.S. Title 36, Chapter 27;
  - 2. A medication is administered in compliance with an order from a physician, physician assistant, registered nurse practitioner, or as otherwise provided by law;
  - 3. A medication is administered to a patient by a physician or as otherwise provided by law;
  - 4. Medications and controlled substances are maintained in a locked area in the physical facilities;
  - 5. Only personnel designated by policies and procedures have access to the locked area containing medications and controlled substances;

6. Expired, mislabeled, or unusable medications and controlled substances are disposed of according to policies and procedures;
7. A medication error or an adverse reaction, including any actions taken in response to the medication error or adverse reaction, is immediately reported to the medical director and licensee, and recorded in the patient's medical record;
8. Medication information is maintained in a patient's medical record and contains:
  - a. The patient's name, age, and weight;
  - b. The medications the patient is currently taking; and
  - c. Allergies or sensitivities to medications, antiseptic solutions, or latex; and
9. If medication is administered to a patient, the following are documented in the patient's medical record:
  - a. The date and time of administration;
  - b. The name, strength, dosage form, amount of medication, and route of administration; and
  - c. The identification and signature of the individual administering the medication.
- h. Orders issued by a physician, physician assistant or registered nurse practitioner;
- i. A record of medical services, nursing services, and health-related services provided to the patient; and
- j. The patient's medication information;
2. A medical record is accessible only to the Department or personnel authorized by policies and procedures;
3. Medical record information is confidential and released only with the written informed consent of a patient or the patient's representative or as otherwise permitted by law;
4. A medical record is protected from loss, damage, or unauthorized use and is maintained and accessible for seven years after the date of an adult patient's discharge or if the patient is a child, either for at least three years after the child's 18th birthday or for at least seven years after the patient's discharge, whichever date occurs last;
5. A medical record is maintained at the abortion clinic for at least six months after the date of the patient's discharge; and
6. Vital records and vital statistics are retained according to A.R.S. § 36-343.

**B.** A licensee shall comply with Department requests for access to or copies of patient medical records as follows:

1. Subject to the redaction permitted in subsection (B)(5), for patient medical records requested for review in connection with a compliance inspection, the licensee shall provide the Department with the following patient medical records related to medical services associated with an abortion, including any follow-up visits to the abortion clinic in connection with the abortion:
  - a. Patient identification including:
    - i. The patient's name, address, and date of birth;
    - ii. The designated patient's representative, if applicable; and
    - iii. The name and telephone number of an individual to contact in an emergency;
  - b. The patient's medical history required in R9-10-1508(A)(1);
  - c. The patient's physical examination required in R9-10-1508(A)(2);
  - d. The laboratory test results required in R9-10-1508(A)(3);
  - e. The physician's estimated gestational age of the fetus required in R9-10-1508(C);
  - f. The ultrasound results required in R9-10-1508(D);
  - g. Each consent form signed by the patient or the patient's representative;
  - h. Orders issued by a physician, physician assistant, or registered nurse practitioner;
  - i. A record of medical services, nursing services, and health-related services provided to the patient; and
  - j. The patient's medication information.
2. For patient medical records requested for review in connection with an initial licensing or compliance inspection, the licensee is not required to produce for review by the Department any patient medical records created or prepared by a referring physician or any of that referring physician's medical staff.
3. The licensee is not required to provide patient medical records regarding medical services associated with an abortion that occurred before:
  - a. The effective date of these rules, or
  - b. A previous licensing or compliance inspection of the abortion clinic.

**Historical Note**

Adopted effective August 6, 1993, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1993, Ch. 163, Section 3(B). Repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). New Section adopted effective April 1, 2000, under an exemption from the provisions of the Arizona Administrative Procedure Act pursuant to Laws 1999, Chapter 311; filed with the Office of the Secretary of State December 23, 1999 at 6 A.A.R. 351 (Supp. 99-4).

Amended by exempt rulemaking at 6 A.A.R. 3755, effective January 1, 2001 (Supp. 00-3). Amended by exempt rulemaking at 20 A.A.R. 448, effective April 1, 2014 (Supp. 14-1).

*Editor's Note: The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act, which means these rules were not reviewed by the Governor's Regulatory Review Council or approved by the Attorney General's Office.*

**R9-10-1511. Medical Records**

**A.** A licensee shall ensure that:

1. A medical record is established and maintained for a patient that contains:
  - a. Patient identification including:
    - i. The patient's name, address, and date of birth;
    - ii. The designated patient's representative, if applicable; and
    - iii. The name and telephone number of an individual to contact in an emergency;
  - b. The patient's medical history required in R9-10-1508(A)(1);
  - c. The patient's physical examination required in R9-10-1508(A)(2);
  - d. The laboratory test results required in R9-10-1508(A)(3);
  - e. The physician's estimated gestational age of the fetus required in R9-10-1508(C);
  - f. The ultrasound results, including the original print, required in R9-10-1508(D);
  - g. Each consent form signed by the patient or the patient's legal guardian;

4. The patient medical records may be provided to the Department in either paper or in an electronic format that is acceptable to the Department.
  5. When access to or copies of patient medical records are requested from a licensee by the Department, the licensee shall redact only personally identifiable patient information from the patient medical records before the disclosure of the patient medical records to the Department, except as provided in subsection (B)(8).
  6. For patient medical records requested for review in connection with an initial licensing or compliance inspection, the licensee shall provide the redacted copies of the patient medical records to the Department within two business days of the Department's request for the redacted medical records if the total number of patients for whom patient medical records are requested by the Department is from one to ten patients, unless otherwise agreed to by the Department and the licensee. The time within which the licensee shall produce redacted records to the Department shall be increased by two business days for each additional five patients for whom patient medical records are requested by the Department, unless otherwise agreed to by the Department and the licensee.
  7. Upon request by the Department, in addition to redacting only personally identifiable patient information, the licensee shall code the requested patient medical records by a means that allows the Department to track all patient medical records related to a specific patient without the personally identifiable patient information.
  8. For patient medical records requested for review in connection with a complaint investigation, the Department shall have access to or copies of unredacted patient medical records.
  9. If the Department obtains copies of unredacted patient medical records, the Department shall:
    - a. Allow the examination and use of the unredacted patient medical records only by those Department employees who need access to the patient medical records to fulfill their investigative responsibilities and duties;
    - b. Maintain all unredacted patient medical records in a locked drawer, cabinet, or file or in a password-protected electronic file with access to the secured drawer, cabinet, or file limited to those individuals who have access to the patient medical records according to subsection (B)(9)(a);
    - c. Destroy all unredacted patient medical records at the termination of the Department's complaint investigation or at the termination of any administrative or legal action that is taken by the Department as the result of the Department's complaint investigation, whichever is later;
    - d. If the unredacted patient medical records are filed with a court or other judicial body, including any administrative law judge or panel, file the records only under seal; and
    - e. Prevent access to the unredacted records by anyone except as provided in subsection (B)(9)(a) or subsection (B)(9)(d).
- C.** A medical director shall ensure that only personnel authorized by policies and procedures, records or signs an entry in a medical record and:
1. An entry in a medical record is dated and legible;
  2. An entry is authenticated by:
    - a. A written signature;
    - b. An individual's initials if the individual's written signature already appears in the medical record;
    - c. A rubber-stamp signature; or
    - d. An electronic signature;
  3. An entry is not changed after it has been recorded but additional information related to an entry may be recorded in the medical record;
  4. When a verbal or telephone order is entered in the medical record, the entry is authenticated within 21 days by the individual who issued the order;
  5. If a rubber-stamp signature or an electronic signature is used:
    - a. An individual's rubber stamp or electronic signature is not used by another individual;
    - b. The individual who uses a rubber stamp or electronic signature signs a statement that the individual is responsible for the use of the rubber stamp or the electronic signature; and
    - c. The signed statement is included in the individual's personnel record; and
  6. If an abortion clinic maintains medical records electronically, the medical director shall ensure the date and time of an entry is recorded by the computer's internal clock.
- D.** As required by A.R.S. § 36-449.03(I), the Department shall not release any personally identifiable patient or physician information.

#### Historical Note

Adopted effective August 6, 1993, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1993, Ch. 163, Section 3(B). Repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). New Section adopted effective April 1, 2000, under an exemption from the provisions of the Arizona Administrative Procedure Act pursuant to Laws 1999, Chapter 311; filed with the Office of the Secretary of State December 23, 1999 at 6 A.A.R. 351 (Supp. 99-4). Amended by exempt rulemaking at 6 A.A.R. 3755, effective January 1, 2001 (Supp. 00-3). Amended by final rulemaking at 16 A.A.R. 688, effective November 1, 2010 (Supp. 10-2). Amended by exempt rulemaking at 20 A.A.R. 448, effective April 1, 2014 (Supp. 14-1). Amended by exempt rulemaking at 20 A.A.R. 2078, effective July 24, 2014 (Supp. 14-3).

**Editor's Note:** *The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act, which means these rules were not reviewed by the Governor's Regulatory Review Council or approved by the Attorney General's Office.*

#### R9-10-1512. Environmental and Safety Standards

A licensee shall ensure that:

1. Physical facilities:
  - a. Provide lighting and ventilation to ensure the health and safety of a patient;
  - b. Are maintained in a clean condition;
  - c. Are free from a condition or situation that may cause a patient to suffer physical injury;
  - d. Are maintained free from insects and vermin; and
  - e. Are smoke-free;
2. A warning notice is placed at the entrance to a room or area where oxygen is in use;
3. Soiled linen and clothing are kept:
  - a. In a covered container, and

- b. Separate from clean linen and clothing;
- 4. Personnel wash hands after each direct patient contact and after handling soiled linen, soiled clothing, or biohazardous medical waste;
- 5. A written emergency plan is established, documented, and implemented that includes procedures for protecting the health and safety of patients and other individuals in a fire, natural disaster, loss of electrical power, or threat or incidence of violence; and
- 6. An evacuation drill is conducted at least once every six months that includes all personnel in the physical facilities the day of the evacuation drill. Documentation of the evacuation drill is maintained in the physical facilities for one year after the date of the evacuation drill and includes:
  - a. The date and time of the evacuation drill; and
  - b. The names of personnel participating in the evacuation drill.

#### Historical Note

Adopted effective August 6, 1993, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1993, Ch. 163, Section 3(B). Repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). New Section adopted effective April 1, 2000, under an exemption from the provisions of the Arizona Administrative Procedure Act pursuant to Laws 1999, Chapter 311; filed with the Office of the Secretary of State December 23, 1999 at 6 A.A.R. 351 (Supp. 99-4). Amended by exempt rulemaking at 20 A.A.R. 448, effective April 1, 2014 (Supp. 14-1).

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#### R9-10-1513. Equipment Standards

A licensee shall ensure that:

- 1. Equipment and supplies are maintained in a quantity sufficient to meet the needs of patients present in the abortion clinic;
- 2. Equipment to monitor vital signs is in each room in which an abortion is performed;
- 3. A surgical or gynecologic examination table is used for an abortion;
- 4. The following equipment and supplies are available in the abortion clinic:
  - a. Equipment to measure blood pressure;
  - b. A stethoscope;
  - c. A scale for weighing a patient;
  - d. Supplies for obtaining specimens and cultures and for laboratory tests; and
  - e. Equipment and supplies for use in a medical emergency including:
    - i. Ventilatory assistance equipment;
    - ii. Oxygen source;
    - iii. Suction apparatus; and
    - iv. Intravenous fluid equipment and supplies; and
  - f. Ultrasound equipment;
- 5. In addition to the requirements in subsection (4), the following equipment is available for an abortion procedure performed after the first trimester:
  - a. Drugs to support cardiopulmonary function; and
  - b. Equipment to monitor cardiopulmonary status;
- 6. Equipment and supplies are clean and, if applicable, sterile before each use;
- 7. Equipment required in this Section is maintained in working order, tested and calibrated at least once every 12 months or according to the manufacturer's recommendations, and used according to the manufacturer's recommendations; and
- 8. Documentation of each equipment test, calibration, and repair is maintained in the physical facilities for one year after the date of the testing, calibration, or repair and provided to the Department for review within two hours after the Department requests the documentation.

#### Historical Note

Adopted effective August 6, 1993, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1993, Ch. 163, Section 3(B). Repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). New Section adopted effective April 1, 2000, under an exemption from the provisions of the Arizona Administrative Procedure Act pursuant to Laws 1999, Chapter 311; filed with the Office of the Secretary of State December 23, 1999 at 6 A.A.R. 351 (Supp. 99-4). Amended by exempt rulemaking at 20 A.A.R. 448, effective April 1, 2014 (Supp. 14-1).

*Editor's Note: The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act, which means these rules were not reviewed by the Governor's Regulatory Review Council or approved by the Attorney General's Office.*

#### R9-10-1514. Physical Facilities

- A. A licensee shall ensure that an abortion clinic complies with all local building codes, ordinances, fire codes, and zoning requirements. If there are no local building codes, ordinances, fire codes, or zoning requirements, the abortion clinic shall comply with the applicable codes and standards incorporated by reference in A.A.C. R9-1-412 that were in effect on the date the abortion clinic's architectural plans and specifications were submitted to the Department for approval.
- B. A licensee shall ensure that an abortion clinic provides areas or rooms:
  - 1. That provide privacy for:
    - a. A patient's interview, medical evaluation, and counseling;
    - b. A patient to dress; and
    - c. Performing an abortion procedure;
  - 2. For personnel to dress;
  - 3. With a sink and a flushable toilet in working order;
  - 4. For cleaning and sterilizing equipment and supplies;
  - 5. For storing medical records;
  - 6. For storing equipment and supplies;
  - 7. For hand washing before the abortion procedure; and
  - 8. For a patient recovering after an abortion.
- C. A licensee shall ensure that an abortion clinic has an emergency exit to accommodate a stretcher or gurney.

#### Historical Note

Adopted effective August 6, 1993, under an exemption from the provisions of the Administrative Procedure Act pursuant to Laws 1993, Ch. 163, Section 3(B). Repealed effective November 1, 1998, under an exemption from the provisions of the Administrative Procedure Act pur-

suant to Laws 1998, Ch. 178, § 17; filed with the Office of the Secretary of State October 2, 1998 (Supp. 98-4). New Section adopted effective April 1, 2000, under an exemption from the provisions of the Arizona Administrative Procedure Act pursuant to Laws 1999, Chapter 311; filed with the Office of the Secretary of State December 23, 1999 at 6 A.A.R. 351 (Supp. 99-4). Amended by exempt rulemaking at 6 A.A.R. 3755, effective January 1, 2001 (Supp. 00-3). Amended by exempt rulemaking at 20 A.A.R. 448, effective April 1, 2014 (Supp. 14-1).

#### **R9-10-1515. Enforcement**

- A.** For an abortion clinic that is not in substantial compliance or that is in substantial compliance but refuses to carry out a plan of correction acceptable to the Department, the Department may:
1. Assess a civil penalty according to A.R.S. § 36-431.01,
  2. Impose an intermediate sanction according to A.R.S. § 36-427,
  3. Suspend or revoke a license according to A.R.S. § 36-427,
  4. Deny a license, or
  5. Bring an action for an injunction according to A.R.S. § 36-430.
- B.** In determining the appropriate enforcement action, the Department shall consider the threat to the health, safety, and welfare of the abortion clinic's patients or the general public, including:
1. Whether the abortion clinic has repeated violations of statutes or rules;
  2. Whether the abortion clinic has engaged in a pattern of noncompliance; and
  3. The type, severity, and number of violations.

#### **Historical Note**

New Section R9-10-1515 made by exempt rulemaking at 20 A.A.R. 448, effective April 1, 2014 (Supp. 14-1).

### **ARTICLE 16. BEHAVIORAL HEALTH RESPITE HOMES**

#### **R9-10-1601. Definitions**

In addition to the definitions in A.R.S. § 36-401 and R9-10-101, the following apply in this Article unless otherwise specified:

1. "Acceptance" means, after a referral from a collaborating health care institution, an individual receives services from a provider in a behavioral health respite home.
2. "Provider" means an individual who lives in a behavioral health respite home and ensures that a recipient receives the behavioral health services and ancillary services in the recipient's treatment plan.
3. "Recipient" means an individual referred by a collaborating health care institution to and accepted by a behavioral health respite home.
4. "Release" means a documented termination of services by a provider to a recipient that is authorized by a collaborating health care institution.
5. "Sibling" means one of two or more individuals having one or both parents in common.

#### **Historical Note**

Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### **R9-10-1602. Supplemental Application Requirements**

In addition to the license application requirements in A.R.S. § 36-422 and 9 A.A.C. 10, Article 1, an applicant shall include, in a for-

mat provided by the Department, the following information for the behavioral health respite home's collaborating health care institution:

1. Name,
2. Address,
3. Class or subclass,
4. License number, and
5. Name and contact information for an individual assigned by the collaborating health care institution to monitor the behavioral health respite home.

#### **Historical Note**

Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-1602 renumbered to R9-10-1603; new Section R9-10-1602 made by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### **R9-10-1603. Administration**

- A.** A governing authority of a behavioral health respite home:
1. Consists of no more than two providers, who live in the behavioral health respite home;
  2. Has the authority and responsibility to manage the behavioral health respite home;
  3. Has a documented agreement with a collaborating health care institution that establishes the responsibilities of the behavioral health respite home and the collaborating health care institution, consistent with the requirements in this Chapter;
  4. Shall establish, in writing, the behavioral health respite home's scope of services, which are approved by the collaborating health care institution; and
  5. Shall ensure that:
    - a. Except as provided in R9-10-1612(A), no more than three recipients are accepted by the behavioral health respite home;
    - b. A provider is on the premises whenever a recipient is present in the behavioral health respite home;
    - c. Documentation required by this Article is provided to the Department within two hours after a Department request; and
    - d. When documentation or information is required by this Chapter to be submitted on behalf of the behavioral health respite home, the documentation or information is provided to the unit in the Department that is responsible for licensing the behavioral health respite home.
- B.** A provider:
1. Is at least 21 years of age;
  2. Holds current certification in cardiopulmonary resuscitation and first aid training applicable to the ages of recipients;
  3. Has the skills and knowledge established by the collaborating health care institution as specified in R9-10-118;
  4. Has documentation of completion of training in assistance in the self-administration of medication as specified in R9-10-118; and
  5. Has documentation of evidence of freedom from infectious tuberculosis:
    - a. On or before the date the provider begins providing services at or on behalf of the behavioral health respite home, and
    - b. As specified in R9-10-113.
- C.** A provider shall ensure that policies and procedures are:
1. Established, documented, and implemented to protect the health and safety of a recipient that cover:



- a. Recordkeeping;
  - b. Recipient acceptance and release;
  - c. The release of a recipient under 18 years of age to an individual other than the recipient's parent or guardian;
  - d. Recipient rights;
  - e. The provision of respite care services, including coordinating the provision of behavioral health services;
  - f. Recipients' medical records, including electronic medical records;
  - g. Assistance in the self-administration of medication;
  - h. Infection control; and
  - i. How a provider will respond to a recipient's sudden, intense, or out-of-control behavior to prevent harm to the recipient or another individual;
2. Approved, in writing, by the behavioral health respite home's collaborating health care institution before implementation and when the policies and procedures are reviewed or updated; and
  3. Reviewed by the provider and the behavioral health respite home's collaborating health care institution at least once every three years and updated as needed.
- D.** A provider shall provide written notification to the Department and the collaborating health care institution of a recipient's:
1. Death, if the recipient's death is required to be reported according to A.R.S. § 11-593, within one working day after the recipient's death; and
  2. Self-injury, within two working days after the recipient inflicts a self-injury that requires immediate intervention by an emergency medical services provider.
- E.** If abuse, neglect, or exploitation of a recipient is alleged or suspected to have occurred before the recipient was accepted or while the recipient is not at a behavioral health respite home and not receiving services from the behavioral health respite home, a provider shall report the alleged or suspected abuse, neglect, or exploitation of the recipient as follows:
1. For a recipient 18 years of age or older, according to A.R.S. § 46-454; or
  2. For a recipient under 18 years of age, according to A.R.S. § 13-3620.
- F.** If a provider has a reasonable basis, according to A.R.S. § 13-3620 or 46-454, to believe that abuse, neglect, or exploitation has occurred on the premises or while a recipient is receiving behavioral health respite home services, the provider shall:
1. If applicable, take immediate action to stop the suspected abuse, neglect, or exploitation;
  2. Report the suspected abuse, neglect, or exploitation of the recipient as follows:
    - a. To the behavioral health respite home's collaborating health care institution; and
    - b. For a:
      - i. Recipient 18 years of age or older, according to A.R.S. § 46-454; and
      - ii. Recipient under 18 years of age, according to A.R.S. § 13-3620;
  3. Document:
    - a. The suspected abuse, neglect, or exploitation;
    - b. Any action taken according to subsection (F)(1); and
    - c. The report in subsection (F)(2);
  4. Maintain the documentation in subsection (F)(3) for at least 12 months after the date of the report in subsection (F)(2);
  5. Initiate an investigation of the suspected abuse, neglect, or exploitation and document the following information
    - within five working days after the report required in subsection (F)(2):
    - a. The dates, times, and description of the suspected abuse, neglect, or exploitation;
    - b. A description of any injury to the recipient related to the suspected abuse or neglect and any change to the recipient's physical, cognitive, functional, or emotional condition;
    - c. The names of witnesses to the suspected abuse, neglect, or exploitation; and
    - d. The action taken by the provider to prevent the suspected abuse, neglect, or exploitation from occurring in the future; and
  6. Maintain a copy of the documented information required in subsection (F)(5) and any other information obtained during the investigation for at least 12 months after the date the investigation was initiated.
- G.** A provider shall ensure that a recipient under 18 years of age is only released to an individual who, according to policies and procedures:
1. Is designated by the recipient's parent or guardian to release the recipient, and
  2. Presents documentation at the time of the recipient's release that verifies the individual's identity.
- H.** A provider shall maintain a record for each provider that includes:
1. The provider's:
    - a. Name,
    - b. Date of birth, and
    - c. Contact telephone number; and
  2. Documentation of:
    - a. Verification of skills and knowledge, completed by the behavioral health respite home's collaborating health care institution;
    - b. Certification in cardiopulmonary resuscitation and first aid training;
    - c. Completion of training in assistance in the self-administration of medication, provided by the behavioral health respite home's collaborating health care institution; and
    - d. Evidence of freedom from infectious tuberculosis.

#### Historical Note

Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-1603 renumbered to R9-10-1604; new Section R9-10-1603 renumbered from R9-10-1602 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-1604. Recipient Rights

##### A. A provider shall ensure that:

1. A recipient is treated with dignity, respect, and consideration;
2. A recipient is not subjected to:
  - a. Abuse;
  - b. Neglect;
  - c. Exploitation;
  - d. Coercion;
  - e. Manipulation;
  - f. Sexual abuse;
  - g. Sexual assault;
  - h. Seclusion;
  - i. Restraint;
  - j. Retaliation for submitting a complaint to the Department or another entity; or

- k. Misappropriation of personal and private property by:
      - i. A behavioral health respite home's provider, or
      - ii. An individual other than a recipient residing in the behavioral health respite home; and
  - 3. A recipient or the recipient's representative:
    - a. Is informed of the recipient complaint process;
    - b. Consents to photographs of the recipient before the recipient is photographed, except that a recipient may be photographed when accepted by a behavioral health respite home for identification and administrative purposes; and
    - c. Except as otherwise permitted by law, provides written consent to the release of information in the recipient's medical record.
- B.** A recipient has the following rights:
  - 1. Not to be discriminated against based on race, national origin, religion, gender, sexual orientation, age, disability, marital status, or diagnosis;
  - 2. To receive services that support and respect the recipient's individuality, choices, strengths, and abilities;
  - 3. To receive privacy in care for personal needs;
  - 4. To review, upon written request, the recipient's own medical record according to A.R.S. §§ 12-2293, 12-2294, and 12-2294.01;
  - 5. To receive a referral to another health care institution if the provider is not authorized or not able to provide physical health services or behavioral health services needed by the recipient; and
  - 6. To receive assistance from a family member, recipient's representative, or other individual in understanding, protecting, or exercising the recipient's rights.

#### Historical Note

Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-1604 renumbered to R9-10-1605; new Section R9-10-1604 renumbered from R9-10-1603 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-1605. Providing Services

- A.** A provider shall ensure that behavioral health services and ancillary services are provided to a recipient according to the recipient's treatment plan obtained from the behavioral health respite home's collaborating health care institution.
- B.** A provider shall submit to the behavioral health respite home's collaborating health care institution and, if applicable, the recipient's case manager:
  - 1. Documentation of any significant change in a recipient's behavior or physical, cognitive, or functional condition and the action taken by a provider to address the recipient's changing needs; and
  - 2. Notification of a recipient's unexpected self-release.

#### Historical Note

Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-1605 renumbered to R9-10-1606; new Section R9-10-1605 renumbered from R9-10-1604 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-1606. Assistance in the Self-Administration of Medication

- A.** If a provider provides assistance in the self-administration of medication, the provider shall ensure that:

- 1. If a recipient is receiving assistance in the self-administration of medication, the recipient's medication is stored by the provider;
- 2. The following assistance is provided to a recipient:
  - a. A reminder when it is time to take the medication;
  - b. Opening the medication container or medication organizer for the recipient;
  - c. Observing the recipient while the recipient removes the medication from the medication container or medication organizer;
  - d. Verifying that the medication is taken as ordered by the recipient's medical practitioner by confirming that:
    - i. The recipient taking the medication is the individual stated on the medication container label;
    - ii. The recipient is taking the dosage of the medication as stated on the medication container label, and
    - iii. The recipient is taking the medication at the time stated on the medication container label; or
  - e. Observing the recipient while the recipient takes the medication; and
- 3. Assistance in the self-administration of medication provided to a recipient is documented in the recipient's medical record.
- B.** When medication is stored by a provider, the provider shall ensure that:
  - 1. A locked cabinet, closet, or self-contained unit is used for medication storage;
  - 2. Medication is stored according to the instructions on the medication container; and
  - 3. Medication, including expired medication, that is no longer being used is discarded.
- C.** A provider shall immediately report a medication error or a recipient's adverse reaction to a medication to the:
  - 1. Medical practitioner who ordered the medication, or
  - 2. Contact individual at the behavioral health respite home's collaborating health care institution.

#### Historical Note

Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-1606 renumbered to R9-10-1607; new Section R9-10-1606 renumbered from R9-10-1605 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-1607. Medical Records

- A.** A provider shall ensure that:
  - 1. A medical record is established and maintained for each recipient according to A.R.S. Title 12, Chapter 13, Article 7.1;
  - 2. An entry in a recipient's medical record is:
    - a. Only recorded by the provider or an individual designated by the provider to record an entry;
    - b. Dated, legible, and authenticated; and
    - c. Not changed to make the initial entry illegible;
  - 3. A recipient's medical record is available to an individual:
    - a. Authorized by policies and procedures to access the recipient's medical record;
    - b. If the individual is not authorized according to policies and procedures, with the written consent of the recipient or the recipient's representative; or
    - c. As permitted by law; and
  - 4. A recipient's medical record is protected from loss, damage, or unauthorized use.

- B.** If a provider maintains recipients' medical records electronically, the provider shall ensure that safeguards exist to prevent unauthorized access.
- C.** A provider shall ensure that a recipient's medical record contains:
1. Recipient information that includes:
    - a. The recipient's name,
    - b. The recipient's date of birth,
    - c. Any known allergies, and
    - d. Medication information for the recipient;
  2. The names, addresses, and telephone numbers of:
    - a. The recipient's medical practitioner;
    - b. The recipient's case manager, if applicable;
    - c. The behavioral health professional assigned to the recipient by the behavioral health respite home's collaborating health care institution; and
    - d. An individual to be contacted in the event of an emergency;
  3. The date and time of the recipient's acceptance by the behavioral health respite home and, if applicable, the date and time of the recipient's release from the behavioral health respite home;
  4. If applicable, the name and contact information of the recipient's representative and:
    - a. If the recipient is 18 years of age or older or an emancipated minor, the document signed by the recipient consenting for the recipient's representative to act on the recipient's behalf; or
    - b. If the recipient's representative:
      - i. Has a health care power of attorney established under A.R.S. § 36-3221 or a mental health care power of attorney executed under A.R.S. § 36-3282, a copy of the health care power of attorney or mental health care power of attorney; or
      - ii. Is a legal guardian, a copy of the court order establishing guardianship;
  5. A copy of the recipient's treatment plan and any updates to the recipient's treatment plan obtained from the behavioral health respite home's collaborating health care institution;
  6. For a recipient receiving assistance in the self-administration of medication, documentation that includes for each medication:
    - a. The date and time of assistance;
    - b. The name, strength, dosage, and route of administration;
    - c. The provider's signature or first and last initials; and
    - d. Any adverse reaction the recipient has to the medication;
  7. Documentation of the recipient's refusal of a medication, if applicable;
  8. Documentation of any significant change in the recipient's behavior or physical, cognitive, or functional condition and the action taken by a provider to address the recipient's changing needs;
  9. If applicable, documentation of any actions taken to control the recipient's sudden, intense, or out-of-control behavior to prevent harm to the recipient or another individual;
  10. If applicable, documentation of a notification to the behavioral health respite home's collaborating health care institution of an unexpected self-release of the recipient; and
  11. A written notice of release from the behavioral health respite home, if applicable.

**Historical Note**

Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-1607 renumbered to R9-10-1608; new Section R9-10-1607 renumbered from R9-10-1606 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-1608. Food Services**

A provider shall ensure that:

1. Food is obtained, handled, and stored to prevent contamination, spoilage, or a threat to the health of a recipient;
2. Three nutritionally balanced meals are served each day;
3. Nutritious snacks are available between meals;
4. Food served meets any special dietary needs of a recipient as prescribed by the recipient's physician or registered dietitian; and
5. Chemicals and detergents are not stored with food.

**Historical Note**

Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-1608 renumbered to R9-10-1609; new Section R9-10-1608 renumbered from R9-10-1607 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-1609. Emergency and Safety Standards**

A provider shall ensure that:

1. A first aid kit is available at a behavioral health respite home sufficient to meet the needs of recipients;
2. If a firearm or ammunition for a firearm is stored at a behavioral health respite home:
  - a. The firearm is stored separate from the ammunition for the firearm; and
  - b. The firearm and the ammunition for the firearm are:
    - i. Stored in a locked closet, cabinet, or container; and
    - ii. Inaccessible to a recipient;
3. A smoke detector is installed in:
  - a. A bedroom used by a recipient,
  - b. A hallway in a behavioral health respite home, and
  - c. A behavioral health respite home's kitchen;
4. A smoke detector required in subsection (3):
  - a. Is maintained in operable condition; and
  - b. Is battery operated or, if hard-wired into the electrical system of a behavioral health respite home, has a back-up battery;
5. A behavioral health respite home has a portable fire extinguisher that is labeled 1A-10-BC by the Underwriters Laboratory and available in the behavioral health respite home's kitchen;
6. A portable fire extinguisher required in subsection (5) is:
  - a. If a disposable fire extinguisher, replaced when the fire extinguisher's indicator reaches the red zone; or
  - b. Serviced at least once every 12 months and has a tag attached to the fire extinguisher that includes the date of service;
7. A written evacuation plan is maintained and available for use by the provider and any recipient in a behavioral health respite home;
8. An evacuation drill is conducted at least once every six months; and
9. A record of an evacuation drill required in subsection (8) is maintained for at least 12 months after the date of the evacuation drill.

**Historical Note**

Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-1609 renumbered to R9-10-1610; new Section R9-10-1609 renumbered from R9-10-1608 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-1610. Environmental Standards**

- A.** A provider shall ensure that a behavioral health respite home:
1. Is in a building that:
    - a. Is arranged, designed, and used for the living, sleeping, and housekeeping activities for one family on a permanent basis; and
    - b. Is free of any plumbing, electrical, ventilation, mechanical, chemical, or structural hazard that may jeopardize the health or safety of a recipient;
  2. Has a living room accessible at all times to a recipient;
  3. Has a dining area furnished for group meals that is accessible to the provider, recipients, and any other individuals present in the behavioral health respite home;
  4. For each six individuals residing in the behavioral health respite home, including recipients, has at least one bathroom equipped with:
    - a. A working toilet that flushes and has a seat; and
    - b. A sink with running water accessible for use by a recipient;
  5. Has equipment and supplies to maintain a recipient's personal hygiene accessible to the recipient;
  6. Is clean and free from accumulations of dirt, garbage, and rubbish; and
  7. Implements a pest control program to minimize the presence of insects and vermin at the behavioral health respite home.
- B.** A provider shall ensure that any pets or other animals allowed on the premises are:
1. Controlled to prevent endangering a recipient and to maintain sanitation;
  2. Licensed consistent with local ordinances; and
  3. For a dog or cat, vaccinated against rabies.
- C.** If a swimming pool is located on the premises, a provider shall ensure that:
1. The swimming pool is equipped with the following:
    - a. An operational water circulation system that clarifies and disinfects the swimming pool water continuously and that includes at least:
      - i. A removable strainer,
      - ii. Two swimming pool inlets located on opposite sides of the swimming pool, and
      - iii. A drain located at the swimming pool's lowest point and covered by a grating that cannot be removed without using tools; and
    - b. An operational cleaning system;
  2. The swimming pool is enclosed by a wall or fence that:
    - a. Is at least five feet in height as measured on the exterior of the wall or fence;
    - b. Has no vertical openings greater than four inches across;
    - c. Has no horizontal openings, except as described in subsection (C)(2)(e);
    - d. Is not chain-link;
    - e. Does not have a space between the ground and the bottom fence rail that exceeds four inches in height; and
    - f. Has a self-closing, self-latching gate that:
      - i. Opens away from the swimming pool,

- ii. Has a latch located at least 54 inches from the ground, and
  - iii. Is locked when the swimming pool is not in use; and
3. A life preserver or shepherd's crook is available and accessible in the pool area.
- D.** A provider shall ensure that a spa that is not enclosed by a wall or fence as described in subsection (C)(2) is covered and locked when not in use.

**Historical Note**

Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-1610 renumbered to R9-10-1611; new Section R9-10-1610 renumbered from R9-10-1609 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-1611. Adult Behavioral Health Respite Services**

A provider shall ensure that:

1. A bedroom for use by a recipient:
  - a. Is separated from a hall, corridors, or other habitable room by floor to ceiling walls containing no interior openings except doors and is not used as a passageway to another bedroom or habitable room;
  - b. Provides sufficient space for an individual in the bedroom to have unobstructed access to the bedroom door;
  - c. Contains for each recipient using the bedroom:
    - i. A separate, adult-sized, single bed or larger bed with a clean mattress in good repair;
    - ii. Clean bedding appropriate for the season; and
    - iii. Storage space for personal effects and clothing such as shelves, a dresser, or chest of drawers; and
  - d. If used for:
    - i. Single occupancy, contains at least 60 square feet of floor space; or
    - ii. Double occupancy, contains at least 100 square feet of floor space;
2. A mirror is available to a recipient for grooming;
3. A recipient does not share a bedroom with an individual who is not a recipient;
4. No more than two recipients share a bedroom;
5. If two recipients share a bedroom, each recipient agrees, in writing, to share the bedroom; and
6. A recipient's bedroom is not used to store anything that may be a hazard to the recipient or another individual.

**Historical Note**

Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Section R9-10-1611 renumbered to R9-10-1612; new Section R9-10-1611 renumbered from R9-10-1610 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-1612. Children's Behavioral Health Respite Services**

- A.** A provider may provide children's behavioral health respite services for up to four recipients if at least two of the recipients are siblings.
- B.** For a behavioral health respite home that provides children's behavioral health respite services, a provider shall:
1. Have a valid fingerprint clearance card according to A.R.S. § 36-425.03; and
  2. Ensure that:
    - a. If an adult other than a provider is present in the behavioral health respite home, the provider super-

vises the adult when and where a recipient is present;

- b. A recipient does not share a bedroom with:
  - i. An individual that, based on the other individual's developmental levels, social skills, verbal skills, and personal history, may present a threat to the recipient;
  - ii. Except as provided in subsection (C), an adult; or
  - iii. Except as provided in subsection (B)(2)(c), an individual that is not the same gender;
- c. A recipient may share a bedroom with an individual that is not the same gender if the individual is the recipient's sibling;
- d. A bedroom used by a recipient:
  - i. If the bedroom is a private bedroom, contains at least 60 square feet of floor space, not including the closet; or
  - ii. If the bedroom is a shared bedroom:
    - (1) Contains at least 100 square feet of floor space, not including a closet, for two individual occupying the bedroom or contains at least 140 square feet of floor space, not including a closet, for three individuals occupying the bedroom;
    - (2) If there are four siblings occupying the bedroom, contains at least 140 square feet of floor space, not including a closet;
    - (3) Provides space between beds or bunk beds; and
    - (4) Provides sufficient space for an individual in the bedroom to have unobstructed access to the bedroom door;
  - iii. For a recipient under three years of age, may contain a crib;
  - iv. Except for a recipient under three years of age who has a crib, contains a bed for the recipient that is at least 36 inches wide and at least 72 inches long, and consists of at least a frame and mattress and clean linens; and
  - v. Contains individual storage space for personal effects and clothing such as shelves, a dresser, or chest of drawers;
- e. Clean linens for a bed include a mattress pad, sheets large enough to tuck under the mattress, pillows, pillow cases, waterproof mattress covers as needed, and blankets to ensure warmth and comfort of a recipient;
- f. A recipient older than three years of age does not sleep in a crib;
- g. Clean and non-hazardous toys, educational materials, and physical activity equipment are available and accessible to recipients in a quantity sufficient to meet each recipient's needs and are appropriate to each recipient's age and developmental level; and
- h. The following are stored in a labeled container separate from food storage areas and inaccessible to a recipient:
  - i. Materials and chemicals labeled as a toxic substance, and
  - ii. Substances that have a child warning label and may be a hazard to a recipient.

- C. If a recipient is younger than 2 years of age and sleeps in a crib, the recipient may sleep in a crib placed in a provider's bedroom.

#### Historical Note

New Section R9-10-1612 renumbered from R9-10-1611 and amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

### ARTICLE 17. UNCLASSIFIED HEALTH CARE INSTITUTIONS

#### R9-10-1701. Definitions

Definitions in A.R.S. § 36-401 and R9-10-101 apply in this Article unless otherwise specified.

#### Historical Note

Adopted effective July 6, 1994 (Supp. 94-3). Section amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2).

#### R9-10-1702. Administration

- A. A governing authority for a health care institution not otherwise classified or subclassified in A.R.S. Title 36, Chapter 4 or 9 A.A.C. 10 shall:
  - 1. Consist of one or more individuals responsible for the organization, operation, and administration of the health care institution;
  - 2. Establish, in writing:
    - a. A health care institution's scope of services, and
    - b. Qualifications for an administrator;
  - 3. Designate, in writing, an administrator who has the qualifications established in subsection (A)(2)(b);
  - 4. Adopt a quality management program according to R9-10-1703;
  - 5. Review and evaluate the effectiveness of the quality management program in R9-10-1703 at least once every 12 months;
  - 6. Designate, in writing, an acting administrator who has the qualifications established in subsection (A)(2)(b) if the administrator is:
    - a. Expected not to be present on a health care institution's premises for more than 30 calendar days, or
    - b. Not present on a health care institution's premises for more than 30 calendar days; and
  - 7. Except as provided in subsection (A)(6), notify the Department according to A.R.S. § 36-425 when there is a change in an administrator and identify the name and qualifications of the new administrator.
- B. An administrator:
  - 1. Is directly accountable to the governing authority of a health care institution for the daily operation of the health care institution and all services provided by or at the health care institution;
  - 2. Has the authority and responsibility to manage the health care institution; and
  - 3. Except as provided in subsection (A)(6), designates, in writing, an individual who is present on the health care institution's premises and accountable for the health care institution when the administrator is not present on the health care institution's premises.
- C. An administrator shall ensure that:
  - 1. Policies and procedures are established, documented, and implemented to protect the health and safety of a patient that:
    - a. Cover job descriptions, duties, and qualifications, including required skills, knowledge, education, and experience for personnel members, employees, volunteers and students;

- b. Cover orientation and in-service education for personnel members, employees, volunteers and students;
  - c. Include how a personnel member may submit a complaint relating to services provided to a patient;
  - d. Cover the requirements in A.R.S. Title 36, Chapter 4, Article 11;
  - e. Cover cardiopulmonary resuscitation training, including:
    - i. The method and content of cardiopulmonary resuscitation training,
    - ii. The qualifications for an individual providing cardiopulmonary resuscitation training,
    - iii. The time-frame for renewal of cardiopulmonary resuscitation training, and
    - iv. The documentation that verifies that the individual has received cardiopulmonary resuscitation training;
  - f. Include a method to identify a patient to ensure the patient receives services as ordered;
  - g. Cover first aid training;
  - h. Cover patient rights, including assisting a patient who does not speak English or who has a physical or other disability to become aware of patient rights;
  - i. Cover specific steps for:
    - i. A patient to file a complaint, and
    - ii. The health care institution to respond to and resolve a patient complaint;
  - j. Cover medical records, including electronic medical records;
  - k. Cover a quality management program, including incident report and supporting documentation;
  - l. Cover contracted services;
  - m. Cover health care directives; and
  - n. Cover when an individual may visit a patient in a health care institution;
2. Policies and procedures for health care institution services are established, documented, and implemented to protect the health and safety of a patient that:
- a. Cover patient screening, admission, assessment, treatment plan, transport, transfer, and discharge, if applicable;
  - b. Cover patient outings, if applicable;
  - c. Include when general consent and informed consent are required;
  - d. Cover the provision of services listed in the health care institution's scope of services;
  - e. Cover administering medication, assistance in the self-administration of medication, and disposing of medication, including provisions for inventory control and preventing diversion of controlled substances, if applicable;
  - f. Cover infection control;
  - g. Cover telemedicine, if applicable;
  - h. Cover environmental services that affect patient care;
  - i. Cover smoking and the use of tobacco products on the health care institution's premises;
  - j. Cover how the health care institution will respond to a patient's sudden, intense, or out-of-control behavior to prevent harm to the patient or another individual;
  - k. Cover how incidents are reported and investigated; and
  - l. Designate which employees or personnel members are required to have current certification in cardiopulmonary resuscitation and first aid training;
3. Policies and procedures are reviewed at least once every three years and updated as needed;
4. Policies and procedures are available to personnel members, employees, volunteers, and students; and
5. Unless otherwise stated:
- a. Documentation required by this Article is provided to the Department within two hours after the Department's request; and
  - b. When documentation or information is required by this Chapter to be submitted on behalf of a health care institution, the documentation or information is provided to the unit in the Department that is responsible for licensing and monitoring the health care institution.
- D.** If applicable, an administrator shall designate a clinical director who:
- 1. Provides direction for behavioral health services provided at the health care institution, and
  - 2. Is a behavioral health professional.
- E.** An administrator shall provide written notification to the Department of a patient's:
- 1. Death, if the patient's death is required to be reported according to A.R.S. § 11-593, within one working day after the patient's death; and
  - 2. Self-injury, within two working days after the patient inflicts a self-injury that requires immediate intervention by an emergency medical services provider.
- F.** If abuse, neglect, or exploitation of a patient is alleged or suspected to have occurred before the patient was admitted or while the patient is not on the premises and not receiving services from a health care institution's employee or personnel member, an administrator shall report the alleged or suspected abuse, neglect, or exploitation of the patient as follows:
- 1. For a patient 18 years of age or older, according to A.R.S. § 46-454; or
  - 2. For a patient under 18 years of age, according to A.R.S. § 13-3620.
- G.** If an administrator has a reasonable basis, according to A.R.S. § 13-3620 or 46-454, to believe abuse, neglect, or exploitation has occurred on the premises or while the patient is receiving unclassified healthcare services, the administrator shall:
- 1. If applicable, take immediate action to stop the suspected abuse, neglect, or exploitation;
  - 2. Report the suspected abuse, neglect, or exploitation of the patient:
    - a. For a patient 18 years of age or older, according to A.R.S. § 46-454; or
    - b. For a patient under 18 years of age, according to A.R.S. § 13-3620;
  - 3. Document:
    - a. The suspected abuse, neglect, or exploitation;
    - b. Any action taken according to subsection (G)(1); and
    - c. The report in subsection (G)(2);
  - 4. Maintain the documentation in subsection (G)(3) for at least 12 months after the date of the report in subsection (G)(2);
  - 5. Initiate an investigation of the suspected abuse, neglect, or exploitation and document the following information within five working days after the report required in (G)(2):
    - a. The dates, times, and description of the suspected abuse, neglect, or exploitation;

- b. A description of any injury to the patient related to the suspected abuse or neglect and any change to the patient's physical, cognitive, functional, or emotional condition;
  - c. The names of witnesses to the suspected abuse, neglect, or exploitation; and
  - d. The action taken by the administrator to prevent the suspected abuse, neglect, or exploitation from occurring in the future; and
6. Maintain a copy of the documented information required in subsection (G)(5) and any other information obtained during the investigation for at least 12 months after the date the investigation was initiated.

- H.** An administrator shall ensure that the following information or documents are conspicuously posted on the premises and are available upon request to a personnel member, an employee, a patient, or a patient's representative:
- 1. The health care institution's current license,
  - 2. The evacuation plan listed in R9-10-1711, and
  - 3. The location at which inspection reports required in R9-10-1712(B) are available for review or can be made available for review.

#### Historical Note

Adopted effective July 6, 1994 (Supp. 94-3). Amended by final rulemaking at 16 A.A.R. 688, effective November 1, 2010 (Supp. 10-2). Section amended by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-1703. Quality Management

An administrator shall ensure that:

- 1. A plan is established, documented, and implemented for an ongoing quality management program that, at a minimum, includes:
  - a. A method to identify, document, and evaluate incidents;
  - b. A method to collect data to evaluate services provided to patients;
  - c. A method to evaluate the data collected to identify a concern about the delivery of services related to patient care;
  - d. A method to make changes or take action as a result of the identification of a concern about the delivery of services related to patient care; and
  - e. The frequency of submitting a documented report required in subsection (2) to the governing authority;
- 2. A documented report is submitted to the governing authority that includes:
  - a. An identification of each concern about the delivery of services related to patient care, and
  - b. Any changes made or actions taken as a result of the identification of a concern about the delivery of services related to patient care; and
- 3. The report required in subsection (2) and the supporting documentation for the report are maintained for at least 12 months after the date the report is submitted to the governing authority.

#### Historical Note

Adopted effective July 6, 1994 (Supp. 94-3). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-1704. Contracted Services

An administrator shall ensure that:

- 1. Contracted services are provided according to the requirements in this Article,
- 2. Documented of current contracted services is maintained that includes a description of the contracted services provided.

#### Historical Note

Adopted effective July 6, 1994 (Supp. 94-3). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-1705. Personnel

**A.** An administrator shall ensure that:

- 1. A personnel member is:
  - a. At least 21 years old, or
  - b. Licensed or certified under A.R.S. Title 32 and providing services within the personnel member's scope of practice;
- 2. An employee is at least 18 years old,
- 3. A student is at least 18 years old, and
- 4. A volunteer is at least 21 years old.

**B.** An administrator shall ensure that:

- 1. The qualifications, skills, and knowledge required for each type of personnel member:
  - a. Are based on:
    - i. The type of physical health services or behavioral health services expected to be provided by the personnel member according to the established job description, and
    - ii. The acuity of the patients receiving physical health services or behavioral health services from the personnel member according to the established job description; and
  - b. Include:
    - i. The specific skills and knowledge necessary for the personnel member to provide the expected physical health services and behavioral health services listed in the established job description,
    - ii. The type and duration of education that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected physical health services or behavioral health services listed in the established job description, and
    - iii. The type and duration of experience that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected physical health services or behavioral health services listed in the established job description;
- 2. A personnel member's skills and knowledge are verified and documented:
  - a. Before the personnel member provides physical health services or behavioral health services, and
  - b. According to policies and procedures;
- 3. Sufficient personnel members are present on a health care institution's premises with the qualifications, skills, and knowledge necessary to:
  - a. Provide the services in the health care institution's scope of services,
  - b. Meet the needs of a patient, and

- c. Ensure the health and safety of a patient.
- C. An administrator shall ensure that:
  - 1. A plan to provide orientation specific to the duties of a personnel member, employee, volunteer, and student is developed, documented, and implemented;
  - 2. A personnel member completes orientation before providing behavioral health services or physical health services;
  - 3. An individual's orientation is documented, to include:
    - a. The individual's name,
    - b. The date of the orientation, and
    - c. The subject or topics covered in the orientation;
  - 4. A plan to provide in-service education specific to the duties of a personnel member is developed;
  - 5. A personnel member's in-service education is documented, to include:
    - a. The personnel member's name,
    - b. The date of the training, and
    - c. The subject or topics covered in the training; and
  - 6. A work schedule of each personnel member is developed and maintained at the health care institution for at least 12 months after the date of the work schedule.
- D. An administrator shall ensure that a personnel member, or an employee, a volunteer, or a student who has or is expected to have direct interaction with a patient, provides evidence of freedom from infectious tuberculosis:
  - a. On or before the date the individual begins providing services at or on behalf of the unclassified healthcare institution, and
  - b. As specified in R9-10-113.
- E. An administrator shall ensure that a personnel record is maintained for each personnel member, employee, volunteer, or student that includes:
  - 1. The individual's name, date of birth, and contact telephone number;
  - 2. The individual's starting date of employment or volunteer service and, if applicable, the ending date; and
  - 3. Documentation of:
    - a. The individual's qualifications including skills and knowledge applicable to the individual's job duties;
    - b. The individual's education and experience applicable to the individual's job duties;
    - c. The individual's completed orientation and in-service education as required by policies and procedures;
    - d. The individual's license or certification, if the individual is required to be licensed or certified in this Article or policies and procedures;
    - e. If the health care institution provides services to children, the individual's compliance with the fingerprinting requirements in A.R.S. § 36-425.03;
    - f. Cardiopulmonary resuscitation training, if required for the individual according to R9-10-1702(C)(2)(I);
    - g. First aid training, if required for the individual according to this Article or policies and procedures; and
    - h. Evidence of freedom from infectious tuberculosis, if the individual is required to provide evidence of freedom according to subsection (D).
- F. An administrator shall ensure that personnel records are:
  - 1. Maintained:
    - a. Throughout an individual's period of providing services in or for the health care institution, and
    - b. For at least 24 months after the last date the individual provided services in or for the health care institution; and

- 2. For a personnel member who has not provided physical health services or behavioral health services at or for the health care institution during the previous 12 months, provided to the Department within 72 hours after the Department's request.

- G. An administrator shall ensure that at least one personnel member who is present at the health care institution during the hours of the health care institution operation has first-aid training and cardiopulmonary resuscitation certification specific to the populations served by the health care institution.

#### Historical Note

Adopted effective July 6, 1994 (Supp. 94-3). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-1706. Transport; Transfer

- A. Except as provided in subsection (B), an administrator shall ensure that:
  - 1. A personnel member coordinates the transport and the services provided to the patient;
  - 2. According to policies and procedures:
    - a. An evaluation of the patient is conducted before and after the transport,
    - b. Information in the patient's medical record is provided to a receiving health care institution, and
    - c. A personnel member explains risks and benefits of the transport to the patient or the patient's representative; and
  - 3. Documentation in the patient's medical record includes:
    - a. Communication with an individual at a receiving health care institution;
    - b. The date and time of the transport;
    - c. The mode of transportation; and
    - d. If applicable, the personnel member accompanying the patient during a transport.
- B. Subsection (A) does not apply to:
  - 1. Transportation to a location other than a licensed health care institution,
  - 2. Transportation provided for a patient by the patient or the patient's representative,
  - 3. Transportation provided by an outside entity that was arranged for a patient by the patient or the patient's representative, or
  - 4. A transport to another licensed health care institution in an emergency.
- C. Except for a transfer of a patient due to an emergency, an administrator shall ensure that:
  - 1. A personnel member coordinates the transfer and the services provided to the patient;
  - 2. According to policies and procedures:
    - a. An evaluation of the patient is conducted before the transfer;
    - b. Information in the patient's medical record, including orders that are in effect at the time of the transfer, is provided to a receiving health care institution; and
    - c. A personnel member explains risks and benefits of the transfer to the patient or the patient's representative; and
  - 3. Documentation in the patient's medical record includes:
    - a. Communication with an individual at a receiving health care institution;
    - b. The date and time of the transfer;



- c. The mode of transportation; and
- d. If applicable, the name of the personnel member accompanying the patient during a transfer.

**Historical Note**

Adopted effective July 6, 1994 (Supp. 94-3). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-1707. Patient Rights****A.** An administrator shall ensure that:

1. The requirements in subsection (B) and the patient rights in subsection (C) are conspicuously posted on the premises;
2. At the time of admission, a patient or the patient's representative receives a written copy of the requirements in subsection (B) and the patient rights in subsection (C); and
3. Policies and procedures include:
  - a. How and when a patient or the patient's representative is informed of patient rights in subsection (C), and
  - b. Where patient rights are posted as required in subsection (A)(1).

**B.** An administrator shall ensure that:

1. A patient is treated with dignity, respect, and consideration;
2. A patient is not subjected to:
  - a. Abuse;
  - b. Neglect;
  - c. Exploitation;
  - d. Coercion;
  - e. Manipulation;
  - f. Sexual abuse;
  - g. Sexual assault;
  - h. Seclusion;
  - i. Restraint;
  - j. Retaliation for submitting a complaint to the Department or another entity; or
  - k. Misappropriation of personal and private property by the unclassified health care institution's personnel members, employees, volunteers, or students; and
3. A patient or the patient's representative:
  - a. Is informed of the patient complaint process;
  - b. Consents to photographs of the patient before the patient is photographed, except that a patient may be photographed when admitted to a health care institution for identification and administrative purposes; and
  - c. Except as otherwise permitted by law, provides written consent to the release of information in the patient's:
    - i. Medical record, or
    - ii. Financial records.

**C.** A patient has the following rights:

1. Not to be discriminated against based on race, national origin, religion, gender, sexual orientation, age, disability, marital status, or diagnosis;
2. To receive services that support and respect the patient's individuality, choices, strengths, and abilities;
3. To receive privacy in care for personal needs;

4. To review, upon written request, the patient's own medical record according to A.R.S. §§ 12-2293, 12-2294, and 12-2294.01;
5. To receive a referral to another health care institution if the provider is not authorized or not able to provide physical health services or behavioral health services needed by the patient; and
6. To receive assistance from a family member, representative, or other individual in understanding, protecting, or exercising the patient's rights.

**Historical Note**

Adopted effective July 6, 1994 (Supp. 94-3). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-1708. Medical Records****A.** An administrator shall ensure that:

1. A medical record is established and maintained for each patient according to A.R.S. Title 12, Chapter 13, Article 7.1;
2. An entry in a patient's medical record is:
  - a. Recorded only by a personnel member authorized by policies and procedures to make the entry;
  - b. Dated, legible, and authenticated; and
  - c. Not changed to make the entry illegible;
3. An order is:
  - a. Dated when the order is entered in the patient's medical record and includes the time of the order;
  - b. Authenticated by a medical practitioner or behavioral health professional according to policies and procedures; and
  - c. If the order is a verbal order, authenticated by the medical practitioner or behavioral health professional issuing the order;
4. If a rubber-stamp signature or an electronic signature is used to authenticate an order, the individual whose signature the rubber-stamp signature or electronic signature represents is accountable for the use of the rubber-stamp signature or electronic signature;
5. A patient's medical record is available to an individual:
  - a. Authorized according to policies and procedures to access the patient's medical record;
  - b. If the individual is not authorized according to policies and procedures, with the written consent of the patient or the patient's representative; or
  - c. As permitted by law;
6. Policies and procedures include the maximum time-frame to retrieve a patient's medical record at the request of a medical practitioner, behavioral health professional, or authorized personnel member; and
7. A patient's medical record is protected from loss, damage, or unauthorized use.

**B.** If a health care institution maintains a patient's medical records electronically, an administrator shall ensure that:

1. Safeguards exist to prevent unauthorized access, and
2. The date and time of an entry in a patient's medical record is recorded by the computer's internal clock.

**C.** An administrator shall ensure that a patient's medical record contains:

1. Patient information that includes:
  - a. The patient's name;
  - b. The patient's address;
  - c. The patient's date of birth; and

- d. Any known allergies, including medication allergies;
- 2. The name of the admitting medical practitioner or behavioral health professional;
- 3. The date of admission and, if applicable, the date of discharge;
- 4. An admitting diagnosis;
- 5. If applicable, the name and contact information of the patient's representative and:
  - a. If the patient is 18 years of age or older or an emancipated minor, the document signed by the patient consenting for the patient's representative to act on the patient's behalf; or
  - b. If the patient's representative:
    - i. Is a legal guardian, a copy of the court order establishing guardianship; or
    - ii. Has a health care power of attorney established under A.R.S. § 36-3221 or a mental health care power of attorney executed under A.R.S. § 36-3282, a copy of the health care power of attorney or mental health care power of attorney;
- 6. If applicable, documented general consent and informed consent by the patient or the patient's representative;
- 7. Documentation of medical history and results of a physical examination;
- 8. A copy of the patient's health care directive, if applicable;
- 9. Orders;
- 10. Assessment;
- 11. Treatment plans;
- 12. Interval note;
- 13. Progress notes;
- 14. Documentation of health care institution services provided to the patient;
- 15. Disposition of the patient after discharge;
- 16. If applicable, documentation of any actions taken to control the patient's sudden, intense, or out-of-control behavior to prevent harm to the patient or another individual;
- 17. Discharge plan;
- 18. A discharge summary, if applicable;
- 19. If applicable:
  - a. Laboratory reports,
  - b. Radiologic reports,
  - c. Diagnostic reports, and
  - d. Consultation reports; and
- 20. Documentation of a medication administered to the patient that includes:
  - a. The date and time of administration;
  - b. The name, strength, dosage, and route of administration;
  - c. For a medication administered for pain, when initially administered or PRN:
    - i. An assessment of the patient's pain before administering the medication, and
    - ii. The effect of the medication administered;
  - d. For a psychotropic medication, when initially administered or PRN:
    - i. An assessment of the patient's behavior before administering the psychotropic medication, and
    - ii. The effect of the psychotropic medication administered;
  - e. The identification, signature, and professional designation of the individual administering or observing the self-administration of the medication; and
  - f. Any adverse reaction a patient has to the medication.

**Historical Note**

Adopted effective July 6, 1994 (Supp. 94-3). Section

repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-1709. Medication Services**

- A.** An administrator shall ensure that:
  - 1. Policies and procedures for medication services include:
    - a. A process for providing information to a patient about medication prescribed for the patient including:
      - i. The prescribed medication's anticipated results,
      - ii. The prescribed medication's potential adverse reactions,
      - iii. The prescribed medication's potential side effects, and
      - iv. Potential adverse reactions that could result from not taking the medication as prescribed;
    - b. Procedures for preventing, responding to, and reporting a medication error;
    - c. Procedures for responding to and reporting an unexpected reaction to a medication;
    - d. Procedures to ensure that a patient's medication regimen and method of administration is reviewed by a medical practitioner and to ensure the medication regimen meets the patient's needs;
    - e. Procedures for:
      - i. Documenting, as applicable, medication administration and assistance in the self-administration of medication; and
      - ii. Monitoring a patient who self-administers medication;
    - f. Procedures for assisting a patient in obtaining medication; and
    - g. If applicable, procedures for providing medication administration or assistance in the self-administration of medication off the premises; and
  - 2. A process is specified for review through the quality management program of:
    - a. A medication administration error, and
    - b. An adverse reaction to a medication.
- B.** If a health care institution provides medication administration, an administrator shall ensure that:
  - 1. Medication is stored by the health care institution;
  - 2. Policies and procedures for medication administration:
    - a. Are reviewed and approved by a medical practitioner;
    - b. Specify the individuals who may:
      - i. Order medication, and
      - ii. Administer medication;
    - c. Ensure that medication is administered to a patient only as prescribed; and
    - d. Cover the documentation of a patient's refusal to take prescribed medication in the patient's medical record;
  - 3. Verbal orders for medication services are taken by a nurse, unless otherwise provided by law; and
  - 4. A medication administered to a patient:
    - a. Is administered in compliance with an order, and
    - b. Is documented in the patient's medical record.
- C.** If a health care institution provides assistance in the self-administration of medication, an administrator shall ensure that:
  - 1. A patient's medication is stored by the health care institution;
  - 2. The following assistance is provided to a patient:

- a. A reminder when it is time to take the medication;
  - b. Opening the medication container for the patient;
  - c. Observing the patient while the patient removes the medication from the container;
  - d. Verifying that the medication is taken as ordered by the patient's medical practitioner by confirming that:
    - i. The patient taking the medication is the individual stated on the medication container label,
    - ii. The patient is taking the dosage of the medication as stated on the medication container label, and
    - iii. The patient is taking the medication at the time stated on the medication container label; or
  - e. Observing the patient while the patient takes the medication;
3. Policies and procedures for assistance in the self-administration of medication are reviewed and approved by a medical practitioner or registered nurse;
  4. Training for a personnel member, other than a medical practitioner or registered nurse, in assistance in the self-administration of medication:
    - a. Is provided by a medical practitioner or registered nurse or an individual trained by a medical practitioner or registered nurse; and
    - b. Includes:
      - i. A demonstration of the personnel member's skills and knowledge necessary to provide assistance in the self-administration of medication,
      - ii. Identification of medication errors and medical emergencies related to medication that require emergency medical intervention, and
      - iii. Process for notifying the appropriate entities when an emergency medical intervention is needed;
  5. A personnel member, other than a medical practitioner or registered nurse, completes the training in subsection (C)(4) before the personnel member provides assistance in the self-administration of medication; and
  6. Assistance in the self-administration of medication provided to a patient:
    - a. Is in compliance with an order, and
    - b. Is documented in the patient's medical record.
- D.** An administrator shall ensure that:
1. A current drug reference guide is available for use by personnel members;
  2. A current toxicology reference guide is available for use by personnel members; and
  3. If pharmaceutical services are provided on the premises:
    - a. A committee, composed of at least one physician, one pharmacist, and other personnel members as determined by policies and procedures, is established to:
      - i. Develop a drug formulary,
      - ii. Update the drug formulary at least once every 12 months,
      - iii. Develop medication usage and medication substitution policies and procedures, and
      - iv. Specify which medications and medication classifications are required to be automatically stopped after a specific time period unless the ordering medical practitioner specifically orders otherwise;
    - b. The pharmaceutical services are provided under the direction of a pharmacist;
  - c. The pharmaceutical services comply with A.R.S. Title 36, Chapter 27; A.R.S. Title 32, Chapter 18; and 4 A.A.C. 23; and
  - d. A copy of the pharmacy license is provided to the Department upon request.
- E.** When medication is stored at a health care institution, an administrator shall ensure that:
1. Medication is stored in a separate locked room, closet, or self-contained unit used only for medication storage;
  2. Medication is stored according to the instructions on the medication container; and
  3. Policies and procedures are established, documented, and implemented to protect the health and safety of a patient for:
    - a. Receiving, storing, inventorying, tracking, dispensing, and discarding medication including expired medication;
    - b. Discarding or returning prepackaged and sample medication to the manufacturer if the manufacturer requests the discard or return of the medication;
    - c. A medication recall and notification of patients who received recalled medication; and
    - d. Storing, inventorying, and dispensing controlled substances.
- F.** An administrator shall ensure that a personnel member immediately reports a medication error or a patient's adverse reaction to a medication to the medical practitioner who ordered the medication and, if applicable, the health care institution's clinical director.

#### Historical Note

Adopted effective July 6, 1994 (Supp. 94-3). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-1710. Food Services

If food services are provided, an administrator shall ensure:

1. Food is obtained, handled, and stored to prevent contamination, spoilage, or a threat to the health of a patient;
2. Three nutritionally balanced meals are served each day;
3. Nutritious snacks are available between meals;
4. Food served meets any special dietary needs of a patient as prescribed by the patient's physician or dietitian; and
5. Chemicals and detergents are not stored with food.

#### Historical Note

Adopted effective July 6, 1994 (Supp. 94-3). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2).

#### R9-10-1711. Emergency and Safety Standards

**A.** An administrator shall ensure that:

1. A first aid kit is available at a health care institution;
2. If a firearm or ammunition for a firearm are stored at a health care institution:
  - a. The firearm is stored separate from the ammunition for the firearm; and
  - b. The firearm and the ammunition for the firearm are:
    - i. Stored in a locked closet, cabinet, or container; and
    - ii. Inaccessible to a patient;
3. If applicable, there is a smoke detector installed in:
  - a. A bedroom used by a patient,
  - b. A hallway in a health care institution, and

- c. A health care institution's kitchen;
- 4. A smoke detector required in subsection (A)(3):
  - a. Is maintained in operable condition; and
  - b. Is battery operated or, if hard-wired into the electrical system of a health care institution, has a back-up battery;
- 5. A health care institution has a portable fire extinguisher that is labeled 1A-10-BC by the Underwriters Laboratory and is available to a personnel member;
- 6. A portable fire extinguisher required in subsection (A)(5) is:
  - a. If a disposable fire extinguisher, replaced when the fire extinguisher's indicator reaches the red zone; or
  - b. Serviced at least once every 12 months and has a tag attached to the fire extinguisher that includes the date of service;
- 7. A written evacuation plan is maintained and available for use by personnel members and any patient in a health care institution;
- 8. An evacuation drill is conducted at least once every six months; and
- 9. A record of an evacuation drill required in subsection (A)(8) is maintained for at least 12 months after the date of the evacuation drill.
- B.** An administrator shall:
  - 1. Obtain a fire inspection conducted according to the time-frame established by the local fire department or the State Fire Marshal,
  - 2. Make any repairs or corrections stated on the fire inspection report, and
  - 3. Maintain documentation of a current fire inspection.

#### Historical Note

Adopted effective July 24, 1978 (Supp. 78-4). Section repealed; new Section adopted effective July 6, 1994 (Supp. 94-3). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### **R9-10-1712. Physical Plant, Environmental Services, and Equipment Standards**

- A.** If applicable, an administrator shall ensure that a health care institution:
  - 1. Is in a building that:
    - a. Has a certificate of occupancy from the local jurisdiction; and
    - b. Is free of any plumbing, electrical, ventilation, mechanical, or structural hazard that may jeopardize the health or safety of a patient;
  - 2. Has a living room accessible at all times to a patient;
  - 3. Has a dining area furnished for group meals that is accessible to the provider, patients, and any other individuals present in the health care institution;
  - 4. Has:
    - a. At least one bathroom for each six individuals residing in the health care institution, including patients; and
    - b. A bathroom accessible for use by a patient that contains:
      - i. A working sink with running water, and
      - ii. A working toilet that flushes and has a seat; and
  - 5. Has equipment and supplies to maintain a patient's personal hygiene that are accessible to the patient.
- B.** An administrator shall ensure that:
  - 1. A health care institution's premises are:

- a. Sufficient to provide the health care institution's scope of services;
  - b. Cleaned and disinfected according to the health care institution's policies and procedures to prevent, minimize, and control illness and infection;
  - c. Clean and free from accumulations of dirt, garbage, and rubbish; and
  - d. Free from a condition or situation that may cause an individual to suffer physical injury;
- 2. If a health care institution collects urine or stool specimens from a patient, the health care institution has at least one bathroom that:
  - a. Contains:
    - i. A working sink with running water,
    - ii. A working toilet that flushes and has a seat,
    - iii. Toilet tissue,
    - iv. Soap for hand washing,
    - v. Paper towels or a mechanical air hand dryer,
    - vi. Lighting, and
    - vii. A means of ventilation; and
  - b. Is for the exclusive use of the health care institution;
- 3. A pest control program is implemented and documented;
- 4. If pets or animals are allowed in the health care institution, pets or animals are:
  - a. Controlled to prevent endangering the patients and to maintain sanitation;
  - b. Licensed consistent with local ordinances; and
  - c. For a dog or a cat, vaccinated against rabies;
- 5. A smoke-free environment is maintained on the premises;
- 6. A refrigerator used to store a medication is:
  - a. Maintained in working order, and
  - b. Only used to store medications;
- 7. Equipment at the health care institution is:
  - a. Sufficient to provide the health care institution's scope of service;
  - b. Maintained in working condition;
  - c. Used according to the manufacturer's recommendations; and
  - d. If applicable, tested and calibrated according to the manufacturer's recommendations or, if there are no manufacturer's recommendations, as specified in policies and procedures;
- 8. Documentation of an equipment test, calibration, and repair is maintained for at least 12 months after the date of testing, calibration, or repair; and
- 9. Combustible or flammable liquids and hazardous materials stored by the health care institution are stored in the original labeled containers or safety containers in a storage area that is locked and inaccessible to patients.

#### Historical Note

Adopted effective July 24, 1978 (Supp. 78-4). Section repealed, new Section adopted effective July 6, 1994 (Supp. 94-3). Section repealed; new Section adopted effective July 6, 1994 (Supp. 94-3). Section repealed; new Section made by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2). Amended by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### **R9-10-1713. Repealed**

#### Historical Note

Adopted effective July 24, 1978 (Supp. 78-4). Section repealed, new Section adopted effective July 6, 1994 (Supp. 94-3). Section repealed by exempt rulemaking at 19 A.A.R. 2015, effective October 1, 2013 (Supp. 13-2).

**R9-10-1714. Reserved****R9-10-1715. Repealed****Historical Note**

Adopted effective July 24, 1978 (Supp. 78-4). Repealed effective July 6, 1994 (Supp. 94-3).

**R9-10-1716. Repealed****Historical Note**

Adopted effective July 24, 1978 (Supp. 78-4). Repealed effective July 6, 1994 (Supp. 94-3).

**R9-10-1717. Repealed****Historical Note**

Adopted effective July 24, 1978 (Supp. 78-4). Repealed effective July 6, 1994 (Supp. 94-3).

**R9-10-1718. Repealed****Historical Note**

Adopted effective July 24, 1978 (Supp. 78-4). Repealed effective July 6, 1994 (Supp. 94-3).

**R9-10-1719. Repealed****Historical Note**

Adopted effective July 24, 1978 (Supp. 78-4). Repealed effective July 6, 1994 (Supp. 94-3).

**R9-10-1720. Repealed****Historical Note**

Adopted effective July 24, 1978 (Supp. 78-4). Repealed effective July 6, 1994 (Supp. 94-3).

**R9-10-1721. Repealed****Historical Note**

Adopted effective July 24, 1978 (Supp. 78-4). Repealed effective July 6, 1994 (Supp. 94-3).

**R9-10-1722. Repealed****Historical Note**

Adopted effective July 24, 1978 (Supp. 78-4). Repealed effective July 6, 1994 (Supp. 94-3).

**R9-10-1723. Repealed****Historical Note**

Adopted effective July 24, 1978 (Supp. 78-4). Repealed effective July 6, 1994 (Supp. 94-3).

**R9-10-1724. Reserved****R9-10-1725. Reserved****R9-10-1726. Reserved****R9-10-1727. Reserved****R9-10-1728. Reserved****R9-10-1729. Reserved****R9-10-1730. Reserved****R9-10-1731. Repealed****Historical Note**

Adopted effective July 24, 1978 (Supp. 78-4). Repealed effective July 6, 1994 (Supp. 94-3).

**R9-10-1732. Repealed****Historical Note**

Adopted effective July 24, 1978 (Supp. 78-4). Repealed effective July 6, 1994 (Supp. 94-3).

**R9-10-1733. Repealed****Historical Note**

Adopted effective July 24, 1978 (Supp. 78-4). Corrections: R9-10-1733(B)(2), correction in spelling, “architectural”; R9-10-1733(C)(1)(d), 100 square feet, corrected to read “1000” square feet, as certified effective July 24, 1978 (Supp. 87-2). Repealed effective July 6, 1994 (Supp. 94-3).

**R9-10-1734. Repealed****Historical Note**

Adopted effective July 24, 1978 (Supp. 78-4). Repealed effective July 6, 1994 (Supp. 94-3).

## **ARTICLE 18. ADULT BEHAVIORAL HEALTH THERAPEUTIC HOMES**

**R9-10-1801. Definitions**

In addition to the definitions in A.R.S. § 36-401 and R9-10-101, the following definitions apply in this Article unless otherwise specified:

1. “Acceptance” means, after a referral from a collaborating health care institution, an individual begins to live in and receive services from a provider in an adult behavioral health therapeutic home.
2. “Backup provider” means an individual designated by a provider to be present in an adult behavioral health therapeutic home, when a provider is not present, who ensures that a resident receives the behavioral health services and ancillary services in the resident’s treatment plan.
3. “Provider” means an individual who lives in an adult behavioral health therapeutic home and ensures that a resident receives the behavioral health services and ancillary services in the resident’s treatment plan.
4. “Release” means a documented termination of services to a resident by a provider that is authorized by a collaborating health care institution.
5. “Resident” means an individual referred by a collaborating health care institution to and accepted by an adult behavioral health therapeutic home.

**Historical Note**

New Section made by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-1802. Supplemental Application Requirements**

In addition to the license application requirements in A.R.S. § 36-422 and 9 A.A.C. 10, Article 1, an applicant shall include, in a format provided by the Department:

1. The name of the backup provider; and
2. For the adult behavioral health therapeutic home’s collaborating health care institution:
  - a. Name,
  - b. Address,
  - c. Class or subclass,
  - d. License number, and
  - e. Name and contact information for an individual assigned by the collaborating health care institution to monitor the adult behavioral health therapeutic home.

**Historical Note**

New Section made by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-1803. Administration**

- A.** A governing authority of an adult behavioral health therapeutic home:
1. Consists of no more than two providers, who live in the adult behavioral health therapeutic home;
  2. Has the authority and responsibility to manage the adult behavioral health therapeutic home;
  3. Has a documented agreement with a collaborating health care institution that establishes the responsibilities of the adult behavioral health therapeutic home and the collaborating health care institution, consistent with the requirements in this Chapter;
  4. Shall establish, in writing, the adult behavioral health therapeutic home's scope of services, which are approved by the collaborating health care institution;
  5. Shall designate a back-up provider to be present in the adult behavioral health therapeutic home and accountable for services provided by the adult behavioral health therapeutic home when the provider is not present at the adult behavioral health therapeutic home; and
  6. Shall ensure that:
    - a. No more than three residents are accepted by the adult behavioral health therapeutic home;
    - b. Documentation required by this Article is provided to the Department within two hours after a Department request; and
    - c. When documentation or information is required by this Chapter to be submitted on behalf of the adult behavioral health therapeutic home, the documentation or information is provided to the unit in the Department that is responsible for licensing the adult behavioral health therapeutic home.
- B.** A provider or back-up provider:
1. Is at least 21 years of age;
  2. Holds current certification in cardiopulmonary resuscitation and first aid training applicable to the ages of residents;
  3. Has the skills and knowledge established by the collaborating health care institution as specified in R9-10-118;
  4. Has documentation of completion of training in assistance in the self-administration of medication as specified in R9-10-118; and
  5. Has documentation of evidence of freedom from infectious tuberculosis:
    - a. On or before the date the provider or back-up provider begins providing services at or on behalf of the adult behavioral health therapeutic home, and
    - b. As specified in R9-10-113.
- C.** A provider shall ensure that policies and procedures are:
1. Established, documented, and implemented to protect the health and safety of a resident that cover:
    - a. Recordkeeping;
    - b. Resident acceptance and release;
    - c. Resident rights;
    - d. The provision of services, including coordinating the provision of behavioral health services;
    - e. Residents' medical records, including electronic medical records;
    - f. Assistance in the self-administration of medication;
    - g. Infection control; and
    - h. How a provider will respond to a resident's sudden, intense, or out-of-control behavior to prevent harm to the resident or another individual;
  2. Approved, in writing, by an adult behavioral health therapeutic home's collaborating health care institution before implementation and when the policies and procedures are reviewed or updated; and
- D.** A provider shall provide written notification to the Department and the adult behavioral health therapeutic home's collaborating health care institution of a resident's:
1. Death, if the resident's death is required to be reported according to A.R.S. § 11-593, within one working day after the resident's death; and
  2. Self-injury, within two working days after the resident inflicts a self-injury that requires immediate intervention by an emergency medical services provider.
- E.** If abuse, neglect, or exploitation of a resident is alleged or suspected to have occurred before the resident was accepted or while the resident is not at an adult behavioral health therapeutic home and not receiving services from the adult behavioral health therapeutic home, a provider shall report the alleged or suspected abuse, neglect, or exploitation of the resident according to A.R.S. § 46-454.
- F.** If a provider has a reasonable basis, according to A.R.S. § 46-454, to believe abuse, neglect, or exploitation has occurred on the premises or while a resident is receiving adult behavioral health therapeutic services, the provider shall:
1. If applicable, take immediate action to stop the suspected abuse, neglect, or exploitation;
  2. Immediately report the suspected abuse, neglect, or exploitation of the resident as follows:
    - a. To the adult behavioral health therapeutic home's collaborating health care institution; and
    - b. According to A.R.S. § 46-454;
  3. Document:
    - a. The suspected abuse, neglect, or exploitation;
    - b. Any action taken according to subsection (F)(1); and
    - c. The report in subsection (F)(2);
  4. Maintain the documentation in subsection (F)(3) for at least 12 months after the date of the report in subsection (F)(2);
  5. Initiate an investigation of the suspected abuse, neglect, or exploitation and document the following information within five working days after the report required in subsection (F)(2):
    - a. The dates, times, and description of the suspected abuse, neglect, or exploitation;
    - b. A description of any injury to the resident related to the suspected abuse or neglect and any change to the resident's physical, cognitive, functional, or emotional condition;
    - c. The names of witnesses to the suspected abuse, neglect, or exploitation; and
    - d. The actions taken by the provider to prevent the suspected abuse, neglect, or exploitation from occurring in the future; and
  6. Maintain a copy of the documented information required in subsection (F)(5) and any other information obtained during the investigation for at least 12 months after the date the investigation was initiated.
- G.** A provider shall maintain a record for each provider and backup provider that includes:
1. For the provider and the backup provider:
    - a. Name;
    - b. Date of birth;
    - c. Contact telephone number; and
    - d. Documentation of:

- i. Verification of skills and knowledge, completed by the adult behavioral health therapeutic home's collaborating health care institution;
  - ii. Certification in cardiopulmonary resuscitation and first aid training;
  - iii. Completion of training in assistance in the self-administration of medication, provided by the adult behavioral health therapeutic home's collaborating health care institution;
  - iv. If the provider or backup provider provides behavioral health services, clinical oversight as required in R9-10-1805(C); and
  - v. Evidence of freedom from infectious tuberculosis; and
2. For the backup provider, home address.

**Historical Note**

New Section made by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-1804. Resident Rights**

- A.** A provider shall ensure that:
- 1. A resident is treated with dignity, respect, and consideration;
  - 2. A resident is not subjected to:
    - a. Abuse;
    - b. Neglect;
    - c. Exploitation;
    - d. Coercion;
    - e. Manipulation;
    - f. Sexual abuse;
    - g. Sexual assault;
    - h. Seclusion;
    - i. Restraint;
    - j. Retaliation for submitting a complaint to the Department or another entity; or
  - k. Misappropriation of personal and private property by:
    - i. An adult behavioral health therapeutic home's provider or backup provider, or
    - ii. An individual other than a resident residing in the adult behavioral health therapeutic home; and
  - 3. A resident or the resident's representative:
    - a. Is informed of the resident complaint process;
    - b. Consents to photographs of the resident before the resident is photographed, except that the resident may be photographed when accepted by an adult behavioral health therapeutic home for identification and administrative purposes; and
    - c. Except as otherwise permitted by law, provides written consent to the release of information in the resident's medical record.
- B.** A resident has the following rights:
- 1. Not to be discriminated against based on race, national origin, religion, gender, sexual orientation, age, disability, marital status, or diagnosis;
  - 2. To receive services that support and respect the resident's individuality, choices, strengths, and abilities;
  - 3. To receive privacy in care for personal needs;
  - 4. To review, upon written request, the resident's own medical record according to A.R.S. §§ 12-2293, 12-2294, and 12-2294.01;
  - 5. To receive a referral to another health care institution if the provider is not authorized or not able to provide phys-

ical health services or behavioral health services needed by the resident; and

- 6. To receive assistance from a family member, resident's representative, or other individual in understanding, protecting, or exercising the resident's rights.

**Historical Note**

New Section made by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-1805. Providing Services**

- A.** A provider shall ensure that behavioral health services and ancillary services are provided to a resident according to the resident's treatment plan obtained from the adult behavioral health therapeutic home's collaborating health care institution.
- B.** A provider shall submit documentation of any significant change in a resident's behavior or physical, cognitive, or functional condition and the action taken by the provider to address the resident's changing needs to the adult behavioral health therapeutic home's collaborating health care institution or, if applicable, the resident's case manager.
- C.** A provider who provides behavioral health services to a resident:
- 1. For the purpose of an exception to licensing in A.R.S. § 32-3271, is considered a behavioral health technician; and
  - 2. Shall comply with the requirements for clinical oversight for a behavioral health technician in R9-10-115.

**Historical Note**

New Section made by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

**R9-10-1806. Assistance in the Self-Administration of Medication**

- A.** If a provider provides assistance in the self-administration of medication, the provider shall ensure that:
- 1. If a resident is receiving assistance in the self-administration of medication, the resident's medication is stored by the provider;
  - 2. The following assistance is provided to a resident:
    - a. A reminder when it is time to take the medication;
    - b. Opening the medication container or medication organizer for the resident;
    - c. Observing the resident while the resident removes the medication from the medication container or medication organizer;
    - d. Verifying that the medication is taken as ordered by the resident's medical practitioner by confirming that:
      - i. The resident taking the medication is the individual stated on the medication container label,
      - ii. The resident is taking the dosage of the medication as stated on the medication container label, and
      - iii. The resident is taking the medication at the time stated on the medication container label; or
    - e. Observing the resident while the resident takes the medication; and
  - 3. Assistance in the self-administration of medication provided to a resident is documented in the resident's medical record.
- B.** When medication is stored by a provider, the provider shall ensure that:

1. A locked cabinet, closet, or self-contained unit is used for medication storage;
  2. Medication is stored according to the instructions on the medication container; and
  3. Medication, including expired medication, that is no longer being used is discarded.
- C.** A provider shall immediately report a medication error or a resident's adverse reaction to a medication to the:
1. Medical practitioner who ordered the medication, or
  2. Contact individual at an adult behavioral health therapeutic home's collaborating health care institution.

#### Historical Note

New Section made by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-1807. Medical Records

- A.** A provider shall ensure that:
1. A medical record is established and maintained for each resident according to A.R.S. Title 12, Chapter 13, Article 7.1;
  2. An entry in a resident's medical record is:
    - a. Only recorded by the provider or individual designated by the provider to record an entry;
    - b. Dated, legible, and authenticated; and
    - c. Not changed to make the initial entry illegible;
  3. A resident's medical record is available to an individual:
    - a. Authorized by policies and procedures to access the resident's medical record;
    - b. If the individual is not authorized according to policies and procedures, with the written consent of the resident or the resident's representative; or
    - c. As permitted by law; and
  4. A resident's medical record is protected from loss, damage, or unauthorized use.
- B.** If a provider maintains residents' medical records electronically, the provider shall ensure that safeguards exist to prevent unauthorized access.
- C.** A provider shall ensure that a resident's medical record contains:
1. Resident information that includes:
    - a. The resident's name,
    - b. The resident's date of birth,
    - c. Any known allergies, and
    - d. Medication information for the resident;
  2. The names, addresses, and telephone numbers of:
    - a. The resident's medical practitioner;
    - b. The resident's case manager, if applicable;
    - c. The behavioral health professional assigned to the resident by the adult behavioral health therapeutic home's collaborating health care institution; and
    - d. An individual to be contacted in the event of an emergency;
  3. The date of the resident's acceptance by the adult behavioral health therapeutic home and, if applicable, the date of the resident's release from the adult behavioral health therapeutic home;
  4. If applicable, the name and contact information of the resident's representative and:
    - a. The document signed by the resident consenting for the resident's representative to act on the resident's behalf; or
    - b. If the resident's representative:
      - i. Has a health care power of attorney established under A.R.S. § 36-3221 or a mental health care power of attorney executed under A.R.S. § 36-

- 3282, a copy of the health care power of attorney or mental health care power of attorney; or
  - ii. Is a legal guardian, a copy of the court order establishing guardianship;
5. A copy of the resident's treatment plan and any updates to the resident's treatment plan, obtained from the adult behavioral health therapeutic home's collaborating health care institution;
  6. For a resident receiving assistance in the self-administration of medication, documentation that includes for each medication:
    - a. The date and time of assistance;
    - b. The name, strength, dosage, and route of administration;
    - c. The provider's signature or first and last initials; and
    - d. Any adverse reaction the resident has to the medication;
  7. Documentation of the resident's refusal of a medication, if applicable;
  8. Documentation of any significant change in a resident's behavior or physical, cognitive, or functional condition and the action taken by a provider to address the resident's changing needs;
  9. If applicable, documentation of any actions taken to control the resident's sudden, intense, or out-of-control behavior to prevent harm to the resident or another individual; and
  10. If applicable, a written notice of termination of residency.

#### Historical Note

New Section made by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-1808. Food Services

A provider shall ensure that:

1. Food is obtained, handled, and stored to prevent contamination, spoilage, or a threat to the health of a resident;
2. Three nutritionally balanced meals are served each day;
3. Nutritious snacks are available between meals;
4. Food served meets any special dietary needs of a resident as prescribed by the resident's physician or registered dietitian; and
5. Chemicals or detergents are not stored with food.

#### Historical Note

New Section made by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-1809. Emergency and Safety Standards

A provider shall ensure that:

1. A first aid kit is available at an adult behavioral health therapeutic home sufficient to meet the needs of residents;
2. If a firearm or ammunition for a firearm is stored at an adult behavioral health therapeutic home:
  - a. The firearm is stored separate from the ammunition for the firearm; and
  - b. The firearm and the ammunition for the firearm are:
    - i. Stored in a locked closet, cabinet, or container; and
    - ii. Inaccessible to a resident;
3. A smoke detector is installed in:
  - a. A bedroom used by a resident,
  - b. A hallway in an adult behavioral health therapeutic home, and



- c. An adult behavioral health therapeutic home's kitchen;
- 4. A smoke detector required in subsection (3):
  - a. Is maintained in operable condition; and
  - b. Is battery operated or, if hard-wired into the electrical system of an adult behavioral health therapeutic home, has a back-up battery;
- 5. An adult behavioral health therapeutic home has a portable fire extinguisher that is labeled 1A-10-BC by the Underwriters Laboratory and available in the adult behavioral health therapeutic home's kitchen;
- 6. A portable fire extinguisher required in subsection (5) is:
  - a. If a disposable fire extinguisher, replaced when the fire extinguisher's indicator reaches the red zone; or
  - b. Serviced at least once every 12 months and has a tag attached to the fire extinguisher that includes the date of service;
- 7. A written evacuation plan is maintained and available for use by the provider and any resident in an adult behavioral health therapeutic home;
- 8. An evacuation drill is conducted at least once every six months; and
- 9. A record of an evacuation drill required in subsection (8) is maintained for at least one year after the date of the evacuation drill.

#### Historical Note

New Section made by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

#### R9-10-1810. Physical Plant, Environmental Services, and Equipment Standards

- A. A provider shall ensure that an adult behavioral health therapeutic home:
  - 1. Is in a building that:
    - a. Is arranged, designed, and used for the living, sleeping, and housekeeping activities for one family on a permanent basis; and
    - b. Is free of any plumbing, electrical, ventilation, mechanical, chemical, or structural hazard that may jeopardize the health or safety of a resident;
  - 2. Has a living room accessible at all times to a resident;
  - 3. Has a dining area furnished for group meals that is accessible to the provider, residents, and any other individuals present in the adult behavioral health therapeutic home;
  - 4. For each six individuals residing in the adult behavioral health therapeutic home, including residents, has at least one bathroom equipped with:
    - a. A working toilet that flushes and has a seat; and
    - b. A sink with running water accessible for use by a resident;
  - 5. Has equipment and supplies to maintain a resident's personal hygiene that are accessible to the resident;
  - 6. Is clean and free from accumulations of dirt, garbage, and rubbish; and
  - 7. Implements a pest control program to minimize the presence of insects and vermin at the adult behavioral health therapeutic home.
- B. A provider shall ensure that pets and animals are:
  - 1. Controlled to prevent endangering the residents and to maintain sanitation;
  - 2. Licensed consistent with local ordinances; and
  - 3. For a dog or cat, vaccinated against rabies.
- C. If a swimming pool is located on the premises, a provider shall ensure that:
  - 1. The swimming pool is equipped with the following:

- a. An operational water circulation system that clarifies and disinfects the swimming pool water continuously and that includes at least:
  - i. A removable strainer,
  - ii. Two swimming pool inlets located on opposite sides of the swimming pool, and
  - iii. A drain located at the swimming pool's lowest point and covered by a grating that cannot be removed without using tools; and
- b. An operational cleaning system;
- 2. The swimming pool is enclosed by a wall or fence that:
  - a. Is at least five feet in height as measured on the exterior of the wall or fence;
  - b. Has no vertical openings greater than four inches across;
  - c. Has no horizontal openings, except as described in subsection (C)(2)(e);
  - d. Is not chain-link;
  - e. Does not have a space between the ground and the bottom fence rail that exceeds four inches in height; and
  - f. Has a self-closing, self-latching gate that:
    - i. Opens away from the swimming pool,
    - ii. Has a latch located at least 54 inches from the ground, and
    - iii. Is locked when the swimming pool is not in use; and
- 3. A life preserver or shepherd's crook is available and accessible in the pool area.
- D. A provider shall ensure that a spa that is not enclosed by a wall or fence as described in subsection (C)(2) is covered and locked when not in use.
- E. A provider shall ensure that:
  - 1. A bedroom for use by a resident:
    - a. Is separated from a hall, corridors, or other habitable room by floor-to-ceiling walls containing no interior openings except doors and is not used as a passageway to another bedroom or habitable room;
    - b. Provides sufficient space for an individual in the bedroom to have unobstructed access to the bedroom door;
    - c. Contains for each resident using the bedroom:
      - i. A separate, adult-sized, single bed or larger bed with a clean mattress in good repair;
      - ii. Clean bedding appropriate for the season; and
      - iii. An individual dresser and closet for storage of personal possessions and clothing; and
    - d. If used for:
      - i. Single occupancy, contains at least 60 square feet of floor space; or
      - ii. Double occupancy, contains at least 100 square feet of floor space; and
  - 2. A mirror is available to a resident for grooming;
  - 3. A resident does not share a bedroom with an individual who is not a resident;
  - 4. No more than two residents share a bedroom;
  - 5. If two residents share a bedroom, each resident agrees, in writing, to share the bedroom; and
  - 6. A resident's bedroom is not used to store anything other than the furniture and articles used by the resident and the resident's belongings.

#### Historical Note

New Section made by exempt rulemaking at 20 A.A.R. 1409, pursuant to Laws 2013, Ch. 10, § 13; effective July 1, 2014 (Supp. 14-2).

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# Chapter Divider Page

# Chapter Divider Page

**TITLE 9. HEALTH SERVICES****CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM  
ADMINISTRATION**

*Editor's Note: The Office of the Secretary of State prints all Code Chapters on white paper (Supp 01-3).*

*Editor's Note: This Chapter contains rules which were adopted or amended under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6), pursuant to Laws 1992, Ch. 301, § 61 and Ch. 302, § 13, and Laws 1993, Ch. 6, § 34. Exemption from A.R.S. Title 41, Chapter 6 means that AHCCCS did not submit notice of this rulemaking to the Secretary of State's Office for publication in the Arizona Administrative Register; the Governor's Regulatory Review Council did not review these rules; AHCCCS was not required to hold public hearings on these rules; and the Attorney General did not certify these rules. Because this Chapter contains rules which are exempt from the regular rulemaking process, the Chapter is printed on blue paper.*

**ARTICLE 1. DEFINITIONS**

*New Article 1, consisting of Sections R9-22-101 through R9-22-103, R9-22-105, and R9-22-106 through R9-22-112 adopted effective December 8, 1997 (Supp. 97-4).*

*Former Article 1, consisting of Section R9-22-101, repealed effective December 8, 1997 (Supp. 97-4).*

## Section

R9-22-101.	Location of Definitions
R9-22-102.	Repealed
R9-22-103.	Repealed
R9-22-104.	Reserved
R9-22-105.	Repealed
R9-22-106.	Repealed
R9-22-107.	Repealed
R9-22-108.	Repealed
R9-22-109.	Repealed
R9-22-110.	Repealed
R9-22-111.	Reserved
R9-22-112.	Repealed
R9-22-113.	Reserved
R9-22-114.	Repealed
R9-22-115.	Repealed
R9-22-116.	Repealed
R9-22-117.	Repealed
R9-22-118.	Reserved
R9-22-119.	Reserved
R9-22-120.	Repealed

**ARTICLE 2. SCOPE OF SERVICES**

## Section

R9-22-201.	Scope of Services-related Definitions
R9-22-202.	General Requirements
R9-22-203.	Experimental Services
R9-22-204.	Inpatient General Hospital Services
R9-22-205.	Attending Physician, Practitioner, and Primary Care Provider Services
R9-22-206.	Organ and Tissue Transplant Services
R9-22-207.	Dental Services
R9-22-208.	Laboratory, Radiology, and Medical Imaging Services
R9-22-209.	Pharmaceutical Services
R9-22-210.	Emergency Medical Services for Non-FES Members
R9-22-210.01.	Emergency Behavioral Health Services for Non-FES Members
R9-22-211.	Transportation Services
R9-22-212.	Durable Medical Equipment, Orthotic and Prosthetic Devices, and Medical Supplies
R9-22-213.	Early and Periodic Screening, Diagnosis, and Treatment Services (E.P.S.D.T.)
R9-22-214.	Repealed
R9-22-215.	Other Medical Professional Services

R9-22-216.	NF, Alternative HCBS Setting, or HCBS
R9-22-217.	Services Included in the Federal Emergency Services Program
R9-22-218.	Repealed

**ARTICLE 3. GENERAL ELIGIBILITY REQUIREMENTS**

*Article 3, consisting of Sections R9-22-301 through R9-22-303, made by final rulemaking at 19 A.A.R. 3309, effective November 30, 2013 (Supp. 13-4).*

*Article 3, consisting of Sections R9-22-301 through R9-22-319 and R9-22-321 through R9-22-344, repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section R9-22-320 repealed December 13, 1993 (Supp. 93-4).*

## Section

R9-22-301.	Reserved
R9-22-302.	Reserved
R9-22-303.	Prior Quarter Eligibility

**ARTICLE 4. REPEALED**

## Section

R9-22-401.	Repealed
R9-22-402.	Repealed
R9-22-403.	Repealed
R9-22-404.	Repealed
R9-22-405.	Repealed
R9-22-406.	Repealed

**ARTICLE 5. GENERAL PROVISIONS AND STANDARDS**

## Section

R9-22-501.	General Provisions and Standards – Related Definitions
R9-22-502.	Pre-existing Conditions
R9-22-503.	Provider Requirements Regarding Records
R9-22-504.	Marketing; Prohibition Against Inducements; Misrepresentations; Discrimination; Sanctions
R9-22-505.	Standards, Licensure, and Certification for Providers of Hospital and Medical Services
R9-22-506.	Repealed
R9-22-507.	Repealed
R9-22-508.	Repealed
R9-22-509.	Transition and Coordination of Member Care
R9-22-510.	Repealed
R9-22-511.	Repealed
R9-22-512.	Release of Safeguarded Information
R9-22-513.	Repealed
R9-22-514.	Repealed
R9-22-515.	Repealed
R9-22-516.	Renumbered
R9-22-517.	Renumbered
R9-22-518.	Information to Enrolled Members
R9-22-519.	Repealed
R9-22-520.	Expired
R9-22-521.	Program Compliance Audits

R9-22-522. Quality Management/Utilization Management (QM/UM) Requirements  
 R9-22-523. Expired  
 R9-22-524. Repealed  
 R9-22-525. Repealed  
 R9-22-526. Renumbered  
 R9-22-527. Renumbered  
 R9-22-528. Renumbered  
 R9-22-529. Renumbered

#### ARTICLE 6. RFP AND CONTRACT PROCESS

*Article 6, consisting of Sections R9-22-601 through R9-22-604, adopted by final rulemaking at 5 A.A.R. 607, effective February 5, 1999 (Supp. 99-1).*

*Article 6, consisting of Sections R9-22-601 through R9-22-605, repealed by final rulemaking at 5 A.A.R. 607, effective February 5, 1999 (Supp. 99-1).*

*Article 6, consisting of Sections R9-22-601 through R9-22-604, adopted effective July 16, 1985.*

*Former Article 6, consisting of Sections R9-22-601 through R9-22-603, repealed effective October 1, 1983.*

##### Section

R9-22-601. General Provisions  
 R9-22-602. RFP  
 R9-22-603. Contract Award  
 R9-22-604. Contract or Proposal Protests; Appeals  
 R9-22-605. Waiver of Contractor's Subcontract with Hospitals  
 R9-22-606. Contract Compliance Sanction

#### ARTICLE 7. STANDARDS FOR PAYMENTS

##### Section

R9-22-701. Standard for Payments Related Definitions  
 R9-22-701.01. Reserved  
 R9-22-701.02. Reserved  
 R9-22-701.03. Reserved  
 R9-22-701.04. Reserved  
 R9-22-701.05. Reserved  
 R9-22-701.06. Reserved  
 R9-22-701.07. Reserved  
 R9-22-701.08. Reserved  
 R9-22-701.09. Reserved  
 R9-22-701.10. Scope of the Administration's and Contractor's Liability  
 R9-22-702. Charges to Members  
 R9-22-703. Payments by the Administration  
 R9-22-704. Repealed  
 R9-22-705. Payments by Contractors  
 R9-22-706. Repealed  
 R9-22-707. Repealed  
 R9-22-708. Payments for Services Provided to Eligible American Indians  
 R9-22-709. Contractor's Liability to Hospitals for the Provision of Emergency and Post-stabilization Care  
 R9-22-710. Payments for Non-hospital Services  
 R9-22-711. Copayments  
 R9-22-712. Reimbursement: General  
 R9-22-712.01. Inpatient Hospital Reimbursement for claims with admission dates and discharge dates from October 1, 1998 through September 30, 2014  
 R9-22-712.02. Reserved  
 R9-22-712.03. Reserved  
 R9-22-712.04. Reserved  
 R9-22-712.05. Graduate Medical Education Fund Allocation  
 R9-22-712.06. Reserved

R9-22-712.07. Rural Hospital Inpatient Fund Allocation Exhibit 1. Pool Example  
 R9-22-712.08. Reserved  
 R9-22-712.09. Hierarchy for Tier Assignment through September 30, 2014  
 R9-22-712.10. Outpatient Hospital Reimbursement: General  
 R9-22-712.11. Reserved  
 R9-22-712.12. Reserved  
 R9-22-712.13. Reserved  
 R9-22-712.14. Reserved  
 R9-22-712.15. Outpatient Hospital Reimbursement: Affected Hospitals  
 R9-22-712.16. Reserved  
 R9-22-712.17. Reserved  
 R9-22-712.18. Reserved  
 R9-22-712.19. Reserved  
 R9-22-712.20. Outpatient Hospital Reimbursement: Methodology for the AHCCCS Outpatient Capped Fee-For-Service Schedule  
 R9-22-712.21. Reserved  
 R9-22-712.22. Reserved  
 R9-22-712.23. Reserved  
 R9-22-712.24. Reserved  
 R9-22-712.25. Outpatient Hospital Fee Schedule Calculations: Associated Service Costs  
 R9-22-712.26. Reserved  
 R9-22-712.27. Reserved  
 R9-22-712.28. Reserved  
 R9-22-712.29. Reserved  
 R9-22-712.30. Outpatient Hospital Reimbursement: Payment for a Service Not Listed in the AHCCCS Outpatient Capped Fee-for-service Schedule  
 R9-22-712.31. Reserved  
 R9-22-712.32. Reserved  
 R9-22-712.33. Reserved  
 R9-22-712.34. Reserved  
 R9-22-712.35. Outpatient Hospital Reimbursement: Adjustments to Fees  
 R9-22-712.36. Reserved  
 R9-22-712.37. Reserved  
 R9-22-712.38. Reserved  
 R9-22-712.39. Reserved  
 R9-22-712.40. Outpatient Hospital Reimbursement: Annual and Periodic Update  
 R9-22-712.41. Reserved  
 R9-22-712.42. Reserved  
 R9-22-712.43. Reserved  
 R9-22-712.44. Reserved  
 R9-22-712.45. Outpatient Hospital Reimbursement: Outpatient Payment Restrictions  
 R9-22-712.46. Reserved  
 R9-22-712.47. Reserved  
 R9-22-712.48. Reserved  
 R9-22-712.49. Reserved  
 R9-22-712.50. Outpatient Hospital Reimbursement: Billing  
 R9-22-712.51. Reserved  
 R9-22-712.52. Reserved  
 R9-22-712.53. Reserved  
 R9-22-712.54. Reserved  
 R9-22-712.55. Reserved  
 R9-22-712.56. Reserved  
 R9-22-712.57. Reserved  
 R9-22-712.58. Reserved  
 R9-22-712.59. Reserved  
 R9-22-712.60. Diagnosis Related Group Payments  
 R9-22-712.61. DRG Payments: Exceptions

R9-22-712.62. DRG Base Payment  
 R9-22-712.63. DRG Base Payments Not Based on the Statewide Standardized Amount  
 R9-22-712.64. DRG Base Payments and Outlier CCR for Out-of-State Hospitals  
 R9-22-712.65. DRG Provider Policy Adjustor  
 R9-22-712.66. DRG Service Policy Adjustor  
 R9-22-712.67. DRG Reimbursement: Transfers  
 R9-22-712.68. DRG Reimbursement: Unadjusted Outlier Add-on Payment  
 R9-22-712.69. DRG Reimbursement: Covered Day Adjusted DRG Base Payment and Covered Day Adjusted Outlier Add-on Payment  
 R9-22-712.70. Covered Day Adjusted DRG Base Payment and Covered Day Adjusted Outlier Add-on Payment for FES members  
 R9-22-712.71. Final DRG Payment  
 R9-22-712.72. DRG Reimbursement: Enrollment Changes During an Inpatient Stay  
 R9-22-712.73. DRG Reimbursement: Inpatient Stays for Members Eligible for Medicare  
 R9-22-712.74. DRG Reimbursement: Third Party Liability  
 R9-22-712.75. DRG Reimbursement: Payment for Administrative Days  
 R9-22-712.76. DRG Reimbursement: Interim Claims  
 R9-22-712.77. DRG Reimbursement: Admissions and Discharges on the Same Day  
 R9-22-712.78. DRG Reimbursement: Readmissions  
 R9-22-712.79. DRG Reimbursement: Change of Ownership  
 R9-22-712.80. DRG Reimbursement: New Hospitals  
 R9-22-712.81. DRG Reimbursement: Updates  
 R9-22-713. Overpayment and Recovery of Indebtedness  
 R9-22-714. Payments to Providers  
 R9-22-715. Hospital Rate Negotiations  
 R9-22-716. Repealed  
 R9-22-717. Repealed  
 R9-22-718. Urban Hospital Inpatient Reimbursement Program  
 R9-22-719. Contractor Performance Measure Outcomes  
 R9-22-720. Reinsurance  
 R9-22-721. Reserved  
 R9-22-722. Reserved  
 R9-22-723. Reserved  
 R9-22-724. Reserved  
 R9-22-725. Reserved  
 R9-22-726. Reserved  
 R9-22-727. Reserved  
 R9-22-728. Reserved  
 R9-22-729. Reserved  
 R9-22-730. Hospital Assessment

#### ARTICLE 8. REPEALED

*Article 8, consisting of Sections R9-22-801 through R9-22-804 and Exhibit A, repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004. The subject matter of Article 8 is now in 9 A.A.C. 34 (Supp. 04-1).*

Section  
 R9-22-801. Repealed  
 R9-22-802. Repealed  
 R9-22-803. Repealed  
 R9-22-804. Repealed  
 Exhibit A. Repealed  
 R9-22-805. Repealed

#### ARTICLE 9. REPEALED

*Article 22, consisting of Sections R9-22-901 through R9-22-909, repealed by final rulemaking at 12 A.A.R. 4484, January 6, 2007 (Supp. 06-4).*

*Article 22, consisting of Sections R9-22-901 through R9-22-908, adopted effective August 29, 1985.*

*Former Article 22, consisting of Section R9-22-901, repealed effective October 1, 1983.*

Section  
 R9-22-901. Repealed  
 R9-22-902. Repealed  
 R9-22-903. Repealed  
 R9-22-904. Repealed  
 R9-22-905. Repealed  
 R9-22-906. Repealed  
 R9-22-907. Repealed  
 R9-22-908. Repealed  
 R9-22-909. Repealed

#### ARTICLE 10. FIRST- AND THIRD-PARTY LIABILITY AND RECOVERIES

*Article 10, consisting of Section R9-22-1001 through R9-22-1002, adopted effective November 7, 1997 (Supp. 97-4).*

*Article 10, consisting of Section R9-22-1001 through R9-22-1002, repealed effective November 7, 1997 (Supp. 97-4).*

*Article 10 consisting of Sections R9-22-1001 and R9-22-1002 adopted effective October 1, 1985.*

Section  
 R9-22-1001. Definitions  
 R9-22-1002. General Provisions  
 R9-22-1003. Cost Avoidance  
 R9-22-1004. Member Participation  
 R9-22-1005. Collections  
 R9-22-1006. AHCCCS Monitoring Responsibilities  
 R9-22-1007. Notification for Perfection, Recording, and Assignment of AHCCCS Liens  
 R9-22-1008. Notification Information for Liens  
 R9-22-1009. Notification of Health Insurance Information

#### ARTICLE 11. CIVIL MONETARY PENALTIES AND ASSESSMENTS

*Article 11 consisting of Sections R9-22-1101 through R9-22-1104 adopted effective October 1, 1986.*

Section  
 R9-22-1101. Basis for Civil Monetary Penalties and Assessments for Fraudulent Claims; Definitions  
 R9-22-1102. Determining the Amount of a Penalty and an Assessment  
 R9-22-1103. Repealed  
 R9-22-1104. Mitigating Circumstances  
 R9-22-1105. Aggravating Circumstances  
 R9-22-1106. Notice of Intent  
 R9-22-1107. Reserved  
 R9-22-1108. Request for a Compromise  
 R9-22-1109. Failure to Respond to the Notice of Intent  
 R9-22-1110. Request for State Fair Hearing  
 R9-22-1111. Issues and Burden of Proof  
 R9-22-1112. Withdrawal and Continuances

#### ARTICLE 12. BEHAVIORAL HEALTH SERVICES

*Article 12, consisting of Sections R9-22-1201 through R9-22-1208, repealed; new Article 12, consisting of Sections R9-22-1201*

through R9-22-1208 adopted by final rulemaking at 6 A.A.R. 179, effective December 13, 1999 (Supp. 99-4).

#### Section

- R9-22-1201. General Requirements
- R9-22-1202. ADHS and Contractor Responsibilities
- R9-22-1203. Eligibility for Covered Services
- R9-22-1204. General Service Requirements
- R9-22-1205. Scope and Coverage of Behavioral Health Services
- R9-22-1206. General Provisions and Standards for Service Providers
- R9-22-1207. General Provisions for Payment
- R9-22-1208. Repealed

### ARTICLE 13. CHILDREN'S REHABILITATIVE SERVICES (CRS)

*Article 13, consisting of Sections R9-22-1301 through R9-22-1306, made by final rulemaking at 19 A.A.R. 2954, effective November 10, 2013 (Supp. 13-3).*

*Article 13, consisting of Sections R9-22-1301 through R9-22-1306, made by exempt rulemaking at 18 A.A.R. 2074, effective August 1, 2012 (Supp. 12-3). Exemption to promulgate rules repealed under Laws 2012, Chapter 299, Section 7 (Supp. 13-3).*

*Article 13, consisting of Sections R9-22-1301 through R9-22-1309, repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004. The subject matter of Article 13 is now in 9 A.A.C. 34 (Supp. 04-1).*

*Article 13, consisting of Sections R9-22-1301 through R9-22-1309, adopted effective September 9, 1998 (Supp. 98-3).*

#### Section

- R9-22-1301. Children's Rehabilitative Services (CRS) related Definitions
- R9-22-1302. Children's Rehabilitative Services (CRS) Eligibility Requirements
- R9-22-1303. Medical Eligibility
- R9-22-1304. Referral and Disposition of CRS Medical Eligibility Determination
- R9-22-1305. CRS Redetermination
- R9-22-1306. Transition or Termination
- R9-22-1307. Covered Services
- R9-22-1308. Repealed
- R9-22-1309. Repealed

### ARTICLE 14. AHCCCS MEDICAL COVERAGE FOR HOUSEHOLDS

*Article 14, consisting of Sections R9-22-1401 through R9-22-1436, repealed; new Article 14, consisting of Sections R9-22-1401 through R9-22-1433 made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).*

*Article 14, consisting of Sections R9-22-1401 through R9-22-1436, adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).*

#### Section

- R9-22-1401. General Information
- R9-22-1402. Repealed
- R9-22-1403. Agency Responsible for Determining Eligibility
- R9-22-1404. Repealed
- R9-22-1405. Repealed
- R9-22-1406. Repealed
- R9-22-1407. Deceased Applicants
- R9-22-1408. Repealed
- R9-22-1409. Repealed
- R9-22-1410. Repealed
- R9-22-1411. Repealed

- R9-22-1412. Repealed
- R9-22-1413. Time-frames, Reinstatement of an Application
- R9-22-1414. Repealed
- R9-22-1415. Repealed
- R9-22-1416. Effective Date of Eligibility
- R9-22-1417. Repealed
- R9-22-1418. Repealed
- R9-22-1419. Repealed
- R9-22-1420. Income Eligibility Criteria
- R9-22-1421. MAGI based Income Eligibility
- R9-22-1422. Methods for Calculating Monthly Income
- R9-22-1423. Calculations and Use of Methods Listed in R9-22-1422 Based on Frequency of Income
- R9-22-1424. Use of Methods Listed in R9-22-1423 Based on Type of Income
- R9-22-1425. Repealed
- R9-22-1426. Repealed
- R9-22-1427. Eligibility Under MAGI
- R9-22-1428. Repealed
- R9-22-1429. Eligibility for a Newborn
- R9-22-1430. Repealed
- R9-22-1431. Family Planning Services Extension Program (FPEP)
- R9-22-1432. Young Adult Transitional Insurance
- R9-22-1433. Special Groups for Children
- R9-22-1434. Repealed
- R9-22-1435. Eligibility for a Person With Medical Expenses Whose Income is Over 100 Percent FPL
- R9-22-1436. MED Family Unit
- R9-22-1437. MED Income Eligibility Requirements
- R9-22-1438. MED Resource Eligibility Requirements
- R9-22-1439. MED Effective Date of Eligibility
- R9-22-1440. MED Eligibility Period
- R9-22-1441. Eligibility Appeals
- R9-22-1442. Cessation of MED Coverage
- R9-22-1443. Repealed

### ARTICLE 15. AHCCCS MEDICAL COVERAGE FOR PEOPLE WHO ARE AGED, BLIND, OR DISABLED

*Article 15, consisting of Sections R9-22-1501 through R9-22-1508, repealed; new Article 15, consisting of Sections R9-22-1501 through R9-22-1505 made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).*

*Article 15, consisting of Sections R9-22-1501 through R9-22-1508, adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).*

#### Section

- R9-22-1501. General Information
- R9-22-1502. Repealed
- R9-22-1503. Financial Eligibility Criteria
- R9-22-1504. Eligibility For A Person Who is Aged, Blind, or Disabled
- R9-22-1505. Eligibility for Special Groups
- R9-22-1506. Repealed
- R9-22-1507. Repealed
- R9-22-1508. Repealed

### ARTICLE 16. EXPIRED

*Article 16, consisting of Sections R9-22-1601 through R9-22-1612, R9-22-1614 through R9-22-1616, and R9-22-1618 through R9-22-1619, expired at 17 A.A.R. 2384, effective October 31, 2011 (Supp. 11-4).*

*Article 16, consisting of Sections R9-22-1601 through R9-22-1636, repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).*



*Article 16, consisting of Sections R9-22-1601 through R9-22-1613, R9-22-1615 through R9-22-1620, R9-22-1622 through R9-22-1631, R9-22-1633, R9-22-1634, and R9-22-1636, adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).*

#### Section

R9-22-1601.	Expired
R9-22-1602.	Expired
R9-22-1603.	Expired
R9-22-1604.	Expired
R9-22-1605.	Expired
R9-22-1606.	Expired
R9-22-1607.	Expired
R9-22-1608.	Expired
R9-22-1609.	Expired
R9-22-1610.	Expired
R9-22-1611.	Expired
R9-22-1612.	Expired
R9-22-1613.	Repealed
R9-22-1614.	Expired
R9-22-1615.	Expired
R9-22-1616.	Expired
R9-22-1617.	Repealed
R9-22-1618.	Expired
R9-22-1619.	Expired
R9-22-1620.	Repealed
R9-22-1621.	Reserved
R9-22-1622.	Repealed
R9-22-1623.	Repealed
R9-22-1624.	Repealed
R9-22-1625.	Repealed
R9-22-1626.	Repealed
R9-22-1627.	Repealed
R9-22-1628.	Repealed
R9-22-1629.	Repealed
R9-22-1630.	Repealed
R9-22-1631.	Repealed
R9-22-1632.	Reserved
R9-22-1633.	Repealed
R9-22-1634.	Repealed
R9-22-1635.	Reserved
R9-22-1636.	Repealed

### ARTICLE 17. ENROLLMENT

*Article 17, consisting of Sections R9-22-1701 through R9-22-1704, adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).*

#### Section

R9-22-1701.	Enrollment-Related Definitions
R9-22-1702.	Enrollment of a Member with an AHCCCS Contractor
R9-22-1703.	Effective Date of Enrollment with a Contractor
R9-22-1704.	Newborn Enrollment
R9-22-1705.	Guaranteed Enrollment Period

### ARTICLE 18. RESERVED

### ARTICLE 19. FREEDOM TO WORK

*Article 19, consisting of Sections R9-22-1901 through R9-22-1922, made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4).*

#### Section

R9-22-1901.	General Freedom to Work Requirements
R9-22-1902.	General Administration Requirements
R9-22-1903.	Application for Coverage

R9-22-1904.	Notice of Approval or Denial
R9-22-1905.	Reporting and Verifying Changes
R9-22-1906.	Actions that Result from a Redetermination or Change
R9-22-1907.	Notice of Adverse Action Requirements
R9-22-1908.	Request for Hearing
R9-22-1909.	Conditions of Eligibility
R9-22-1910.	Prior Quarter Eligibility
R9-22-1911.	Repealed
R9-22-1912.	Repealed
R9-22-1913.	Premium Requirements
R9-22-1914.	Repealed
R9-22-1915.	Institutionalized Person
R9-22-1916.	Repealed
R9-22-1917.	Repealed
R9-22-1918.	Additional Eligibility Criteria for the Basic Coverage Group
R9-22-1919.	Additional Eligibility Criteria for the Medically Improved Group
R9-22-1920.	Repealed
R9-22-1921.	Enrollment
R9-22-1922.	Redetermination of Eligibility

### ARTICLE 20. BREAST AND CERVICAL CANCER TREATMENT PROGRAM

#### Section

R9-22-2001.	Breast and Cervical Cancer Treatment Program
	Related Definitions
R9-22-2002.	General Requirements
R9-22-2003.	Eligibility Criteria
R9-22-2004.	Treatment
R9-22-2005.	Application Process
R9-22-2006.	Approval, Denial, or Discontinuance of Eligibility
R9-22-2007.	Effective and End Date of Eligibility
R9-22-2008.	Redetermination of Eligibility

### ARTICLE 21. TRAUMA AND EMERGENCY SERVICES FUND

*Article 21, consisting of Sections R9-22-2101 through R9-22-2103, made by exempt rulemaking at 9 A.A.R. 4001, effective October 19, 2003 (Supp. 03-3).*

#### Section

R9-22-2101.	General Provisions
R9-22-2102.	Distribution of Trauma and Emergency Services Fund: Level I Trauma Centers
R9-22-2103.	Distribution of Trauma and Emergency Services Fund: Emergency Services
R9-22-2104.	Additional Trauma and Emergency Services Payments under the Section 1115 Waiver

### ARTICLE 1. DEFINITIONS

#### R9-22-101. Location of Definitions

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

Definition	Section or Citation
"Accommodation"	R9-22-701
"Act"	R9-22-101
"ADHS"	R9-22-101
"Administration"	A.R.S. § 36-2901
"Adverse action"	R9-22-101
"Affiliated corporate organization"	R9-22-101
"Aged"	42 U.S.C. 1382c(a)(1)(A) and R9-22-1501
"Aggregate"	R9-22-701
"AHCCCS"	R9-22-101
"AHCCCS inpatient hospital day or days of care"	R9-22-701
"AHCCCS registered provider"	R9-22-101
"Ambulance"	A.R.S. § 36-2201

## Arizona Health Care Cost Containment System – Administration

“Ancillary department”	R9-22-701	“Dependent child”	A.R.S. § 46-101
“Ancillary service”	R9-22-701	“DES”	R9-22-101
“Anticipatory guidance”	R9-22-201	“Diagnostic services”	R9-22-101
“Annual enrollment choice”	R9-22-1701	“Director”	R9-22-101
“APC”	R9-22-701	“Disabled”	R9-22-1501
“Appellant”	R9-22-101	“Discussion”	R9-22-101
“Applicant”	R9-22-101	“Disenrollment”	R9-22-1701
“Application”	R9-22-101	“DME”	R9-22-101
“Assessment”	R9-22-1101	“DRI inflation factor”	R9-22-701
“Assignment”	R9-22-101	“E.P.S.D.T. services”	42 CFR 440.40(b)
“Attending physician”	R9-22-101	“Eligibility posting”	R9-22-701
“Authorized representative”	R9-22-101	“Eligible person”	A.R.S. § 36-2901
“Authorization”	R9-22-201	“Emergency behavioral health condition for the non-FES member”	R9-22-201
“Auto-assignment algorithm”	R9-22-1701	“Emergency behavioral health services for the non-FES member”	R9-22-201
“AZ-NBCCEDP”	R9-22-2001	“Emergency medical condition for the non-FES member”	R9-22-201
“Baby Arizona”	R9-22-1401	“Emergency medical services for the non-FES member”	R9-22-201
“Behavior management services”	R9-22-1201	“Emergency medical or behavioral health condition for a FES member”	R9-22-217
“Behavioral health adult therapeutic home”	R9-22-1201	“Emergency services costs”	A.R.S. § 36-2903.07
“Behavioral health therapeutic home care services”	R9-22-1201	“Encounter”	R9-22-701
“Behavioral health evaluation”	R9-22-1201	“Enrollment”	R9-22-1701
“Behavioral health medical practitioner”	R9-22-1201	“Enumeration”	R9-22-101
“Behavioral health professional”	A.A.C. R9-20-1201	“Equity”	R9-22-101
“Behavioral health recipient”	R9-22-201	“Experimental services”	R9-22-203
“Behavioral health service”	R9-22-1201	“Existing outpatient service”	R9-22-701
“Behavioral health technician”	A.A.C. R9-20-1201	“Expansion funds”	R9-22-701
“Benefit year”	R9-22-201	“FAA”	R9-22-1401
“BHS”	R9-22-1401	“Facility”	R9-22-101
“Billed charges”	R9-22-701	“Factor”	R9-22-701 and 42 CFR 447.10
“Blind”	R9-22-1501	“FBR”	R9-22-101
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“Business agent”	R9-22-701 and R9-22-704	“Federal poverty level” or “FPL”	A.R.S. § 36-2981
“Calculated inpatient costs”	R9-22-712.07	“Fee-For-Service” or “FFS”	R9-22-101
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“Case record”	R9-22-101	“Fiscal agent”	R9-22-210
“Case review”	R9-22-101	“Fiscal intermediary”	R9-22-701
“Cash assistance”	R9-22-1401	“Foster care maintenance payment”	42 U.S.C. 675(4)(A)
“Categorically eligible”	R9-22-101	“FQHC”	R9-22-101
“CCR”	R9-22-712	“Free Standing Children’s Hospital”	R9-22-701
“Certified psychiatric nurse practitioner”	R9-22-1201	“Fund”	R9-22-712.07
“Charge master”	R9-22-712	“Graduate medical education (GME) program”	R9-22-701
“Child”	R9-22-1503 and R9-22-1603	“Grievance”	A.A.C. R9-34-202
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“Claim”	R9-22-1101	“HCPCS”	R9-22-701
“Claims paid amount”	R9-22-712.07	“Health care practitioner”	R9-22-1201
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## Arizona Health Care Cost Containment System – Administration

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“Prior period coverage” or “PPC”	R9-22-701	“Utilization management”	R9-22-501
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- B.** General definitions. In addition to definitions contained in A.R.S. § 36-2901, the words and phrases in this Chapter have the following meanings unless the context explicitly requires another meaning:
- “Act” means the Social Security Act.
- “ADHS” means the Arizona Department of Health Services.

“Adverse action” means an action taken by the Department or Administration to deny, discontinue, or reduce medical assistance.

“Affiliated corporate organization” means any organization that has ownership or control interests as defined in 42 CFR 455.101, and includes a parent and subsidiary corporation.

“AHCCCS” means the Arizona Health Care Cost Containment System, which is composed of the Administration, contractors, and other arrangements through which health care services are provided to a member.

“AHCCCS registered provider” means a provider or noncontracting provider who:

Enters into a provider agreement with the Administration under R9-22-703(A), and

Meets license or certification requirements to provide covered services.

“Appellant” means an applicant or member who is appealing an adverse action by the Department or Administration.

“Applicant” means a person who submits or whose authorized representative submits a written, signed, and dated application for AHCCCS benefits.

“Application” means an official request for AHCCCS medical coverage made under this Chapter.

“Assignment” means enrollment of a member with a contractor by the Administration.

“Attending physician” means a licensed allopathic or osteopathic doctor of medicine who has primary responsibility for providing or directing preventive and treatment services for a Fee-For-Service member.

“Authorized representative” means a person who is authorized to apply for medical assistance or act on behalf of another person.

“Capped fee-for-service” means the payment mechanism by which a provider of care is reimbursed upon submission of a valid claim for a specific covered service or equipment provided to a member. A payment is made in accordance with an upper or capped limit established by the Director. This capped limit can either be a specific dollar amount or a percentage of billed charges.

“Case record” means an individual or family file retained by the Department that contains all pertinent eligibility information, including electronically stored data.

“Case review” means the Administration’s evaluation of an individual’s or family’s circumstances and case record in a review month.

“Categorically eligible” means a person who is eligible under A.R.S. §§ 36-2901(6)(a)(i), (ii), or (iii) or 36-2934.

“Children’s Rehabilitative Services” or “CRS” means the program that provides covered medical services and covered support services in accordance with A.R.S. § 36-261.

“CMS” means the Centers for Medicare and Medicaid Services.

“Continuous stay” means a period during which a member receives inpatient hospital services without interruption beginning with the date of admission and ending with the date of discharge or date of death.

“Contract” means a written agreement entered into between a person, an organization, or other entity and the Administration to provide health care services to a member under A.R.S. Title 36, Chapter 29, and this Chapter.

“Contract year” means the period beginning on October 1 of a year and continuing until September 30 of the following year.

“Covered services” means the health and medical services described in Articles 2 and 12 of this Chapter as being eligible for reimbursement by AHCCCS.

“Day” means a calendar day unless otherwise specified.

“DBHS” means the Division of Behavioral Health Services within the Arizona Department of Health Services.

“DES” means the Department of Economic Security.

“Diagnostic services” means services provided for the purpose of determining the nature and cause of a condition, illness, or injury.

“Director” means the Director of the Administration or the Director’s designee.

“Discussion” means an oral or written exchange of information or any form of negotiation.

“DME” means durable medical equipment, which is an item or appliance that can withstand repeated use, is designed to serve a medical purpose, and is not generally useful to a person in the absence of a medical condition, illness, or injury.

“Enumeration” means the assignment of a nine-digit identification number to a person by the Social Security Administration.

“Equity” means the county assessor full cash value or market value of a resource minus valid liens, encumbrances, or both.

“Facility” means a building or portion of a building licensed or certified by the Arizona Department of Health Services as a health care institution under A.R.S. Title 36, Chapter 4, to provide a medical service, a nursing service, or other health care or health-related service.

“FBR” means Federal Benefit Rate, the maximum monthly Supplemental Security Income payment rate for a member or a married couple.

“Fee-For-Service” or “FFS” means a method of payment by the AHCCCS Administration to a registered provider on an amount-per-service basis for a member not enrolled with a contractor.

“FES member” means a person who is eligible to receive emergency medical and behavioral health services through the FESP under R9-22-217.

“FESP” means the federal emergency services program under R9-22-217 which covers services to treat an emergency medical or behavioral health condition for a member who is determined eligible under A.R.S. § 36-2903.03(D).

“FQHC” means federally qualified health center.

“GSA” means a geographical service area designated by the Administration within which a contractor provides, directly or through a subcontract, a covered health care service to a member enrolled with the contractor.

“Hospital” means a health care institution that is licensed as a hospital by the Arizona Department of Health Services under A.R.S. Title 36, Chapter 4, Article 2, and certified as a provider under Title XVIII of the Social Security Act, as amended, or is currently determined, by the Arizona Department of Health Services as the CMS designee, to meet the requirements of certification.

“IHS” means Indian Health Service.

“IMD” or “Institution for Mental Diseases” means an Institution for Mental Diseases as described in 42 CFR 435.1010 that is licensed by ADHS.

“Interested party” means an actual or prospective offeror whose economic interest may be directly affected by the issuance of an RFP, the award of a contract, or by the failure to award a contract.

“Legal representative” means a custodial parent of a child under 18, a guardian, or a conservator.

“License” or “licensure” means a nontransferable authorization that is granted based on established standards in law by a state or a county regulatory agency or board and allows a health care provider to lawfully render a health care service.

“Mailing date” when used in reference to a document sent first class, postage prepaid, through the United States mail, means the date:

Shown on the postmark;

Shown on the postage meter mark of the envelope, if no postmark; or

Entered as the date on the document, if there is no legible postmark or postage meter mark.

“Medical record” means a document that relates to medical or behavioral health services provided to a member by a physician or other licensed practitioner of the healing arts and that is kept at the site of the provider.

“Medical supplies” means consumable items that are designed specifically to meet a medical purpose.

“Medically necessary” means a covered service is provided by a physician or other licensed practitioner of the healing arts within the scope of practice under state law to prevent disease, disability, or other adverse health conditions or their progression, or to prolong life.

“Medicare claim” means a claim for Medicare-covered services for a member with Medicare coverage.

“Medicare HMO” means a health maintenance organization that has a current contract with Centers for Medicare and Medicaid Services for participation in the Medicare program under 42 CFR 417(L).

“Non-FES member” means an eligible person who is entitled to full AHCCCS services.

“Offeror” means an individual or entity that submits a proposal to the Administration in response to an RFP.

“Physician” means a person licensed as an allopathic or osteopathic physician under A.R.S. Title 32, Chapter 13 or Chapter 17.

“Practitioner” means a physician assistant licensed under A.R.S. Title 32, Chapter 25, or a registered nurse practitioner certified under A.R.S. Title 32, Chapter 15.

“Prescription” means an order to provide covered services that is signed or transmitted by a provider authorized to prescribe the services.

“Primary care provider” or “PCP” means an individual who meets the requirements of A.R.S. § 36-2901(12) or (13), and who is responsible for the management of a member’s health care.

“Prior authorization” means the process by which the Administration or contractor, whichever is applicable, authorizes, in advance, the delivery of covered services based on factors including but not limited to medical necessity, cost effectiveness, compliance with this Article and any applicable contract provisions. Prior authorization is not a guarantee of payment.

“Prior period coverage” means the period prior to the member’s enrollment during which a member is eligible for covered services. PPC begins on the first day of the month of application or the first eligible month, whichever is later, and continues until the day the member is enrolled with a contractor.

“Proposal” means all documents, including best and final offers, submitted by an offeror in response to an RFP by the Administration.

“Radiology” means professional and technical services rendered to provide medical imaging, radiation oncology, and radioisotope services.

“Referral” means the process by which a member is directed by a primary care provider or an attending physician to another appropriate provider or resource for diagnosis or treatment.

“Rehabilitation services” means physical, occupational, and speech therapies, and items to assist in improving or restoring a person’s functional level.

“Responsible offeror” means an individual or entity that has the capability to perform the requirements of a contract and that ensures good faith performance.

“Responsive offeror” means an individual or entity that submits a proposal that conforms in all material respects to an RFP.

“Review” means a review of all factors affecting a member’s eligibility.

“Review month” means the month in which the individual’s or family’s circumstances and case record are reviewed.

“RFP” means Request for Proposals, including all documents, whether attached or incorporated by reference, that are used by the Administration for soliciting a proposal under 9 A.A.C. 22, Article 6.

“Service location” means a location at which a member obtains a covered service provided by a physician or other licensed practitioner of the healing arts under the terms of a contract.

“Service site” means a location designated by a contractor as the location at which a member is to receive covered services.

“S.O.B.R.A.” means Section 9401 of the Sixth Omnibus Budget Reconciliation Act, 1986, amended by the Medicare Catastrophic Coverage Act of 1988, 42 U.S.C. 1396a(a)(10)(A)(i)(IV), 42 U.S.C. 1396a(a)(10)(A)(i)(VI), and 42 U.S.C. 1396a(a)(10)(A)(i)(VII).

“Specialist” means a Board-eligible or certified physician who declares himself or herself as a specialist and practices a specific medical specialty. For the purposes of this definition, Board-eligible means a physician who meets all the requirements for certification but has not tested for or has not been issued certification.

“Spouse” means a person who has entered into a contract of marriage recognized as valid by this state.

“SSN” means Social Security number.

“Standard of care” means a medical procedure or process that is accepted as treatment for a specific illness, injury, or medical condition through custom, peer review, or consensus by the professional medical community.

“Subcontract” means an agreement entered into by a contractor with any of the following:

A provider of health care services who agrees to furnish covered services to a member,

A marketing organization, or

Any other organization or person that agrees to perform any administrative function or service for the contractor specifically related to securing or fulfilling the contractor's obligation to the Administration under the terms of a contract..

"Taxi" is as defined in A.R.S. § 28-2515.

#### Historical Note

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-101 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-101 repealed, former Sections R9-22-102 and R9-22-301 renumbered as Section R9-22-101 and amended effective October 1, 1983 (Supp. 83-5). Adopted as an emergency effective May 18, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Amended as an emergency by adding new paragraphs (24), (46), (84) and (91) and renumbering accordingly effective August 16, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-4). Amended as an emergency by adding new paragraphs (2) and (15) and renumbering accordingly effective October 25, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-5). Emergency expired. Permanent amendment added paragraphs (2) and (15) and renumbered accordingly effective February 1, 1985 (Supp. 85-1). Amended effective October 1, 1985 (Supp. 85-5). Amended paragraphs (10) and (15) effective October 1, 1986 (Supp. 86-5). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended effective October 1, 1987; amended effective December 22, 1987 (Supp. 87-4). Amended by deleting paragraphs (39) and (62) and renumbering accordingly effective July 1, 1988 (Supp. 88-3). Amended effective May 30, 1989 (Supp. 89-2). Amended effective April 13, 1990 (Supp. 90-2). Amended effective September 29, 1992 (Supp. 92-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective March 1, 1993 (Supp. 93-1). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective October 26, 1993 (Supp. 93-4). Amended effective December 13, 1993 (Supp. 93-4). Amended effective January 14, 1997 (Supp. 97-1). Section repealed; new Section adopted effective December 8, 1997 (Supp. 97-4). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Amended by final rulemaking at 5 A.A.R. 607, effective February 5, 1999 (Supp. 99-1). Amended by final rulemaking at 5 A.A.R. 867, effective March 4, 1999 (Supp. 99-1). Amended by final rulemaking at 5 A.A.R. 4061, effective October 8, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 179, effective December 13, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by exempt rulemaking at 7 A.A.R. 5701, effective December 1, 2001 (Supp. 01-4). Amended by final rulemaking at 7 A.A.R. 5814, effective December 6, 2001 (Supp. 01-4). Amended by final rulemaking at 8 A.A.R. 424, effective

January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 2325, effective May 9, 2002 (Supp. 02-2). Amended by final rulemaking at 8 A.A.R. 3317, effective July 15, 2002 (Supp. 02-3). Amended by exempt rulemaking at 9 A.A.R. 4001, effective October 19, 2003 (Supp. 03-3). Amended by exempt rulemaking at 10 A.A.R. 4588, effective October 12, 2004 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 3830, effective November 12, 2005 (Supp. 05-3). Amended by final rulemaking at 11 A.A.R. 5467, effective December 6, 2005 (Supp. 05-4). Amended by final rulemaking at 13 A.A.R. 836, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 13 A.A.R. 3351, effective November 10, 2007 (Supp. 07-3). Amended by final rulemaking at 14 A.A.R. 1598, effective May 31, 2008 (Supp. 08-2). Amended by exempt rulemaking at 16 A.A.R. 1638, effective October 1, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 1658, effective August 2, 2011 (Supp. 11-3). Amended by exempt rulemaking at 18 A.A.R. 461, effective April 1, 2012 (Supp. 12-1).

#### R9-22-102. Repealed

##### Historical Note

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-102 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1992 (Supp. 82-4). Former Section R9-22-102 renumbered together with former Section R9-22-301 as Section R9-22-101 and amended effective October 1, 1983 (Supp. 83-5). New Section adopted effective December 8, 1997 (Supp. 97-4). Amended by exempt rulemaking at 7 A.A.R. 5701, effective December 1, 2001 (Supp. 01-4). Amended by final rulemaking at 8 A.A.R. 2325, effective May 9, 2002 (Supp. 02-2). Amended by final rulemaking at 11 A.A.R. 5467, effective December 6, 2005 (Supp. 05-4). Amended by final rulemaking at 13 A.A.R. 836, effective May 5, 2007 (Supp. 07-1). Section repealed by final rulemaking at 13 A.A.R. 3351, effective November 10, 2007 (Supp. 07-3).

#### R9-22-103. Repealed

##### Historical Note

Adopted effective December 8, 1997 (Supp. 97-4). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

#### R9-22-104. Reserved

#### R9-22-105. Repealed

##### Historical Note

Adopted effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Section repealed by final rulemaking at 11 A.A.R. 4277, effective December 5, 2005 (Supp. 05-4).

#### R9-22-106. Repealed

##### Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 607, effective February 5, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Section repealed by final rulemaking at 11 A.A.R. 5467, effective December 6, 2005 (Supp. 05-4).

**R9-22-107. Repealed****Historical Note**

Adopted effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 3317, effective July 15, 2002 (Supp. 02-3). Section repealed by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2).

**R9-22-108. Repealed****Historical Note**

Adopted effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1).

**R9-22-109. Repealed****Historical Note**

Adopted effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 5 A.A.R. 4061, effective October 8, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed by final rulemaking at 12 A.A.R. effective 4484, effective January 6, 2007 (Supp. 06-4).

**R9-22-110. Repealed****Historical Note**

Adopted effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Section repealed by final rulemaking at 10 A.A.R. 1146, effective May 1, 2004 (Supp. 04-1).

**R9-22-111. Reserved****R9-22-112. Repealed****Historical Note**

Adopted effective December 8, 1997 (Supp. 97-4). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 179, effective December 13, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Repealed by final rulemaking at 13 A.A.R. 836, effective May 5, 2007 (Supp. 07-1).

**R9-22-113. Reserved****R9-22-114. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed by final rulemaking at 11 A.A.R. 5467, effective December 6, 2005 (Supp. 05-4).

**R9-22-115. Repealed****Historical Note**

Final Section adopted at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed by final rulemaking at 11 A.A.R. 5467, effective December 6, 2005 (Supp. 05-4).

**R9-22-116. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

**R9-22-117. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed by final rulemaking at 14 A.A.R. 1598, effective May 31, 2008 (Supp. 08-2).

**R9-22-118. Reserved****R9-22-119. Reserved****R9-22-120. Repealed****Historical Note**

New Section made by final rulemaking at 7 A.A.R. 5814, effective December 6, 2001 (Supp. 01-4). Section repealed by final rulemaking at 12 A.A.R. 4488, effective January 6, 2007 (Supp. 06-4).

**ARTICLE 2. SCOPE OF SERVICES****R9-22-201. Scope of Services-related Definitions**

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

“Anticipatory guidance” means a person responsible for a child receives information and guidance of what the person should expect of the child’s development and how to help the child stay healthy.

“Behavioral health recipient” means a Title XIX or Title XXI acute care member who is eligible for, and is receiving, behavioral health services through ADHS/DBHS.

“Benefit year” means a one-year time period of October 1st through September 30th.

“Clinical supervision” means a Clinical Supervisor under 9 A.A.C. 20, Article 2 reviews the skills and knowledge of the individual supervised and provides guidance in improving or developing the skills and knowledge.

“Emergency behavioral health condition for a non-FES member” means a condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that a prudent layperson who possesses an average knowledge of health and medicine could reasonably expect the absence of immediate medical attention to result in:

Placing the health of the person, including mental health, in serious jeopardy;

Serious impairment to bodily functions;

Serious dysfunction of any bodily organ or part; or

Serious physical harm to another person.

“Emergency behavioral health services for a non-FES member” means those behavioral health services provided for the treatment of an emergency behavioral health condition.

“Emergency medical condition for a non-FES member” means treatment for a medical condition, including labor and delivery, that manifests itself by acute symptoms of sufficient severity, including severe pain, such that a prudent layperson who possesses an average knowledge of health and medicine,

could reasonably expect the absence of immediate medical attention to result in:

Placing the member's health in serious jeopardy,

Serious impairment to bodily functions, or

Serious dysfunction of any bodily organ or part.

"Emergency medical services for non-FES member" means services provided for the treatment of an emergency medical condition.

"Hearing aid" means an instrument or device designed for, or represented by the supplier as aiding or compensating for impaired or defective human hearing, and includes any parts, attachments, or accessories of the instrument or device.

"Home health services" means services and supplies that are provided by a home health agency that coordinates in-home intermittent services for curative, habilitative care, including home-health aide services, licensed nurse services, and medical supplies, equipment, and appliances.

"Occupational therapy" means medically prescribed treatment provided by or under the supervision of a licensed occupational therapist, to restore or improve an individual's ability to perform tasks required for independent functioning.

"Pharmaceutical service" means medically necessary medications that are prescribed by a physician, practitioner, or dentist under R9-22-209.

"Physical therapy" means treatment services to restore or improve muscle tone, joint mobility, or physical function provided by or under the supervision of a registered physical therapist.

"Post-stabilization services" means covered services related to an emergency medical or behavioral health condition provided after the condition is stabilized.

"Primary care provider services" means healthcare services provided by and within the scope of practice, as defined by law, of a licensed physician, certified nurse practitioner, or licensed physician assistant.

"Psychosocial rehabilitation services" means services that provide education, coaching, and training to address or prevent residual functional deficits and may include services that may assist a member to secure and maintain employment. Psychosocial rehabilitation services may include:

Living skills training,

Cognitive rehabilitation,

Health promotion,

Supported employment, and

Other services that increase social and communication skills to maximize a member's ability to participate in the community and function independently.

"RBHA" or "Regional Behavioral Health Authority" means the same as in A.R.S. § 36-3401.

"Residual functional deficit" means a member's inability to return to a previous level of functioning, usually after experiencing a severe psychotic break or state of decompensation.

"Respiratory therapy" means treatment services to restore, maintain, or improve respiratory functions that are provided by, or under the supervision of, a respiratory therapist licensed according to A.R.S. Title 32, Chapter 35.

"Scope of services" means the covered, limited, and excluded services under Articles 2 and 12 of this Chapter.

"Speech therapy" means medically prescribed diagnostic and treatment services provided by or under the supervision of a certified speech therapist.

"Sterilization" means a medically necessary procedure, not for the purpose of family planning, to render an eligible person or member barren in order to:

Prevent the progression of disease, disability, or adverse health conditions; or

Prolong life and promote physical health.

"Substance abuse" means the chronic, habitual, or compulsive use of any chemical matter that, when introduced into the body, is capable of altering human behavior or mental functioning and, with extended use, may cause psychological dependence and impaired mental, social or educational functioning. Nicotine addiction is not considered substance abuse for adults who are 21 years of age or older.

#### Historical Note

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-201 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (B) effective May 30, 1989 (Supp. 89-2). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Section repealed, new Section adopted effective September 22, 1997 (Supp. 97-3). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 2325, effective May 9, 2002 (Supp. 02-2). Amended by exempt rulemaking at 10 A.A.R. 4588, effective October 12, 2004 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 3217, effective October 1, 2005 (Supp. 05-3). Section repealed; new Section made by final rulemaking at 13 A.A.R. 3351, effective November 10, 2007 (Supp. 07-3). Amended by exempt rulemaking at 16 A.A.R. 1638, effective October 1, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 1658, effective August 2, 2011 (Supp. 11-3). Amended by exempt rulemaking at 17 A.A.R. 1707, effective October 1, 2011 (Supp. 11-3). Amended by final rulemaking at 19 A.A.R. 2747, effective October 8, 2013 (Supp. 13-3).

#### R9-22-202. General Requirements

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

1. "Authorization" means written, verbal, or electronic authorization by:
  - a. The Administration for services rendered to a fee-for-service member, or
  - b. The contractor for services rendered to a prepaid capitated member.
2. Use of the phrase "attending physician" applies only to the fee-for-service population.

B. In addition to other requirements and limitations specified in this Chapter, the following general requirements apply:

1. Only medically necessary, cost effective, and federally-reimbursable and state-reimbursable services are covered services.
2. Covered services for the federal emergency services program (FESP) are under R9-22-217.
3. The Administration or a contractor may waive the covered services referral requirements of this Article.



4. Except as authorized by the Administration or a contractor, a primary care provider, attending physician, practitioner, or a dentist shall provide or direct the member's covered services. Delegation of the provision of care to a practitioner does not diminish the role or responsibility of the primary care provider.
  5. A contractor shall offer a female member direct access to preventive and routine services from gynecology providers within the contractor's network without a referral from a primary care provider.
  6. A member may receive behavioral health services as specified in Articles 2 and 12.
  7. AHCCCS or a contractor shall provide services under the Section 1115 Waiver as defined in A.R.S. § 36-2901.
  8. An AHCCCS registered provider shall provide covered services within the provider's scope of practice.
  9. In addition to the specific exclusions and limitations otherwise specified under this Article, the following are not covered:
    - a. A service that is determined by the AHCCCS Chief Medical Officer to be experimental or provided primarily for the purpose of research;
    - b. Services or items furnished gratuitously, and
    - c. Personal care items except as specified under R9-22-212.
  10. Medical or behavioral health services are not covered services if provided to:
    - a. An inmate of a public institution;
    - b. A person who is in residence at an institution for the treatment of tuberculosis; or
    - c. A person age 21 through 64 who is in an IMD, unless the service is covered under Article 12 of this Chapter.
- C.** The Administration or a contractor may deny payment of non-emergency services if prior authorization is not obtained as specified in this Article and Article 7 of this Chapter. The Administration or a contractor shall not provide prior authorization for services unless the provider submits documentation of the medical necessity of the treatment along with the prior authorization request.
- D.** Services under A.R.S. § 36-2908 provided during the prior period coverage do not require prior authorization.
- E.** Prior authorization is not required for services necessary to evaluate and stabilize an emergency medical condition. The Administration or a contractor shall not reimburse services that require prior authorization unless the provider documents the diagnosis and treatment.
- F.** A service is not a covered service if provided outside the GSA unless one of the following applies:
1. A member is referred by a primary care provider for medical specialty care outside the GSA. If a member is referred outside the GSA to receive an authorized medically necessary service, the contractor shall also provide all other medically necessary covered services for the member;
  2. There is a net savings in service delivery costs as a result of going outside the GSA that does not require undue travel time or hardship for a member or the member's family;
  3. The contractor authorizes placement in a nursing facility located out of the GSA; or
  4. Services are provided during prior period coverage or during the prior quarter coverage.
- G.** If a member is traveling or temporarily residing outside of the GSA, covered services are restricted to emergency care services, unless otherwise authorized by the contractor.
- H.** A contractor shall provide at a minimum, directly or through subcontracts, the covered services specified in this Chapter and in contract.
- I.** The Administration shall determine the circumstances under which a FFS member may receive services, other than emergency services, from service providers outside the member's county of residence or outside the state. Criteria considered by the Administration in making this determination shall include availability and accessibility of appropriate care and cost effectiveness.
- J.** The restrictions, limitations, and exclusions in this Article do not apply to the following: A contractor electing to provide noncovered services.
1. The Administration shall not consider the costs of providing a noncovered service to a member in the development or negotiation of a capitation rate.
  2. A contractor shall pay for noncovered services from administrative revenue or other contractor funds that are unrelated to the provision of services under this Chapter.
- K.** Subject to CMS approval, the restrictions, limitations, and exclusions specified in the following subsections do not apply to American Indians receiving services through IHS or a tribal health program operating under P.L. 93-638 when those services are eligible for 100 percent federal financial participation:
1. R9-22-205(A)(8),
  2. R9-22-205(B)(4)(f),
  3. R9-22-206,
  4. R9-22-207,
  5. R9-22-212(C),
  6. R9-22-212(D),
  7. R9-22-212(E)(8),
  8. R9-22-215(C)(2), and
  9. R9-22-215(C)(5).

#### Historical Note

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-202 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective October 1, 1985 (Supp. 85-5). Amended effective October 1, 1987; amended effective December 22, 1987 (Supp. 87-4). Amended effective May 30, 1989 (Supp. 89-2). Amended effective April 13, 1990 (Supp. 90-2). Amended effective December 13, 1993 (Supp. 93-4). Amended effective July 1, 1995, under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1994, Ch. 322, § 21; filed with the Office of the Secretary of State June 22, 1995 (Supp. 95-3). Amended effective January 1, 1996, under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Third Special Session, Ch. 1, § 5; filed with the Office of the Secretary of State December 28, 1995 (Supp. 95-4). Section repealed effective September 22, 1997 (Supp. 97-3). New Section made by final rulemaking at 13 A.A.R. 3351, effective November 10, 2007 (Supp. 07-3). Amended by exempt rulemaking at 16 A.A.R. 1638, effective October 1, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 1658, effective August 2, 2011 (Supp. 11-3). Amended by final rulemaking at 20 A.A.R. 1949, effective September 6, 2014 (Supp. 14-3).

#### R9-22-203. Experimental Services

- A.** Experimental services are not covered. A service is not experimental if:

1. It is generally and widely accepted as a standard of care in the practice of medicine in the United States and is a safe and effective treatment for the condition for which it is intended or used.
  2. The service does not meet the standard in subsection (A)(1), but the service has been demonstrated to be safe and effective for the condition for which it is intended or used based on the weight of the evidence in peer-reviewed articles in medical journals published in the United States.
  3. The service does not meet the standard in subsection (A)(2) because the condition for which the service is intended or used is rare, but the service has been demonstrated to be safe and effective for the condition for which it is intended or used based on the weight of opinions from specialists who provide the service or related services.
- B.** The following factors shall be considered when evaluating the weight of peer-reviewed articles or the opinions of specialists:
1. The mortality rate and survival rate of the service as compared to the rates for alternative non-experimental services.
  2. The types, severity, and frequency of complications associated with the services as compared with the complications associated with alternative non-experimental services.
  3. The frequency with which the service has been performed in the past.
  4. Whether there is sufficient historical information regarding the service to provide reliable data regarding risks and benefits.
  5. The reputation and experience of the authors and/or specialists and their record in related areas.
  6. The extent to which medical science in the area develops rapidly and the probability that more definite data will be available in the foreseeable future.
  7. Whether the peer reviewed article describes a random controlled trial or an anecdotal clinical case study.
- Historical Note**
- Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-203 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective October 1, 1985 (Supp. 85-5). Amended effective October 1, 1987; amended effective December 22, 1987 (Supp. 87-4). Amended effective May 30, 1989 (Supp. 89-2). Amended effective April 13, 1990 (Supp. 90-2). Amended effective September 29, 1992 (Supp. 92-3). Amended under an exemption from the provisions of the Administrative Procedure Act effective March 22, 1993; received in the Office of the Secretary of State March 24, 1993 (Supp. 93-1). Amended effective December 13, 1993 (Supp. 93-4). Section repealed effective September 22, 1997 (Supp. 97-3). New Section made by exempt rulemaking at 16 A.A.R. 1638, effective October 1, 2010 (Supp. 10-3). Section amended by final rulemaking at 20 A.A.R. 1956, effective September 6, 2014 (Supp. 14-3).
- R9-22-204. Inpatient General Hospital Services**
- A.** The following limitations apply to inpatient general hospital services that are provided by FFS providers.
1. Providers shall obtain prior authorization from the Administration for the following inpatient hospital services:
    - a. Nonemergency and elective admission, including psychiatric hospitalization;
    - b. Elective surgery; and
    - c. Services or items provided to cosmetically reconstruct or improve personal appearance after an illness or injury.
  2. The Administration or a contractor may deny a claim if a provider fails to obtain prior authorization.
  3. Providers are not required to obtain prior authorization from the Administration for the following inpatient hospital services:
    - a. Voluntary sterilization,
    - b. Dialysis shunt placement,
    - c. Arteriovenous graft placement for dialysis,
    - d. Angioplasties or thrombectomies of dialysis shunts,
    - e. Angioplasties or thrombectomies of arteriovenous graft for dialysis,
    - f. Hospitalization for vaginal delivery that does not exceed 48 hours,
    - g. Hospitalization for cesarean section delivery that does not exceed 96 hours, and
    - h. Other services identified by the Administration through the Provider Participation Agreement.
  4. The Administration may perform concurrent review for hospitalizations of non-FES members to determine whether there is medical necessity for the hospitalization. A provider shall notify the Administration no later than 72 hours after an emergency admission.
- C.** Coverage of in-state and out-of-state inpatient hospital services is limited to 25 days per benefit year for members age 21 and older for claims with discharge dates on or before September 30, 2014. The limit applies for all inpatient hospital services with dates of service during the benefit year regardless of whether the member is enrolled in Fee for Service, is enrolled with one or more contractors, or both, during the benefit year.
1. For purposes of calculating the limit:
    - a. Inpatient days are counted towards the limit if paid by the Administration or a contractor;
    - b. Inpatient days will be counted toward the limit in the order of the adjudication date of a paid claim;
    - c. Paid inpatient days are allocated to the benefit year in which the date of service occurs;
    - d. Each 24 hours of paid observation services is counted as one inpatient day if the patient is not admitted to the same hospital directly following the observation services,
    - e. Observation services, which are directly followed by an inpatient admission to the same hospital are not counted towards the inpatient limit; and
    - f. After 25 days of inpatient hospital services have been paid as provided for in this rule Section:
      - i. Outpatient services that are directly followed by an inpatient admission to the same hospital, including observation services, are not covered.
      - ii. Continuous periods of observation services of less than 24 hours that are not directly followed by an inpatient admission to the same hospital are covered.
      - iii. For continuous periods of observation services of 24 hours or more that are not directly followed by an inpatient admission to the same hospital, 23 hours of observations services are covered.
  2. The following inpatient days are not included in the inpatient hospital limitation described in this Section:

- a. Days reimbursed under specialty contracts between AHCCCS and a transplant facility that are included within the component pricing referred to in the contract;
- b. Days related to Behavioral Health:
  - i. Inpatient days that qualify for the psychiatric tier under R9-22-712.09 and reimbursed by the Administration or its contractors, or
  - ii. Inpatient days with a primary psychiatric diagnosis code reimbursed by the Administration or its contractors, or
  - iii. Inpatient days paid by the Arizona Department of Health Services Division of Behavioral Health Services or a RBHA or TRBHA.
- c. Days related to treatment for burns and burn late effects at an American College of Surgeons verified burn center;
- d. Same Day Admit Discharge services are excluded from the 25 day limit; and
- e. Subject to approval by CMS, days for which the state claims 100% FFP, such as payments for days provided by IHS or 638 facilities.

#### Historical Note

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-204 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (A) effective December 22, 1987 (Supp. 87-4). Amended effective December 13, 1993 (Supp. 93-4). Section repealed, new Section adopted effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 6 A.A.R. 179, effective December 13, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 2325, effective May 9, 2002 (Supp. 02-2). Amended by final rulemaking at 17 A.A.R. 1658, effective August 2, 2011 (Supp. 11-3). Amended by exempt rulemaking at 17 A.A.R. 1707, effective October 1, 2011 (Supp. 11-3). Amended by exempt rulemaking at 18 A.A.R. 1745, effective October 1, 2012 (Supp. 12-2). Amended by final rulemaking at 19 A.A.R. 2747, effective October 8, 2013 (Supp. 13-3). Amended by final rulemaking at 20 A.A.R. 1956, effective September 6, 2014 (Supp. 14-3).

#### **R9-22-205. Attending Physician, Practitioner, and Primary Care Provider Services**

- A. A primary care provider, attending physician, or practitioner shall provide primary care provider services within the provider's scope of practice under A.R.S. Title 32. A member may receive primary care provider services in an inpatient or outpatient setting including at a minimum:
  1. Periodic health examination and assessment;
  2. Evaluation and diagnostic workup;
  3. Medically necessary treatment;
  4. Prescriptions for medication and medically necessary supplies and equipment;
  5. Referral to a specialist or other health care professional if medically necessary;
  6. Patient education;
  7. Home visits if medically necessary; and
  8. Preventive health services, such as, well visits, immunizations, colonoscopies, mammograms and PAP smears.

- B. The following limitations and exclusions apply to attending physician and practitioner services and primary care provider services:

1. Specialty care and other services provided to a member upon referral from a primary care provider, or to a member upon referral from the attending physician or practitioner are limited to the service or condition for which the referral is made, or for which authorization is given by the Administration or a contractor.
2. A member's physical examination is not covered if the sole purpose is to obtain documentation for one or more of the following:
  - a. Qualification for insurance,
  - b. Pre-employment physical evaluation,
  - c. Qualification for sports or physical exercise activities,
  - d. Pilot's examination for the Federal Aviation Administration,
  - e. Disability certification to establish any kind of periodic payments,
  - f. Evaluation to establish third-party liabilities, or
  - g. Physical ability to perform functions that have no relationship to primary objectives of the services listed in subsection (A).
3. Orthognathic surgery is covered only for a member who is less than 21 years of age;
4. The following services are excluded from AHCCCS coverage:
  - a. Infertility services, reversal of surgically induced infertility (sterilization), and gender reassignment surgeries;
  - b. Pregnancy termination counseling services;
  - c. Pregnancy terminations, unless required by state or federal law.
  - d. Services or items furnished solely for cosmetic purposes; and
  - e. Hysterectomies unless determined medically necessary.

#### Historical Note

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-205 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (A), paragraph (15) and added paragraph (20) effective December 22, 1987 (Supp. 87-4). Amended subsection (C)(2) effective May 30, 1989 (Supp. 89-2). Amended under an exemption from the provisions of the Administrative Procedure Act effective March 22, 1993; received in the Office of the Secretary of State March 24, 1993 (Supp. 93-1). Amended effective December 13, 1993 (Supp. 93-4). Section repealed, new Section adopted effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2325, effective May 9, 2002 (Supp. 02-2). Amended by exempt rulemaking at 10 A.A.R. 4588, effective October 12, 2004 (Supp. 04-4). Amended by exempt rulemaking at 16 A.A.R. 1638, effective October 1, 2010 (Supp. 10-3). Amended by final rulemaking at 20 A.A.R. 1949, effective September 6, 2014 (Supp. 14-3).

**Editor's Note:** The following Section was renumbered and a new Section adopted under an exemption from the provisions of the Administrative Procedure Act which means that this rule was

*not published as a proposed rule in the Arizona Administrative Register; the rule was not reviewed or approved by the Governor's Regulatory Review Council; and the agency was not required to hold public hearings on the rule. This Section was subsequently amended through the regular rulemaking process.*

#### **R9-22-206. Organ and Tissue Transplant Services**

- A.** Organ and tissue transplant services are covered for a member if prior authorized and coordinated with the member's contractor, or the Administration. Only the following transplants are covered for individuals 21 years of age or older:
1. Heart, including transplants for the treatment of non-ischemic cardiomyopathy;
  2. Liver, including transplants for patients with hepatitis C;
  3. Kidney (cadaveric and live donor),
  4. Simultaneous Pancreas/Kidney (SPK),
  5. Autologous and Allogeneic related and unrelated Hematopoietic Cell transplants;
  6. Cornea;
  7. Bone;
  8. Lung; and
  9. Pancreas after a kidney transplant (PAK).
- B.** The following transplants are not covered for members 21 years of age or older:
1. Pancreas only transplants if it is not performed simultaneously with or following a kidney transplant. Partial pancreas transplants and autologous and allogeneic pancreas islet cell transplants are not covered even if performed simultaneously with or following a kidney transplant,
  2. Intestine transplants, and
  3. Any other type of transplant not specifically listed in subsection (A).
- C.** When there is a transplant of multiple organs, reimbursement will only be made for those covered.
- D.** Organ and tissue transplant services are not covered for non-qualified aliens or noncitizens members of FESP under A.R.S. § 36-2903.03(D).

#### **Historical Note**

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-206 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective October 1, 1985 (Supp. 85-5). Amended effective December 13, 1993 (Supp. 93-4). Former Section R9-22-206 renumbered to R9-22-218, new Section R9-22-206 adopted effective January 1, 1996, under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Third Special Session, Ch. 1, § 5; filed with the Office of the Secretary of State December 28, 1995 (Supp. 95-4). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Amended by exempt rulemaking at 7 A.A.R. 5701, effective December 1, 2001 (Supp. 01-4). Amended by exempt rulemaking at 10 A.A.R. 4588, effective October 12, 2004 (Supp. 04-4). Amended by exempt rulemaking at 16 A.A.R. 1386, effective July 15, 2010 (Supp. 10-3). Amended by exempt rulemaking at 16 A.A.R. 1638, effective October 1, 2010 (Supp. 10-3). Amended by exempt rulemaking at 17 A.A.R. 1122, April 1, 2011 (Supp. 11-2).

#### **R9-22-207. Dental Services**

- A.** The Administration or a contractor shall cover dental services for a member less than 21 years of age under R9-22-213.
- B.** For individuals age 21 years of age or older, the Administration or a contractor shall cover medical and surgical services

furnished by a dentist only to the extent such services may be performed under state law either by a physician or by a dentist and such services would be considered a physician service if furnished by a physician.

1. Except as specified in subsection (C), such services must be related to the treatment of a medical condition such as acute pain, infection, or fracture of the jaw. Covered dental services include examination of the oral cavity, radiographs, complex oral surgical procedures such as treatment of maxillofacial fractures, administration of an appropriate level of anesthesia and the prescription of pain medication and antibiotics.
  2. Such services do not include services that physicians are not generally competent to perform such as dental cleanings, routine dental examinations, dental restorations including crowns and fillings, extractions, pulpotomies, root canals, and the construction or delivery of complete or partial dentures. Diagnosis and treatment of temporomandibular joint dysfunction are not covered except for the reduction of trauma.
- C.** For the purposes of this subsection, simple restorations means silver amalgam or composite resin fillings, stainless steel crowns or preformed crowns. In addition, dental services for an individual 21 years of age or older include:
1. The elimination of oral infections and the treatment of oral disease, which includes dental cleanings, treatment of periodontal disease, medically necessary extractions and the provision of simple restorations as a medically necessary pre-requisite to covered transplantation; and
  2. Prophylactic extraction of teeth in preparation for covered radiation treatment of cancer of the jaw, neck or head.

#### **Historical Note**

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-207 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-207 repealed, new Section R9-22-207 adopted effective October 1, 1985 (Supp. 85-5). Section repealed, new Section adopted effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 2325, effective May 9, 2002 (Supp. 02-2). Amended by exempt rulemaking at 16 A.A.R. 1638, effective October 1, 2010 (Supp. 10-3).

#### **R9-22-208. Laboratory, Radiology, and Medical Imaging Services**

Laboratory, radiology, and medical imaging services are covered services if:

1. Prescribed by the member's attending physician, practitioner, primary care provider or a dentist, or prescribed by a physician or practitioner upon referral from the primary care provider or dentist.
2. Provided by licensed health care providers in a:
  - a. Hospital,
  - b. Clinic,
  - c. Physician's office, or
  - d. Other health care facility.

#### **Historical Note**

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-208 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-208 repealed, new Section R9-22-208 adopted effective

October 1, 1985 (Supp. 85-5). Amended subsection (C) effective December 22, 1987 (Supp. 87-4). Amended effective December 13, 1993 (Supp. 93-4). Section repealed, new Section adopted effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 2325, effective May 9, 2002 (Supp. 02-2).

#### **R9-22-209. Pharmaceutical Services**

- A.** An inpatient or outpatient provider, including a hospital, clinic, other appropriately licensed health care facility, and pharmacy may provide covered pharmaceutical services.
- B.** The Administration or a contractor shall require a provider to make pharmaceutical services:
  - 1. Available during customary business hours, and
  - 2. Located within reasonable travel distance of a member's residence.
- C.** Pharmaceutical services are covered if:
  - 1. Prescribed for a member by the member's primary care provider, attending physician, practitioner, or dentist;
  - 2. Prescribed by a specialist upon referral from the primary care provider or attending physician; or
  - 3. The contractor or its designee authorizes the service.
- D.** The following limitations apply to pharmaceutical services:
  - 1. A medication personally dispensed by a physician, dentist, or a practitioner within the individual's scope of practice is not covered, except in geographically remote areas where there is no participating pharmacy or if accessible pharmacies are closed.
  - 2. A new prescription or refill in excess of a 30 day supply is not covered unless:
    - a. The member will be out of the provider's service area for an extended period of time and the prescription is limited to the extended time period, not to exceed a 90 day supply; or
    - b. The Contractor authorizes the prescription for an extended time period not to exceed a 90-day supply.
  - 3. An over-the-counter medication, in place of a covered prescription medication, is covered only if the over-the-counter medication is appropriate, equally effective, safe, and less costly than the covered prescription medication.
- E.** A contractor shall monitor and ensure sufficient services to prevent any gap in the pharmaceutical regimen of a member who requires a continuing or complex regimen of pharmaceutical treatment to restore, improve, or maintain physical well being.

#### **Historical Note**

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-209 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective October 1, 1985 (Supp. 85-5). Amended effective September 24, 1986 (Supp. 86-5). Amended subsections (A) and (C) effective December 22, 1987 (Supp. 87-4). Amended subsection (C)(3), effective May 30, 1989 (Supp. 89-2). Amended under an exemption from the Administrative Procedure Act effective March 22, 1993; received in the Office of the Secretary of State March 24, 1993 (Supp. 93-1). Amended effective December 13, 1993 (Supp. 93-4). Section repealed, new Section adopted effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2325, effective May 9, 2002 (Supp. 02-2). Amended by final rulemaking at 20 A.A.R. 1949, effective September 6, 2014 (Supp. 14-3).

#### **R9-22-210. Emergency Medical Services for Non-FES Members**

##### **A. General provisions.**

1. **Applicability.** This Section applies to emergency medical services for non-FES members. Provisions regarding emergency behavioral health services for non-FES members are in R9-22-210.01. Provisions regarding emergency medical and behavioral health services for FES members are in R9-22-217.
2. **Definitions.**
  - a. For the purposes of this Section, "contractor" has the same meaning as in A.R.S. § 36-2901. Contractor does not include ADHS/DBHS or a subcontractor of ADHS/DBHS.
  - b. For the purposes of this Section and R9-22-210.01, "fiscal agent" means a person who bills and accepts payment for a hospital or emergency room provider.
3. **Verification.** A provider of emergency medical services shall verify a person's eligibility status with AHCCCS, and if eligible, determine whether the person is enrolled with AHCCCS as non-FES FFS or is enrolled with a contractor.
4. **Prior authorization.**
  - a. Emergency medical services. A provider is not required to obtain prior authorization for emergency medical services.
  - b. Non-emergency medical services. If a non-FES member's medical condition does not require emergency medical services, the provider shall obtain prior authorization as required by the terms of the provider agreement under R9-22-714(A) or the provider's subcontract with the contractor, whichever is applicable.
5. **Prohibition against denial of payment.** Neither the Administration nor a contractor shall:
  - a. Limit what constitutes an emergency medical condition on the basis of lists of diagnoses or symptoms,
  - b. Deny or limit payment because the provider failed to obtain prior authorization for emergency services,
  - c. Deny or limit payment because the provider does not have a subcontract.
6. **Grounds for denial.** The Administration and a contractor may deny payment for emergency medical services for reasons including but not limited to:
  - a. The claim was not a clean claim;
  - b. The claim was not submitted timely; and
  - c. The provider failed to provide timely notification under subsection (B)(4) to the contractor or the Administration, as appropriate, and the contractor does not have actual notice from any other source that the member has presented for services.

##### **B. Additional requirements for emergency medical services for non-FES members enrolled with a contractor.**

1. **Responsible entity.** A contractor is responsible for the provision of all emergency medical services to non-FES members enrolled with the contractor.
2. **Prohibition against denial of payment.** A contractor shall not limit or deny payment for emergency medical services when an employee of the contractor instructs the member to obtain emergency medical services.
3. **Contractor notification.** A contractor shall not deny payment to a hospital, emergency room provider, or fiscal agent for an emergency medical service rendered to a non-FES member based on the failure of the hospital, emergency room provider, or fiscal agent to notify the

member's contractor within 10 days from the day that the member presented for the emergency medical service.

4. Contractor notification. A hospital, emergency room provider, or fiscal agent shall notify the contractor no later than the 11th day after presentation of the non-FES member for emergency inpatient medical services. A contractor may deny payment for a hospital's, emergency room provider's, or fiscal agent's failure to provide timely notice, under this subsection.

**C. Post-stabilization services for non-FES members enrolled with a contractor.**

1. After the emergency medical condition of a member enrolled with a contractor is stabilized, a provider shall request prior authorization from the contractor for post-stabilization services.
2. The contractor is financially responsible for medical post-stabilization services obtained within or outside the network that have been prior authorized by the contractor.
3. The contractor is financially responsible for medical post-stabilization services obtained within or outside the network that are not prior authorized by the contractor, but are administered to maintain the member's stabilized condition within one hour of a request to the contractor for prior authorization of further post-stabilization services;
4. The contractor is financially responsible for medical post-stabilization services obtained within or outside the network that are not prior authorized by the contractor, but are administered to maintain, improve, or resolve the member's stabilized condition if:
  - a. The contractor does not respond to a request for prior authorization within one hour;
  - b. The contractor authorized to give the prior authorization cannot be contacted; or
  - c. The contractor representative and the treating physician cannot reach an agreement concerning the member's care and the contractor physician is not available for consultation. In this situation, the contractor shall give the treating physician the opportunity to consult with a contractor physician. The treating physician may continue with care of the member until the contractor physician is reached or:
    - i. A contractor physician with privileges at the treating hospital assumes responsibility for the member's care,
    - ii. A contractor physician assumes responsibility for the member's care through transfer,
    - iii. The contractor's representative and the treating physician reach agreement concerning the member's care, or
    - iv. The member is discharged.
5. Transfer or discharge. The attending physician or practitioner actually treating the member for the emergency medical condition shall determine when the member is sufficiently stabilized for transfer or discharge and that decision shall be binding on the contractor.

**D. Additional requirements for FFS members.**

1. Responsible entity. The Administration is responsible for the provision of all emergency medical services to non-FES FFS members.
2. Grounds for denial. The Administration may deny payment for emergency medical services if a provider fails to provide timely notice to the Administration.
3. Notification. A provider shall notify the Administration no later than 72 hours after a FFS member receiving emergency medical services presents to a hospital for

inpatient services. The Administration may deny payment for failure to provide timely notice.

**Historical Note**

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-210 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-210 repealed, new Section R9-22-210 adopted effective October 1, 1983 (Supp. 83-5). Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (B), paragraph (1) effective October 1, 1987 (Supp. 87-4). Amended effective December 13, 1993 (Supp. 93-4). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 5 A.A.R. 867, effective March 4, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 179, effective December 13, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 2325, effective May 9, 2002 (Supp. 02-2). Amended by final rulemaking at 11 A.A.R. 5480, effective December 6, 2005 (Supp. 05-4). Amended by final rulemaking at 17 A.A.R. 1658, effective August 2, 2011 (Supp. 11-3). Amended by final rulemaking at 20 A.A.R. 1949, effective September 6, 2014 (Supp. 14-3).

**R9-22-210.01. Emergency Behavioral Health Services for Non-FES Members**

**A. General provisions.**

1. Applicability. This Section applies to emergency behavioral health services for non-FES members. Provisions regarding emergency medical services for non-FES members are in R9-22-210. Provisions regarding emergency medical and behavioral health services for FES members are in R9-22-217.
2. Definition. For the purposes of this Section, "contractor" has the same meaning as in A.R.S. § 36-2901. Contractor does not include ADHS/DBHS, a subcontractor of ADHS/DBHS, or Children's Rehabilitative Services.
3. Responsible entity for inpatient emergency behavioral health services.
  - a. Members enrolled with a contractor.
    - i. ADHS/DBHS. ADHS/DBHS or a subcontractor of ADHS/DBHS is responsible for providing all inpatient emergency behavioral health services to non-FES members with psychiatric or substance abuse diagnoses who are enrolled with the contractor, from one of the following time periods, whichever comes first:
      - (1) The date on which the member becomes a behavioral health recipient, or
      - (2) The 73rd hour after admission for inpatient emergency behavioral health services.
    - ii. Contractors. Contractors are responsible for providing inpatient emergency behavioral health services to non-FES members with psychiatric or substance abuse diagnoses who are enrolled with a contractor and are not behavioral health recipients, for the first 72 hours after admission.
  - b. FFS members. ADHS/DBHS or a subcontractor of ADHS/DBHS is responsible for providing all inpatient emergency behavioral health services for non-

- FES FFS members with psychiatric or substance abuse diagnoses.
4. Responsible entity for non-inpatient emergency behavioral health services for non-FES members. ADHS/DBHS or a subcontractor of ADHS/DBHS is responsible for providing all non-inpatient emergency behavioral health services for non-FES members.
  5. Verification. A provider of emergency behavioral health services shall verify a person's eligibility status with AHCCCS, and if eligible, determine whether the person is a member enrolled with AHCCCS as non-FES FFS or is enrolled with a contractor, and determine whether the member is a behavioral health recipient as defined in R9-22-102.
  6. Prior authorization.
    - a. Emergency behavioral health services. A provider is not required to obtain prior authorization for emergency behavioral health services.
    - b. Non-emergency behavioral health services. When a non-FES member's behavioral health condition is determined by the provider not to require emergency behavioral health services, the provider shall follow the prior authorization requirements of a contractor and ADHS/DBHS or a subcontractor of ADHS/DBHS.
  7. Prohibition against denial of payment. A contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS shall not limit or deny payment to an emergency behavioral health provider for emergency behavioral health services to a non-FES member for the following reasons:
    - a. On the basis of lists of diagnoses or symptoms;
    - b. Prior authorization was not obtained;
    - c. The provider does not have a contract;
    - d. An employee of the contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS instructs the member to obtain emergency behavioral health services; or
    - e. The failure of a hospital, emergency room provider, or fiscal agent to notify the member's contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS within 10 days from the day the member presented for the emergency service.
  8. Grounds for denial. A contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS may deny payment for emergency behavioral health services for reasons including but not limited to the following:
    - a. The claim was not a clean claim;
    - b. The claim was not submitted timely; or
    - c. The provider failed to provide timely notification under subsection (A)(9) to the contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS.
  9. Notification. A hospital, emergency room provider, or fiscal agent shall notify a contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS, whichever is appropriate, no later than the 11th day from presentation of the non-FES member for emergency inpatient behavioral health services.
  10. Behavioral health evaluation. An emergency behavioral health evaluation is covered as an emergency behavioral health service for a non-FES member under this Section if:
    - a. Required to evaluate or stabilize an acute episode of mental disorder or substance abuse, and
    - b. Provided by a qualified provider who is:
      - i. A behavioral health medical practitioner as defined in R9-22-112, including a licensed psychologist, a licensed clinical social worker, a licensed professional counselor, and a licensed marriage and family therapist; or
      - ii. An ADHS/DBHS-contracted provider.
  11. Transfer or discharge. The attending physician or the provider actually treating the non-FES member for the emergency behavioral health condition shall determine when the member is sufficiently stabilized for transfer or discharge and that decision shall be binding on the contractor and ADHS/DBHS or a subcontractor of ADHS/DBHS.
- B. Post-stabilization requirements for non-FES members.**
1. A contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS, as appropriate, is financially responsible for behavioral health post-stabilization services obtained within or outside the network that have been prior authorized by the contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS.
  2. The contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS, as appropriate, is financially responsible for behavioral health post-stabilization services obtained within or outside the network that are not prior authorized by the contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS, but are administered to maintain the member's stabilized condition within one hour of a request to the contractor, ADHS/DBHS, or a subcontractor for prior authorization of further post-stabilization services;
  3. The contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS, as appropriate, is financially responsible for behavioral health post-stabilization services obtained within or outside the network that are not prior authorized by the contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS, but are administered to maintain, improve, or resolve the member's stabilized condition if:
    - a. The contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS, does not respond to a request for prior authorization within one hour;
    - b. The contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS authorized to give the prior authorization cannot be contacted; or
    - c. The representative of the contractor, ADHS/DBHS, or the subcontractor and the treating physician cannot reach an agreement concerning the member's care and the contractor's, ADHS/DBHS' or the subcontractor's physician, is not available for consultation. The treating physician may continue with care of the member until ADHS/DBHS', the contractor's, or the subcontractor's physician is reached, or:
      - i. A contractor physician with privileges at the treating hospital assumes responsibility for the member's care;
      - ii. ADHS/DBHS', a contractor's, or a subcontractor's physician assumes responsibility for the member's care through transfer;
      - iii. A representative of the contractor, ADHS/DBHS, or the subcontractor and the treating physician reach agreement concerning the member's care; or
      - iv. The member is discharged.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 5480, effective December 6, 2005 (Supp. 05-4).  
Amended by final rulemaking at 17 A.A.R. 1658, effective August 2, 2011 (Supp. 11-3).

#### R9-22-211. Transportation Services

- A.** Emergency ambulance services.

1. A member shall receive medically necessary emergency transportation in a ground or air ambulance:
    - a. To the nearest appropriate provider or medical facility capable of meeting the member's medical needs, and
    - b. If no other appropriate means of transportation is available.
  2. The Administration or a member's contractor shall reimburse a ground or air ambulance transport that originates in response to a 911 call or other emergency response system:
    - a. If the member's medical condition justifies the medical necessity of the type of ambulance transportation received,
    - b. The transport is to the nearest appropriate provider or medical facility capable of meeting the member's medical needs, and
    - c. No prior authorization is required for reimbursement of these transports.
  3. The member's medical condition at the time of transport determines whether the transport is medically necessary.
  4. A ground or air ambulance provider furnishing transport in response to a 911 call or other emergency response system shall notify the member's contractor within 10 working days from the date of transport. Failure of the provider to provide notification is cause for denial.
  5. Notification to the Administration of emergency transportation provided to a FFS member is not required, but the provider shall submit documentation with the claim that justifies the service.
- B.** The Administration or a contractor covers air ambulance services only if at least one criterion in subsection (B)(1) is met and at least one criterion in subsection (B)(2), or the criterion in subsection (B)(3) is met. The criteria are:
1. The air ambulance transport is initiated at the request of:
    - a. An emergency response unit,
    - b. A law enforcement official,
    - c. A clinic or hospital medical staff member, or
    - d. A physician or practitioner, and
  2. The point of pickup:
    - a. Is inaccessible by ground ambulance, or
    - b. Is a great distance from the nearest hospital or other provider with appropriate facilities to treat the member's condition and ground ambulance service will not suffice, or
  3. The medical condition of the member requires immediate intervention from emergency ambulance personnel or providers with the appropriate facilities to treat the member's condition.
- C.** Coverage of medically necessary nonemergency transportation is limited to the cost of transporting the member to an appropriate provider capable of meeting the member's medical needs.
1. As specified in contract, a contractor shall arrange or provide medically necessary nonemergency transportation services for a member who is unable to arrange transportation to a service site or location.
  2. For a fee-for-service member, the Administration shall authorize medically necessary nonemergency transportation for a member who is unable to arrange transportation to a service site or location.
- D.** For the purposes of this subsection, an individual means a person who is not in the business of providing transportation services such as a family or household member, friend, or neighbor. The Administration or a contractor shall cover expenses for transportation in traveling to and returning from an approved and prior authorized health care service site provided by an individual if:
1. The transportation services are authorized by the Administration or the member's contractor or designee,
  2. The individual is an AHCCCS registered provider, and
  3. No other means of appropriate transportation is available.
- E.** The Administration or a contractor shall cover expenses for meals, lodging, and transportation for a member traveling to and returning from an approved health care service site outside of the member's service area or county of residence.
- F.** The Administration or a contractor shall cover the expense of meals, lodging, and transportation for:
1. A family member accompanying a member if:
    - a. The member is traveling to or returning from an approved health care service site outside of the member's service area or county of residence; and
    - b. The meals, lodging, and transportation services are authorized by the Administration or the member's contractor or designee.
  2. An escort who is not a family member as follows:
    - a. If the member is travelling to or returning from an approved and prior authorized health care service site, including an inpatient facility, outside of the member's service area or county of residence;
    - b. If the escort services are authorized by the Administration or the member's contractor or designee; and
    - c. Wage paid to an escort as reimbursement shall not exceed the federal minimum wage.
- G.** A provider shall obtain prior authorization from the Administration for transportation services provided for a member for the following:
1. Medically necessary nonemergency transportation services not originated through a 911 call or other emergency response system when the distance traveled exceeds 100 miles (whether one way or round trip); and
  2. All meals, lodging, and services of an escort accompanying the member under this Section.
- H.** A charitable organization routinely providing transportation service at no cost to an ambulatory or chairbound person shall not charge or seek reimbursement from the Administration or a contractor for the provision of the service to a member but may enter into a subcontract with a contractor for medically necessary transportation services provided to a member.

#### Historical Note

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-211 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (A) effective October 1, 1986 (Supp. 86-5). Amended effective December 13, 1993 (Supp. 93-4). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 2325, effective May 9, 2002 (Supp. 02-2). Amended by final rulemaking at 17 A.A.R. 1658, effective August 2, 2011 (Supp. 11-3).

#### **R9-22-212. Durable Medical Equipment, Orthotic and Prosthetic Devices, and Medical Supplies**

- A.** Durable medical equipment, orthotic and prosthetic devices, and medical supplies, including incontinence briefs as specified in subsection (E), are covered services to the extent permitted in this Section if provided in compliance with requirements of this Chapter; and
1. Prescribed by the primary care provider, attending physician, or practitioner; or



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2. Prescribed by a specialist upon referral from the primary care provider, attending physician, or practitioner; and
3. Authorized as required by the Administration, contractor, or contractor's designee.
- B.** Covered medical supplies are consumable items that are designed specifically to meet a medical purpose, are disposable, and are essential for the member's health.
- C.** Covered DME is any item, appliance, or piece of equipment that is not a prosthetic or orthotic; and
  1. Is designed for a medical purpose, and is generally not useful to a person in the absence of an illness or injury, and
  2. Can withstand repeated use, and
  3. Is generally reusable by others.
- D.** Prosthetics are devices prescribed by a physician or other licensed practitioner to artificially replace missing, deformed or malfunctioning portion of the body. Only those prosthetics that are medically necessary for rehabilitation are covered, except as otherwise provided in R9-22-215.
- E.** The following limitations on coverage apply:
  1. The DME is furnished on a rental or purchase basis, whichever is less expensive. The total expense of renting the DME does not exceed the cost of the DME if purchased.
  2. Reasonable repair or adjustment of purchased DME is covered if necessary to make the DME serviceable and if the cost of repair or adjustment is less than the cost of renting or purchasing another unit.
  3. A change in, or addition to, an original order for DME is covered if approved by the prescriber in subsection (A), or prior authorized by the Administration or contractor, and the change or addition is indicated clearly on the order and initialed by the vendor. No change or addition to the original order for DME may be made after a claim for services is submitted to the member's contractor, or the Administration, without prior written notification of the change or addition to the Administration or the contractor.
  4. Reimbursement for rental fees shall terminate:
    - a. No later than the end of the month in which the prescriber in subsection (A) certifies that the member no longer needs the DME;
    - b. If the member is no longer eligible for AHCCCS services; or
    - c. If the member is no longer enrolled with a contractor, with the exception of transitions of care as specified in R9-22-509.
  5. Except for incontinence briefs for persons over 3 years old and under 21 years old as provided in subsection (E)(6), personal care items including items for personal cleanliness, body hygiene, and grooming are not covered unless needed to treat a medical condition. Personal care items are not covered services if used solely for preventive purposes.
  6. Incontinence briefs, including pull-ups are covered to prevent skin breakdown and enable participation in social, community, therapeutic and educational activities under the following circumstances:
    - a. The member is over 3 years old and under 21 years old;
    - b. The member is incontinent due to a documented disability that causes incontinence of bowel or bladder, or both;
    - c. The PCP or attending physician has issued a prescription ordering the incontinence briefs;
  7. First aid supplies are not covered unless they are provided in accordance with a prescription.
  8. The following services are not covered for individuals 21 years of age or older:
    - a. Hearing aids;
    - b. Prescriptive lenses unless they are the sole visual prosthetic device used by the member after a cataract extraction;
    - c. Bone Anchor Hearing Aid (BAHA);
    - d. Cochlear implant;
    - e. Percussive vest;
    - f. Insulin pump;
    - g. Microprocessor-controlled lower limbs or microprocessor-controlled joints for lower limbs; and
    - h. Orthotics, which are defined as devices that are prescribed by a physician or other licensed practitioner of the healing arts to support a weak or deformed portion of the body.
- F.** Liability and ownership.
  1. Purchased DME that is provided to a member and no longer needed by the member may be disposed of in accordance with each contractor's policy.
  2. The Administration shall retain title to purchased DME provided to a member who becomes ineligible or no longer requires use of the DME.
  3. If customized DME is purchased by the Administration or contractor for a member, the equipment shall remain with the person during times of transition to a different contractor, or upon loss of eligibility. For purposes of this subsection, customized DME refers to equipment that is altered or built to specifications unique to a member's medical needs and that, most likely, cannot be used or reused to meet the needs of another individual.
  4. A member shall return DME obtained fraudulently to the Administration or the contractor.
- d.** Incontinence briefs do not exceed 240 briefs per month unless the prescribing physician presents evidence of medical necessity for more than 240 briefs per month for a member diagnosed with chronic diarrhea or spastic bladder;
- e.** The member obtains incontinence briefs from providers in the contractor's network;
- f.** Prior authorization has been obtained as required by the Administration, contractor, or contractor's designee. Contractors may require a new prior authorization to be issued no more frequently than every 12 months. Prior authorization for a renewal of an existing prescription may be provided by the physician through telephone contact with the member rather than an in-person physician visit. Prior authorization will be permitted to ascertain that:
  - i. The member is over age 3 and under age 21;
  - ii. The member has a disability that causes incontinence of bladder or bowel, or both;
  - iii. A physician has prescribed incontinence briefs as medically necessary. A physician prescription supporting medical necessity may be required for specialty briefs or for briefs different from the standard briefs supplied by the contractor; and
  - iv. The prescription is for 240 briefs or fewer per month, unless evidence of medical necessity for over 240 briefs is provided.

**Historical Note**

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-212 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-212 repealed, new Section R9-22-212 adopted effective October 1, 1983 (Supp. 83-5). Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (B), paragraph (2), and deleted subsection (C) effective October 1, 1986 (Supp. 86-5). Section repealed, new Section adopted effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 2325, effective May 9, 2002 (Supp. 02-2). Amended by final rulemaking at 13 A.A.R. 3272, effective September 11, 2007 (Supp. 07-3). Amended by exempt rulemaking at 16 A.A.R. 1638, effective October 1, 2010 (Supp. 10-3).

**R9-22-213. Early and Periodic Screening, Diagnosis, and Treatment Services (E.P.S.D.T.)**

- A.** The following E.P.S.D.T. services are covered for a member less than 21 years of age:
1. Screening services including:
    - a. Comprehensive health and developmental history;
    - b. Comprehensive unclothed physical examination;
    - c. Appropriate immunizations according to age and health history;
    - d. Laboratory tests; and
    - e. Health education, including anticipatory guidance;
  2. Vision services including:
    - a. Diagnosis and treatment for defects in vision;
    - b. Eye examinations for the provision of prescriptive lenses;
    - c. Prescriptive lenses; and
    - d. Frames.
  3. Hearing services including:
    - a. Diagnosis and treatment for defects in hearing;
    - b. Testing to determine hearing impairment; and
    - c. Hearing aids;
  4. Dental services including:
    - a. Emergency dental services as specified in R9-22-207;
    - b. Preventive services including screening, diagnosis, and treatment of dental disease; and
    - c. Therapeutic dental services including fillings, crowns, dentures, and other prosthetic devices;
  5. Orthognathic surgery;
  6. Medically necessary, nutritional assessment and nutritional therapy as specified in contract to provide complete daily dietary requirements or supplement a member's daily nutritional and caloric intake;
  7. Behavioral health services under 9 A.A.C. 22, Article 12;
  8. Hospice services do not include home-delivered meals or services provided and covered through Medicare. The following hospice services are covered:
    - a. Hospice services are covered only for a member who is in the final stages of a terminal illness and has a prognosis of death within six months;
    - b. Services available to a member receiving hospice care are limited to those allowable under 42 CFR 418.202, October 1, 2006, incorporated by reference and on file with the Administration. This incorporation by reference contains no future editions or amendments;
  9. Incontinence briefs as specified under R9-22-212; and
  10. Other necessary health care, diagnostic services, treatment, and measures required by 42 U.S.C. 1396d(r)(5).

- B.** Providers of E.P.S.D.T. services shall meet the following standards:
1. Ensure that services are provided by or under the direction of the member's primary care provider, attending physician, practitioner, or dentist.
  2. Perform tests and examinations under 42 CFR 441 Subpart B, October 1, 2006, which is incorporated by reference and on file with the Administration. This incorporation by reference contains no future editions or amendments.
  3. Refer a member as necessary for dental diagnosis and treatment and necessary specialty care.
  4. Refer a member as necessary for behavioral health evaluation and treatment services.
- C.** Contractors shall meet other E.P.S.D.T. requirements as specified in contract.
- D.** A primary care provider, attending physician, or practitioner shall refer a member with special health care needs under R9-7-301 to CRS.

**Historical Note**

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-213 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-213 repealed, new Section R9-22-213 adopted effective October 1, 1983 (Supp. 83-5). Amended effective October 1, 1985 (Supp. 85-5). Amended effective December 13, 1993 (Supp. 93-4). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2325, effective May 9, 2002 (Supp. 02-2). Amended by final rulemaking at 13 A.A.R. 3272, effective September 11, 2007 (Supp. 07-3). Amended by final rulemaking at 20 A.A.R. 1949, effective September 6, 2014 (Supp. 14-3).

**R9-22-214. Repealed****Historical Note**

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-214 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-214 repealed, new Section R9-22-214 adopted effective October 1, 1983 (Supp. 83-5). Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (B), paragraph (4) and added subsection (C), paragraph (2) effective October 1, 1986 (Supp. 86-5). Correction to subsection (C), paragraph (2) (Supp. 87-4). Section repealed effective September 22, 1997 (Supp. 97-3).

**R9-22-215. Other Medical Professional Services**

- A.** The following medical professional services are covered services if a member receives these services in an inpatient, outpatient, or office:
1. Dialysis;
  2. The following family planning services if provided to delay or prevent pregnancy:
    - a. Medications,
    - b. Supplies,
    - c. Devices, and
    - d. Surgical procedures;
  3. Family planning services are limited to:
    - a. Contraceptive counseling, medications, supplies, and associated medical and laboratory examinations,

including HIV blood screening as part of a package of sexually transmitted disease tests provided with a family planning service;

- b. Sterilization; and
  - c. Natural family planning education or referral;
  - 4. Midwifery services provided by a certified nurse practitioner in midwifery;
  - 5. Midwifery services for low-risk pregnancies and home deliveries provided by a licensed midwife;
  - 6. Respiratory therapy;
  - 7. Ambulatory and outpatient surgery facilities services;
  - 8. Home health services under A.R.S. § 36-2907(D);
  - 9. Private or special duty nursing services;
  - 10. Rehabilitation services including physical therapy, occupational therapy, speech therapy, and audiology within limitations in subsection (C);
  - 11. Total parenteral nutrition services, which are the provision of total caloric needs by intravenous route for individuals with severe pathology of the alimentary tract; and
  - 12. Chemotherapy.
- B.** Prior authorization from the Administration for a member is required for services listed in subsections (A)(3)(b), and (A)(4) through (11); except for:
- 1. Voluntary sterilization;
  - 2. Dialysis shunt placement;
  - 3. Arteriovenous graft placement for dialysis;
  - 4. Angioplasties or thrombectomies of dialysis shunts;
  - 5. Angioplasties or thrombectomies of arteriovenous grafts for dialysis;
  - 6. Eye surgery for the treatment of diabetic retinopathy;
  - 7. Eye surgery for the treatment of glaucoma;
  - 8. Eye surgery for the treatment of macular degeneration;
  - 9. Home health visits following an acute hospitalization (limited up to five visits);
  - 10. Hysteroscopies (up to two, one before and one after) when associated with a family planning diagnosis code and done within 90 days of hysteroscopic sterilization;
  - 11. Physical therapy subject to the limitation in subsection (C);
  - 12. Facility services related to wound debridement;
  - 13. Apnea management and training for premature babies up to the age of 1; and
  - 14. Other services identified by the Administration through the Provider Participation Agreement.
- C.** The following are not covered services:
- 1. Occupational and speech therapies provided on an outpatient basis for a member age 21 or older;
  - 2. Abortion counseling;
  - 3. Services or items furnished solely for cosmetic purposes;
  - 4. Services provided by a podiatrist; or
  - 5. More than 15 outpatient physical therapy visits per benefit year for persons age 21 years or older for the purpose of restoring a skill or level of function and maintaining that skill or level of function once restored.
  - 6. More than 15 outpatient physical therapy visits per benefit year for persons age 21 years or older for the purpose of acquiring a new skill or a new level of function and maintaining that skill or level of function once acquired.

#### Historical Note

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-215 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective October 1, 1985 (Supp. 85-5). Section repealed, new Section

adopted effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 6 A.A.R. 179, effective December 13, 1999 (Supp. 99-4). Amended by final rulemaking at 8 A.A.R. 2325, effective May 9, 2002 (Supp. 02-2). Amended by exempt rulemaking at 16 A.A.R. 1638, effective October 1, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 1658, effective August 2, 2011 (Supp. 11-3). Amended by final rulemaking at 20 A.A.R. 1949, effective September 6, 2014 (Supp. 14-3).

#### R9-22-216. NF, Alternative HCBS Setting, or HCBS

- A.** Services provided in a NF, including room and board, an alternative HCBS setting as defined in R9-28-101, or a HCBS as defined in A.R.S. § 36-2939 are covered for a maximum of 90 days per contract year if the member's medical condition would otherwise require hospitalization.
- B.** Except as otherwise provided in 9 A.A.C. 28, the following services are not itemized for separate billing if provided in a NF, alternative HCBS setting, or HCBS:
  - 1. Nursing services, including:
    - a. Administering medication;
    - b. Tube feedings;
    - c. Personal care services, including but not limited to assistance with bathing and grooming;
    - d. Routine testing of vital signs; and
    - e. Maintenance of a catheter;
  - 2. Basic patient care equipment and sickroom supplies, including:
    - a. First aid supplies such as bandages, tape, ointments, peroxide, alcohol, and over-the-counter remedies;
    - b. Bathing and grooming supplies;
    - c. Identification device;
    - d. Skin lotion;
    - e. Medication cup;
    - f. Alcohol wipes, cotton balls, and cotton rolls;
    - g. Rubber gloves (non-sterile);
    - h. Laxatives;
    - i. Bed and accessories;
    - j. Thermometer;
    - k. Ice bags;
    - l. Rubber sheeting;
    - m. Passive restraints;
    - n. Glycerin swabs;
    - o. Facial tissue;
    - p. Enemas;
    - q. Heating pad; and
    - r. Incontinence briefs.
  - 3. Dietary services including preparation and administration of special diets, and adaptive tools for eating;
  - 4. Any service that is included in a NF's room and board charge or a service that is required of the NF to meet a federal or state licensure standard or county certification requirement;
  - 5. Physician visits made solely for the purpose of meeting state licensure standards or county certification requirements;
  - 6. Physical therapy prescribed only as a maintenance regimen; and
  - 7. Assistive devices and non-customized durable medical equipment.
- C.** A provider shall obtain prior authorization from the Administration for a NF admission for a FFS member.

#### Historical Note

Adopted effective October 1, 1985 (Supp. 85-5). Section repealed, new Section adopted effective September 22,

1997 (Supp. 97-3). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Subsection (C) amended to correct a typographical error (Supp. 00-4). Amended by final rulemaking at 8 A.A.R. 2325, effective May 9, 2002 (Supp. 02-2). Amended by final rulemaking at 13 A.A.R. 3272, effective September 11, 2007 (Supp. 07-3). Amended by final rulemaking at 13 A.A.R. 4122, effective November 6, 2007 (Supp. 07-4).

**Editor's Note:** *The following Section was adopted and amended under an exemption from the provisions of the Administrative Procedure Act which means that this rule was not reviewed by the Governor's Regulatory Review Council; the agency did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the agency was not required to hold public hearings on the rules; and the Attorney General has not certified this rule. This Section was subsequently repealed and a new Section adopted under the regular rulemaking process.*

#### **R9-22-217. Services Included in the Federal Emergency Services Program**

- A.** Definition. For the purposes of this Section, an emergency medical or behavioral health condition for a FES member means a medical condition or a behavioral health condition, including labor and delivery, manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in:
1. Placing the member's health in serious jeopardy,
  2. Serious impairment to bodily functions,
  3. Serious dysfunction of any bodily organ or part, or
  4. Serious physical harm to another person.
- B.** Services. "Emergency services for a FES member" mean those medical or behavioral health services provided for the treatment of an emergency condition. Emergency services include outpatient dialysis services for a FES member with End Stage Renal Disease (ESRD) where a treating physician has certified for the month in which services are received that in the physician's opinion the absence of receiving dialysis at least three times per week would reasonably be expected to result in:
1. Placing the member's health in serious jeopardy, or
  2. Serious impairment of bodily function, or
  3. Serious dysfunction of a bodily organ or part.
- C.** Covered services. Services are considered emergency services if all of the criteria specified in subsection (A) are satisfied at the time the services are rendered. The Administration shall determine whether an emergency condition exists on a case-by-case basis.
- D.** Prior authorization. A provider is not required to obtain prior authorization for emergency services for FES members. Prior authorization for outpatient dialysis services is met when the treating physician has completed and signed a monthly certification as described in subsection (B).
- E.** Services rendered through the Federal Emergency Services Program are subject to all exclusions and limitation on services in this Article including but not limited to the limitations on inpatient hospital services in R9-22-204.

##### **Historical Note**

Adopted under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective October 26, 1993 (Supp. 93-4). Section repealed, new Section adopted effective September 22, 1997 (Supp. 97-3). Amended by exempt rulemaking at 7 A.A.R. 5701,

effective December 1, 2001 (Supp. 01-4). Amended by exempt rulemaking at 10 A.A.R. 4588, effective October 12, 2004 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 5480, effective December 6, 2005 (Supp. 05-4). Amended by final rulemaking at 13 A.A.R. 3351, effective November 10, 2007 (Supp. 07-3). Amended by final rulemaking at 17 A.A.R. 1658, effective August 2, 2011 (Supp. 11-3). Amended by exempt rulemaking at 17 A.A.R. 1868, effective October 1, 2011 (Supp. 11-3). Amended by final rulemaking at 19 A.A.R. 2747, effective October 8, 2013 (Supp. 13-3).

#### **R9-22-218. Repealed**

##### **Historical Note**

Section R9-22-218 renumbered from R9-22-206 effective January 1, 1996, under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Third Special Session, Ch. 1, § 5; filed with the Office of the Secretary of State December 28, 1995 (Supp. 95-4). Section repealed effective September 22, 1997 (Supp. 97-3).

### **ARTICLE 3. GENERAL ELIGIBILITY REQUIREMENTS**

#### **R9-22-301. Reserved**

##### **Historical Note**

Adopted effective August 30, 1982 (Supp. 82-4). Former Section R9-22-301 renumbered together with former Section R9-22-102 as Section R9-22-101 and amended effective October 1, 1983 (Supp. 83-5). New Section R9-22-301 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (B), paragraph (8), subsection (E), paragraph (3), and subsection (J), paragraph (5) effective October 1, 1986 (Supp. 86-5). Amended subsections (C) and (E) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsections (B) and (C) effective October 1, 1987; amended subsection (D) effective December 22, 1987 (Supp. 87-4). Amended effective May 30, 1989 (Supp. 89-2). Amended effective September 29, 1992 (Supp. 92-3). Amended effective December 13, 1993 (Supp. 93-4). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section reserved by final rulemaking at 19 A.A.R. 3309, effective November 30, 2013 (Supp. 13-4).

#### **R9-22-302. Reserved**

##### **Historical Note**

Adopted effective August 30, 1982 (Supp. 82-4). Former Section R9-22-302 repealed, new Section R9-22-302 adopted effective November 20, 1984 (Supp. 84-6). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended effective September 29, 1992 (Supp. 92-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section reserved by final rulemaking at 19 A.A.R. 3309, effective November 30, 2013 (Supp. 13-4).

#### **R9-22-303. Prior Quarter Eligibility**

- A.** Prior Quarter eligibility shall be effective no earlier than January 1, 2014. An applicant may be eligible during any of the three months prior to application if the applicant:
1. Received one or more covered services described in 9 A.A.C. 22, Article 2 and Article 12, and 9 A.A.C. 28, Article 2 during the month; and

2. Would have qualified for Medicaid at the time services were received if the person had applied regardless of whether the person is alive when the application is made.
- B.** The Prior Quarter requirements do not apply to:
1. Qualified Medicare Beneficiaries
  2. KidsCare

#### Historical Note

Adopted effective August 30, 1982 (Supp. 82-4). Former Section R9-22-303 repealed, new Section R9-22-303 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsection (A) effective February 26, 1988 (Supp. 88-1). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). New Section made by final rulemaking at 19 A.A.R. 3309, effective November 30, 2013 (Supp. 13-4).

#### R9-22-304. Verification of Eligibility Information

- A.** Except as provided in subsection (E), if information provided by or on behalf of an applicant or member on an application, renewal form or otherwise does not conflict with information obtained by the agency through an electronic data match, the Administration or its designee shall determine or renew eligibility based on such information.
- B.** The Administration or its designee shall not require an applicant, member, or representative to provide additional verification unless the verification cannot be obtained electronically or the verification obtained electronically conflicts with information provided by or on behalf of the applicant or member.
- C.** If information provided by or on behalf of an applicant or member does conflict with information obtained through an electronic data match, the applicant or member shall provide the Administration or its designee with information or documentation necessary to verify eligibility, including evidence originating from an agency, organization, or an individual with actual knowledge of the information.
- D.** Income information obtained through an electronic data match shall be considered reasonably compatible with income information provided by or on behalf of an individual if both meet or both exceed the applicable income limit.
- E.** The Administration or its designee shall not accept the applicant's or member's statement by itself as verification of:
1. SSN;
  2. Qualified alien status, except as described under 42 USC 1320b-7(d)(4)(A); or
  3. Citizenship, except as described under 42 USC 1396a(ee)(1).
- F.** The Administration or its designee shall give an applicant or member at least 10 days from the date of a written or electronic request for information to provide required verification. The Administration or its designee may deny the application or discontinue eligibility if an applicant or a member does not provide the required information timely.

#### Historical Note

Adopted effective August 30, 1982 (Supp. 82-4). Former Section R9-22-304 repealed, new Section R9-22-304 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). New Section R9-22-304 made by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

#### R9-22-305. Eligibility Requirements

As a condition of eligibility, the Administration or its designee must require applicants, and members to do the following:

1. Take all necessary steps to obtain any annuities, pensions, retirement, disability benefits to which they are entitled, unless they can show good cause for not doing so.
2. Furnish a SSN under 42 CFR 435.910 and 435.920, or in the absence of an SSN, provide proof of a submitted application of SSN. The Administration or its designee will assist in obtaining or verifying the applicant's SSN under 42 CFR 435.910 if an applicant cannot recall the applicant's SSN or has not been issued a SSN. An applicant is not required to furnish an SSN if the applicant is not able to legally obtain a SSN. The Administration or its designee shall determine eligibility notwithstanding the applicant's lack of a SSN, if the applicant is cooperating with the Administration or its designee to obtain a SSN and obtain a SSN prior to the next scheduled review of eligibility.
3. Provide proof of residency of Arizona. An applicant or a member is not eligible unless the applicant or member is a resident of Arizona under 42 CFR 435.403 effective October 1, 2012, 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.
4. A written declaration, signed under penalty of perjury, must be provided for each person for whom benefits are being sought stating whether the individual is a citizen or national of the United States, and, if that individual is not a citizen or national of the United States, that the individual is a qualified alien. The declaration must be provided by the individual for whom eligibility is being sought or an adult member of the individual's family or household.
5. Each applicant who claims qualified alien status must provide either:
  - a. Alien registration documentation or other proof of immigration registration from the Immigration and Naturalization Service that contains the individual's alien admission number or alien file number (or numbers if the individual has more than one number), or
  - b. Other documents that the Administration or its designee accepts as evidence of immigration status, such as:
    - i. a Form I-94 Departure Record issued by the USCIS,
    - ii. a Foreign Passport,
    - iii. a USCIS Parole Notice,
    - iv. a Victim of Trafficking Certification or Eligibility Letter issued by the US DHHS Office of Refugee Resettlement,
    - v. other documentation consistent with 42 CFR 435.406 or 435.407.
  - c. Sufficient information for the Administration or its designee to obtain electronic verification of immigration status from the USCIS.
6. If a person for whom eligibility is being sought, states that they are an alien, that person is not required to comply with subsections (4) and (5); however, if they do not comply with those sections, and if they meet all other eligibility criteria, benefits will be limited to those necessary to treat an emergency medical condition.

**Historical Note**

Adopted effective August 30, 1982 (Supp. 82-4). Former Section R9-22-305 repealed, new Section R9-22-305 adopted effective November 20, 1984 (Supp. 84-6). Amended subsection (A) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsection (A) effective February 26, 1988 (Supp. 88-1). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). New Section R9-22-305 made by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-306. Administration, Administration's designee or Member Responsibilities****A.** The Administration or its designee is responsible for the following:

1. The Administration or its designee shall determine eligibility within 90 days for an applicant applying on the basis of disability and 45 days for all other applicants, unless:
  - a. The agency cannot reach a decision because the applicant or an examining physician delays or fails to take a required action, or
  - b. When there is an administrative or other emergency beyond the agency's control.
2. If an applicant dies while an application is pending, the Administration or its designee shall complete an eligibility determination for the deceased applicant.
3. The Administration or its designee shall complete an eligibility determination on an application filed on behalf of a deceased applicant.
4. During the application process the Administration or its designee shall provide information to the applicant or member explaining the requirements to:
  - a. Cooperate with DCSS in establishing paternity and enforcing medical support, except in circumstances when good cause under 42 CFR 433.147 exists for not cooperating;
  - b. Establish good cause for not cooperating with DCSS in establishing paternity and enforcing medical support, when applicable;
  - c. Report a change listed under subsection (B)(3)(c) no later than 10 days from the date the applicant or member knows of the change;
  - d. Send to the Administration or its designee any medical support payments resulting from a court order;
  - e. Cooperate with the Administration or its designee's assignment of rights and securing payments received from any liable party for a member's medical care.
5. Offer to help the applicant or member to complete the application form and to obtain the required verification;
6. Provide the applicant or member with information explaining:
  - a. The eligibility and verification requirements for AHCCCS medical coverage;
  - b. The requirement that the applicant or member obtain and provide a SSN to the Administration or its designee;
  - c. How the Administration or its designee uses the SSN;
7. Explain to the applicant or member the practice of exchange of eligibility and income information through the electronic service established by the Secretary;
8. Explain to the applicant and member the right to appeal an adverse action under R9-22-315;
9. Use any information provided by the member to complete data matches with potentially liable parties;

10. Explain the eligibility review process;
11. Explain the AHCCCS pre-enrollment process;
12. Use the Systematic Alien Verification for Entitlements (SAVE) process to verify qualified alien status;
13. Provide information regarding the penalties for perjury and fraud on the application;
14. Review any verification items provided by the applicant or member and inform the member of any additional verification items and time-frames within which the applicant or member shall provide information to the Administration or its designee;
15. Explain to the applicant or member the applicant's and member's responsibilities under subsection (B);
16. Transfer the applicant's information to other insurance affordability programs as described under 42 CFR 435.1200(e) when the applicant does not qualify for Medicaid;
17. Attain a written record of a collateral contact: such as a verbal statement from a representative of an agency or organization, or an individual with actual knowledge of the information;
18. Complete a review of eligibility:
  - a. Any time there is a change in a member's circumstance that may affect eligibility,
  - b. For a member approved for the MED program under R9-22-1435 through R9-22-1440 before the end of the six-month eligibility period,
  - c. Of each member's continued eligibility for AHCCCS medical coverage once every 12 months;
19. The Administration or its designee shall discontinue eligibility and notify the member of the discontinuance under R9-22-307 if the member:
  - a. Fails to comply with the review of eligibility,
  - b. Fails to comply under 42 CFR 433.148 with the requirements and conditions of eligibility under this Article regarding assignment of rights and cooperation of establishing paternity and obtaining medical support, or
  - c. Does not meet the eligibility requirements; and
20. Redetermine eligibility for a person terminated from the SSI cash program.
  - a. Continuation of AHCCCS medical coverage. The Administration shall continue AHCCCS medical coverage for a person terminated from the SSI cash program until a redetermination of eligibility is completed.
  - b. Coverage group screening. Before terminating a person from the SSI cash program, the Administration shall determine if the person is eligible for coverage as a person described in A.R.S. §§ 36-2901(6)(a)(i) through (vi) or 36-2934.
  - c. Eligibility decision.
    - i. If a person is eligible under this Article or 9 A.A.C. 28, Article 4, the Administration shall send a notice informing the applicant that AHCCCS medical coverage is approved.
    - ii. If a person is ineligible, the Administration shall send a notice to deny AHCCCS medical coverage.

**B.** Applicant and Member Responsibilities.

1. An applicant or a member shall authorize the Administration or its designee to obtain verification for initial eligibility or continuation of eligibility.
2. As a condition of eligibility, an applicant or a member shall:

## Arizona Health Care Cost Containment System – Administration

- a. Provide the Administration or its designee with complete and truthful information. The Administration or its designee may deny an application or discontinue eligibility if:
    - i. The applicant or member fails to provide information necessary for initial or continuing eligibility;
    - ii. The applicant or member fails to provide the Administration or its designee with written authorization or electronic authorization to permit the Administration or its designee to obtain necessary initial or continuing eligibility verification;
    - iii. The applicant or member fails to provide verification under R9-22-304 after the Administration or its designee made an effort to obtain the necessary verification but has not obtained the necessary information; or
    - iv. The applicant or member does not assist the Administration or its designee in resolving incomplete, inconsistent, or unclear information that is necessary for initial or continuing eligibility;
  - b. Cooperate with the Division of Child Support Services (DCSS) in establishing paternity and enforcing medical support obligations when requested unless good cause exists for not cooperating under 42 CFR 433.147 as of October 1, 2012, which is incorporated by reference, on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol St., NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments. The Administration or its designee shall not deny AHCCCS eligibility to an applicant who would otherwise be eligible, is a minor child, and whose parent or legal representative does not cooperate with the medical support requirements or first- and third-party liability requirements under Article 10 of this Chapter; and
  - c. Provide the information needed to pursue third party coverage for medical care, such as:
    - i. Name of policyholder,
    - ii. Policyholder's relationship to the applicant or member,
    - iii. Name and address of the insurance company, and
    - iv. Policy number.
3. A member or an applicant shall:
    - a. Send to the Administration or its designee any medical support payments received while the member is eligible that result from a medical support order;
    - b. Cooperate with the Administration or its designee regarding any issues arising as a result of Eligibility Quality Control described under A.R.S. § 36-2903.01; and
    - c. Inform the Administration or its designee of the following changes within 10 days from the date the applicant or member knows of a change:
      - i. In address;
      - ii. In the household's composition;
      - iii. In income;
      - iv. In resources, when required under the Medical Expense Deduction (MED) program;
      - v. In Arizona state residency;
      - vi. In citizenship or immigrant status;
      - vii. In first- or third-party liability that may contribute to the payment of all or a portion of the person's medical costs;
      - viii. That may affect the member's or applicant's eligibility, including a change in a woman's pregnancy status;
      - ix. Death;
      - x. Change in marital status; or
      - xi. Change in school attendance.
  4. As a condition of eligibility, an applicant or a member shall cooperate with the assignment of rights as required by R9-22-311. If the applicant or member receives medical care and services for which a first or third party is or may be liable, the applicant or member shall cooperate with the Administration or its designee in assisting, identifying and providing information to assist the Administration or its designee in pursuing any first or third party who is or may be liable to pay for medical care and services.
  5. A pregnant woman under A.R.S. § 36-2901(6)(a)(ii) is not required to provide the Administration or its designee with information regarding paternity or medical support from a father of a child born out of wedlock.
- C. Administration or its designee responsibilities at Eligibility Renewal.**
1. The Administration or its designee shall renew eligibility without requiring information from the individual if able to do so based on reliable information available to the agency, including through an electronic data match. If able to renew eligibility based on such information, the Administration or its designee shall send the member notice of:
    - a. The eligibility determination; and
    - b. The member's requirement to notify the Administration or its designee if any of the information contained in the renewal notice is inaccurate.
  2. If unable to renew eligibility, the Administration or its designee shall:
    - a. Send a pre-populated renewal form listing the information needed to renew eligibility,
    - b. Give the member 30 days from the date of the renewal form to submit the signed renewal form and the information needed,
    - c. Send the member notice of the renewal decision under R9-22-312 or R9-22-1413(B) as applicable.

**Historical Note**

Adopted effective August 30, 1982 (Supp. 82-4). Former Section R9-22-306 repealed, new Section R9-22-306 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (B), paragraphs (1) and (6) effective October 1, 1986 (Supp. 86-5). Amended subsection (B), paragraph (1) and added a new subsection (N) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsection (B) effective October 1, 1987; amended subsection (N) effective December 22, 1987 (Supp. 87-4). Amended effective April 13, 1990 (Supp. 90-2). Amended effective September 29, 1992 (Supp. 92-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective October 26, 1993 (Supp. 93-4). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999

(Supp. 99-1). New Section R9-22-306 made by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

#### **R9-22-307. Approval or Denial of Eligibility**

- A.** Approval. If the applicant meets all the eligibility requirements and conditions of eligibility of this Article, the Administration or its designee shall approve the application and provide the applicant with an approval notice. The approval notice shall contain:
1. The name of each approved applicant,
  2. The effective date of eligibility for each approved applicant,
  3. The reason and the legal citations if a member is approved for only emergency medical services, and
  4. The applicant's right to appeal the decision.
- B.** Denial. If an applicant fails to meet the eligibility requirements or conditions of eligibility of this Article, the Administration or its designee shall deny the application and provide the applicant with a denial notice. The denial notice shall contain:
1. The name of each ineligible applicant,
  2. The specific reason why the applicant is ineligible,
  3. The income and resource calculations for the applicant compared to the income or resource standards for eligibility when the reason for the denial is due to the applicant's income or resources exceeding the applicable standard,
  4. The legal citations supporting the reason for the ineligibility,
  5. The location where the applicant can review the legal citations,
  6. The date of the application being denied; and
  7. The applicant's right to appeal the decision and request a hearing.

#### **Historical Note**

Adopted effective August 30, 1982 (Supp. 82-4). Amended subsections (A) and (C), added subsection (G) and (H) effective October 1, 1983 (Supp. 83-5). Former Section R9-22-307 repealed, new Section R9-22-307 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (A) as an emergency effective December 4, 1985 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-6). Permanent amendment to subsection (A) effective February 5, 1986 (Supp. 86-1). Amended subsections (E) and (F) effective October 1, 1986 (Supp. 86-5). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsection (A) effective February 26, 1988 (Supp. 88-1). Amended effective May 30, 1989 (Supp. 89-2). Amended effective April 13, 1990 (Supp. 90-2). Amended effective September 29, 1992 (Supp. 92-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective October 26, 1993 (Supp. 93-4). Amended under an exemption from the provisions of the Administrative Procedure Act, effective October 8, 1996; filed with the Office of the Secretary of State November 6, 1996 (Supp. 96-4). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). New Section R9-22-307 made by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

#### **R9-22-308. Reinstating Eligibility**

The Administration or its designee shall reopen an application or reinstate eligibility of a member when any of the following conditions are met:

1. The denial or discontinuance of eligibility was due to an administrative error,
2. The discontinuance of eligibility was due to noncompliance with a condition of eligibility and the applicant or member complies prior to the effective date of the discontinuance,
3. The member informs the Administration or its designee of a change of circumstances prior to the effective date of the discontinuance, that would allow for continued eligibility, or
4. Following a discontinuance, the member qualifies for continuation of medical coverage pending an appeal.

#### **Historical Note**

Adopted effective August 30, 1982 (Supp. 82-4). Amended effective October 1, 1983 (Supp. 83-5). Amended by adding subsection (C) effective March 2, 1984 (Supp. 84-2). Former Section R9-22-308 repealed, new Section R9-22-308 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended effective October 1, 1986 (Supp. 86-5). Change in heading only effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended effective May 30, 1989 (Supp. 89-2). Amended effective April 13, 1990 (Supp. 90-2). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective October 26, 1993 (Supp. 93-4). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). New Section R9-22-308 made by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

#### **R9-22-309. Confidentiality and Safeguarding of Information**

The Administration or its designee shall maintain the confidentiality of an applicant or member's records and limit the release of safeguarded information under R9-22-512 and 6 A.A.C. 12, Article 1. In the event of a conflict between R9-22-512 and 6 A.A.C. 12, Article 1, R9-22-512 prevails.

#### **Historical Note**

Adopted effective August 30, 1984 (Supp. 82-4). Amended (D)(1)(d) effective October 1, 1983 (Supp. 83-5). Former Section R9-22-309 repealed, new Section R9-22-309 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended effective October 1, 1986 (Supp. 86-5). Amended subsection (F) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsections (A), (B) and (C) effective October 1, 1987 (Supp. 87-4). Amended effective May 30, 1989 (Supp. 89-2). Amended effective May 30, 1989 (Supp. 89-2). Amended effective April 13, 1990 (Supp. 90-2). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). New Section R9-22-309 made by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

#### **R9-22-310. Ineligible Person**

A person is not eligible for AHCCCS medical coverage if the person is:



1. An inmate of a public institution, or
2. Over age 64 and is residing in an Institution for Mental Disease under 42 CFR 435.1009 except as allowed in 42 USC 1396d(h) or as allowed under the Administration's Section 1115 waiver.

**Historical Note**

Adopted effective August 30, 1982 (Supp. 82-4). Amended (B)(7) and added subsections (C) and (D) effective October 1, 1983 (Supp. 83-5). Former Section R9-22-310 repealed, new Section R9-22-310 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (B) and deleted subsection (C) effective October 1, 1986 (Supp. 86-5). Amended subsection (B), paragraph (7) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsection (B) effective May 30, 1989 (Supp. 89-2). Amended effective April 13, 1990 (Supp. 90-2). Amended effective December 13, 1993 (Supp. 93-4). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). New Section R9-22-310 made by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-311. Assignment of Rights Under Operation of Law**

By operation of law and under A.R.S. § 36-2903, a person determined eligible assigns rights to the system medical benefits to which the person is entitled.

**Historical Note**

Adopted effective August 30, 1982 (Supp. 82-4). Former Section R9-22-311 repealed, new Section R9-22-311 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Change in heading only effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended effective April 13, 1990 (Supp. 90-2). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). New Section R9-22-311 made by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-312. Member Notices**

- A. Contents of notice. The Administration or its designee shall issue a notice by mail, personal delivery, or electronic means when an action is taken regarding a person's eligibility or premiums. The notice shall contain the following information:
  1. The date of the notice issued;
  2. A statement of the action being taken;
  3. The effective date of the action;
  4. The specific reason for the intended action;
  5. If eligibility is being discontinued due to income in excess of the income standards, the actual figures used in the eligibility determination and the amount by which the person exceeds income standards;
  6. If a premium is imposed or increased, the actual figures used in determining the premium amount;
  7. The specific law or regulation that supports the action, or a change in federal or state law that requires an action;
  8. An explanation of the member's rights to an appeal and continued benefits.
- B. Advance notice of changes in eligibility or premiums. "Advance notice" means a notice that is issued to a person at least 10 days before the effective date of the change. Except as

specified in subsection (C), advance notice shall be issued whenever the following adverse action is taken:

1. To discontinue or suspend or reduce eligibility or covered services; or
  2. To impose a premium or increase a person's premium.
- C. The Administration or its designee shall issue a Notice of Adverse Action to a member no later than the effective date of action if:
1. The Administration or its designee receives a request to withdraw;
  2. A person provides information that requires termination of eligibility or an increase or imposition of the premium and the person signs a clear written statement waiving advance notice;
  3. A person cannot be located and mail sent to that person has been returned as undeliverable;
  4. A person has been admitted to a public institution where the person is ineligible under R9-22-310;
  5. A person has been approved for Medicaid or CHIP in another state; or
  6. The Administration or its designee has information that confirms the death of the person.

**Historical Note**

Adopted effective August 30, 1982 (Supp. 82-4). Amended subsections (A) and (B), added subsection (D) effective October 1, 1983 (Supp. 83-5). Former Section R9-22-312 repealed, new Section R9-22-312 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (A) effective October 1, 1986 (Supp. 86-5). Change in heading only effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsection (A) effective October 1, 1987 (Supp. 87-4). Amended effective April 13, 1990 (Supp. 90-2). Amended effective September 29, 1992 (Supp. 92-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). New Section R9-22-312 made by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-313. Withdrawal of Application**

- A. An applicant may withdraw an application at any time before the Administration or its designee completes an eligibility determination by making an oral or written request for withdrawal to the Administration or its designee and stating the reason for withdrawal.
- B. If an applicant orally requests withdrawal of the application, the Administration or its designee shall document the:
  1. Date of the request,
  2. Name of the applicant for whom the withdrawal applies, and
  3. Reason for the withdrawal.
- C. An applicant may withdraw an application in writing by:
  1. Completing an Administration-approved voluntary withdrawal form; or
  2. Submitting a written, signed, and dated request to withdraw the application.
- D. The effective date of the withdrawal is the date of the application.
- E. If an applicant requests to withdraw an application, the Administration or its designee shall:
  1. Deny the application, and
  2. Notify the applicant of the denial following the notice requirements under R9-22-307.

**Historical Note**

Adopted effective August 30, 1982 (Supp. 82-4).  
 Amended effective October 1, 1983 (Supp. 83-5).  
 Amended subsections (C) and (D) as an emergency effective May 18, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Amended subsections (D) and (E) as an emergency effective August 16, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-4). Emergency expired. Former Section R9-22-313 repealed, new Section R9-22-313 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended effective October 1, 1986 (Supp. 86-5). Amended subsections (B), (C), (E) and (G) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsections (B) and (C) effective December 22, 1987 (Supp. 87-4). Amended effective May 30, 1989 (Supp. 89-2). Amended effective April 13, 1990 (Supp. 90-2). Amended effective September 29, 1992 (Supp. 92-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective October 26, 1993 (Supp. 93-4). Amended effective December 13, 1993 (Supp. 93-4). Amended under an exemption from the provisions of the Administrative Procedure Act, effective October 8, 1996; filed with the Office of the Secretary of State November 6, 1996 (Supp. 96-4). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). New Section R9-22-313 made by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-314. Withdrawal from AHCCCS Medical Coverage**

- A.** A member may withdraw from AHCCCS medical coverage at any time by giving oral or written notice of withdrawal to the Administration or its designee. The member or the member's legal or authorized representative shall provide the Administration or its designee with:
  1. The reason for the withdrawal,
  2. The date the notice is effective, and
  3. The name of the member for whom AHCCCS medical coverage is being withdrawn.
- B.** If a notice of withdrawal does not identify specific members the Administration or its designee shall discontinue eligibility for any members that the person submitting the withdrawal has legal authority to act on behalf of.
- C.** The Administration or its designee shall notify the member of the discontinuance as required by R9-22-312.

**Historical Note**

Adopted effective August 30, 1982 (Supp. 82-4).  
 Amended subsection (A) and added subsection (F) as an emergency effective February 28, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1).  
 Amended subsection (A) and added subsection (F) as a permanent rule effective May 16, 1983; text of the amended rule identical to the emergency (Supp. 83-3).  
 Former Section R9-22-314 repealed, new Section R9-22-314 adopted effective November 20, 1984 (Supp. 84-6).  
 Amended effective October 1, 1985 (Supp. 85-5).  
 Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended effective May 30, 1989 (Supp. 89-2). Amended effective September 29, 1992 (Supp. 92-3). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). New Section R9-22-314 made by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-315. Notice of Adverse Action**

- A.** Adverse actions. An applicant or member may appeal, as described under Chapter 34, by requesting a hearing from the Administration or its designee concerning any of the following adverse actions:
  1. Complete or partial denial of eligibility under R9-22-307 and R9-22-313(E);
  2. Suspension, termination, or reduction of AHCCCS medical coverage under R9-22-307, R9-22-312 and R9-22-314;
  3. Delay in the eligibility determination beyond the timeframes under this Article;
  4. The imposition of or increase in a premium or copayment; or
  5. The effective date of eligibility.
- B.** Notice of Adverse Action. The Administration or its designee shall personally deliver or send, by mail, or electronic means a Notice of Adverse Action to the person affected by the action. For the purpose of this Section, the date of the Notice of Adverse Action shall be the date of personal delivery to the applicant or the postmark date, if mailed.
- C.** Automatic change and hearing rights.
  1. An applicant or a member is not entitled to a hearing if the sole issue is a federal or state law requiring an automatic change adversely affecting some or all recipients.
  2. An applicant or a member is entitled to a hearing if a federal or state law requires an automatic change and the applicant or member timely files an appeal that alleges a misapplication of the facts to the law.

**Historical Note**

Adopted effective August 30, 1982 (Supp. 82-4). Former Section R9-22-315 repealed, new Section R9-22-315 adopted effective November 20, 1984 (Supp. 84-6). Repealed effective October 1, 1985 (Supp. 85-5). New Section R9-22-315 adopted effective February 5, 1986 (Supp. 86-1). Amended effective February 26, 1988 (Supp. 88-1). Amended effective April 13, 1990 (Supp. 90-2). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). New Section R9-22-315 made by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-316. Exemptions from Sponsor Deemed Income**

- A.** An applicant shall provide proof to the Administration or its designee when claiming an exemption from sponsor deemed income.
- B.** The Administration or its designee shall grant an exemption from deeming a sponsor's income for a Lawful Permanent Resident applicant if the applicant:
  1. Adjusted immigration status to Lawful Permanent Resident from status as a refugee or asylee;
  2. Is the spouse or dependent child of the sponsor and lives with the sponsor;
  3. Is indigent as specified in subsection (C);
  4. Is a victim of domestic violence or extreme cruelty as specified in subsection (D); or
  5. Has acquired 40 qualified quarters of work credit based on earnings as specified in subsection (E).
- C.** Exemption from sponsor deeming based on indigence.
  1. The Administration or its designee shall consider the applicant indigent and grant an exemption from sponsor deemed income for an applicant, for a period of 12 months beginning with the first month of eligibility if all the following are met:

- a. An applicant is indigent if all of the following are met:
    - i. The applicant does not reside with the applicant's sponsor;
    - ii. The applicant does not receive free room and board; and
    - iii. The applicant's total gross income including monies received from the sponsor and the value of any vendor payments received for food, utilities, or shelter does not exceed 100% of the FPL for the size of the income group.
  2. The Administration or its designee shall send a notice under 8 U.S.C. 1631(e)(2) to the Attorney General's Office when approving an applicant who is exempt from sponsor deemed income due to indigence.
- D.** The Administration or its designee shall grant an exemption from sponsor deemed income for an applicant who is a victim of domestic violence or extreme cruelty under 8 CFR 204.2 for a period of 12 months beginning with the first month of eligibility. The Administration or its designee shall redetermine the exemption status at each renewal.
1. The Administration or its designee considers an applicant to be a victim of domestic violence or extreme cruelty when all of the following are met:
    - a. The applicant is the victim, the parent of a child victim, or the child of a parent victim;
    - b. The perpetrator of the domestic violence or extreme cruelty was the spouse or parent of the victim or other family member related by blood, marriage or adoption to the victim;
    - c. The perpetrator was residing in the same household as the victim when the abuse occurred;
    - d. The abuse occurred in the United States;
    - e. The applicant did not participate in the domestic violence or cruelty; and
    - f. The victim does not currently live with the perpetrator.
  2. The applicant shall provide proof that the applicant or the applicant's child is a victim of domestic violence or extreme cruelty by presenting one of the following:
    - a. USCIS form I-360 Petition for Amerasian, Widow, or Special Immigrant;
    - b. USCIS form I-797 USCIS approval of the I-360 petition;
    - c. Reports or affidavits concerning the domestic violence or cruelty documented by police, judges, or other court officials, medical personnel, school officials, clergy, social workers, counseling or mental health personnel, or other social service agency personnel;
    - d. Legal documentation, such as an order of protection against the perpetrator or an order convicting the perpetrator of committing an act of domestic violence or extreme cruelty that chronicles the existence of domestic violence or extreme cruelty;
    - e. Evidence that indicates that the applicant sought safe haven in a battered women's shelter or similar refuge because of the domestic violence or extreme cruelty against the applicant or the applicant's child; or
    - f. Photographs of the applicant or applicant's child showing visible injury.
- E.** The Administration or its designee shall grant an exemption from sponsor deemed income for an applicant who has reached 40 qualifying quarters of work credit.
1. The Administration or its designee shall not count quarters credited after January 1, 1997 that were earned while

the applicant was receiving any federal means-tested benefits.

2. The Administration or its designee shall not count the 40 qualifying quarters of work credit unless the credited quarters are:
  - a. Quarters that the applicant worked;
  - b. Quarters worked by the applicant's spouse or deceased spouse during their marriage; or
  - c. Quarters worked by the applicant's parents when the applicant was under age 18.

#### Historical Note

Adopted effective August 30, 1982 (Supp. 82-4). Former

Section R9-22-316 repealed, new Section R9-22-316 adopted as an emergency effective February 9, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Former Section R9-22-316 repealed, new Section R9-22-316 adopted as a permanent rule effective May 16, 1983; text of permanent rule identical to the emergency (Supp. 83-3). Amended effective October 1, 1983 (Supp. 83-5). Correction subsection (A), paragraph (1) amended effective October 1, 1983, (Supp. 83-6). Amended as an emergency effective May 18, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Amended as an emergency effective August 16, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-4). Emergency expired. Former Section R9-22-316 repealed, new Section R9-22-316 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (C) effective October 1986 (Supp. 86-5). Change in heading only effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended effective April 13, 1990 (Supp. 90-2). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). New Section R9-22-316 made by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

#### R9-22-317. Sponsor Deemed Income

- A.** The Administration or its designee shall use income of a USCIS sponsor to determine eligibility for a non-citizen applicant, whether or not the income is available, to the non-citizen applicant unless exempt under R9-22-316.
- B.** Counting the income from a sponsor.
1. This Section applies to non-citizen applicants who:
    - a. Are Lawful Permanent Residents under 8 CFR 101.3;
    - b. Applied for Lawful Permanent Resident Status on or after December 19, 1997;
    - c. Are sponsored by an individual who signed a USCIS I-864 Affidavit of Support; and
    - d. Are eligible for full AHCCCS medical coverage.
  2. Sponsor deemed income shall be considered the income of the non-citizen applicant only.
  3. The Administration or its designee shall not use the provisions of this Section when:
    - a. The applicant becomes a naturalized U.S. citizen;
    - b. The applicant qualifies for an exemption listed in R9-22-316; or
    - c. The sponsor dies.
- C.** Determining income from a sponsor.
1. For an applicant who is exempt from sponsor deeming under R9-22-316, only cash contributions actually received from the sponsor are countable income to the applicant.

2. For an applicant to whom the sponsor's income is deemed, the Administration or its designee shall exclude any cash contributions received from the sponsor.

**D. Calculation of income from a sponsor.**

1. The Administration or its designee shall include the total gross income of the sponsor and the sponsor's spouse, when living with the sponsor;
2. The Administration or its designee shall subtract an amount equal to 100% of the FPL for the sponsor's household size from the total gross income under (D)(1); and
3. The amount calculated under subsection (D)(2) is deemed as income to the applicant for purposes of determining eligibility.

**Historical Note**

Adopted effective August 30, 1982 (Supp. 82-4). Former Section R9-22-317 repealed, new Section R9-22-317 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1986 (Supp. 86-5). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). New Section R9-22-317 made by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-318. Repealed**

**Historical Note**

Adopted effective August 30, 1982 (Supp. 82-4). Amended effective October 1, 1983 (Supp. 83-5). Amended as an emergency effective May 18, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Amended as an emergency effective August 16, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-4). Emergency expired. Former Section R9-22-318 repealed, new Section R9-22-318 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (A) and added subsection (C) effective October 1, 1986 (Supp. 86-5). Amended subsection (A) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsection (B) effective October 1, 1987; amended subsection (A) effective December 22, 1987 (Supp. 87-4). Amended effective May 30, 1989 (Supp. 89-2). Amended effective April 13, 1990 (Supp. 90-2). Amended effective September 29, 1992 (Supp. 92-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Amended effective December 13, 1993 (Supp. 93-4). Amended under an exemption from the provisions of the Administrative Procedure Act, effective October 8, 1996; filed with the Office of the Secretary of State November 6, 1996 (Supp. 96-4). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

**R9-22-319. Repealed**

**Historical Note**

Adopted effective August 30, 1982 (Supp. 82-4). Amended as an emergency effective May 18, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Amended as an emergency effective August 16, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-4). Emergency expired. Former Section R9-22-319 repealed, new Section R9-22-319 adopted effective November 20, 1984 (Supp. 84-6). Amended effective May 30, 1989 (Supp. 89-2). Amended effective December 13, 1993 (Supp. 93-4). Section repealed by

final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

**R9-22-320. Repealed**

**Historical Note**

Adopted effective August 30, 1982 (Supp. 82-4). Former Section R9-22-320 repealed, new Section R9-22-320 adopted effective November 20, 1984 (Supp. 84-6). Amended effective April 13, 1990 (Supp. 90-2). Repealed effective December 13, 1993 (Supp. 93-4).

**R9-22-321. Repealed**

**Historical Note**

Adopted effective August 30, 1982 (Supp. 82-4). Former Section R9-22-321 repealed, new Section R9-22-321 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended subsections (B) through (E) effective October 1, 1986 (Supp. 86-5). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended effective October 1, 1987 (Supp. 87-4). Amended subsections (B) and (D) effective May 30, 1989 (Supp. 89-2). Amended effective April 13, 1990 (Supp. 90-2). Amended effective September 29, 1992 (Supp. 92-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Amended December 13, 1993 (Supp. 93-4). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

**R9-22-322. Repealed**

**Historical Note**

Adopted effective August 30, 1982 (Supp. 82-4). Amended as an emergency effective May 27, 1983 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-3). Former Section R9-22-322 repealed, new Section R9-22-322 adopted effective October 1, 1983 (Supp. 83-5). Amended as an emergency effective May 18, 1984 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Amended as an emergency effective August 16, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-4). Emergency expired. Former Section R9-22-322 repealed, new Section R9-22-322 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Change in heading only effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended effective September 29, 1992 (Supp. 92-3). Amended December 13, 1993 (Supp. 93-4). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

**R9-22-323. Repealed**

**Historical Note**

Adopted effective August 30, 1982 (Supp. 82-4). Former Section R9-22-323 repealed, new Section R9-22-323 adopted effective October 1, 1983 (Supp. 83-5). Amended as an emergency effective May 18, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Amended as an emergency effective August 16, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-4). Emergency expired. Former Section R9-22-323 repealed, new Section R9-22-323 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended subsections (B) through (D) effective October 1, 1986 (Supp. 86-5). Amended subsections (A), (B) and (D) effective January

1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsections (B), (D) and (E) effective October 1, 1987 (Supp. 87-4). Amended subsections (B) and (D) effective May 30, 1989 (Supp. 89-2). Amended effective April 13, 1990 (Supp. 90-2). Amended effective September 29, 1992 (Supp. 92-3). Amended effective December 13, 1993 (Supp. 93-4). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

#### **R9-22-324. Repealed**

##### **Historical Note**

Adopted as an emergency effective July 27, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-4). Former Section R9-22-324 adopted as an emergency renumbered as Section R9-22-327. New Section R9-22-324 adopted effective October 1, 1983 (Supp. 83-5). Former Section R9-22-324 repealed, former Section R9-22-323 renumbered as Section R9-22-324 and adopted as an emergency effective May 18, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Former Section R9-22-324 repealed, new Section R9-22-324 adopted as an emergency effective August 16, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-4). Emergency expired. Former Section R9-22-324 repealed, new Section R9-22-324 adopted effective November 20, 1984 (Supp. 84-6). Change in heading only effective October 1, 1987 (Supp. 87-4). Amended effective May 30, 1989 (Supp. 89-2). Amended effective April 13, 1990 (Supp. 90-2). Amended effective September 29, 1992 (Supp. 92-3). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

#### **R9-22-325. Repealed**

##### **Historical Note**

Adopted effective October 1, 1983 (Supp. 83-5). Former Section R9-22-325 repealed, new Section R9-22-325 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1987 (Supp. 87-4). Amended effective December 13, 1993 (Supp. 93-4). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

#### **R9-22-326. Repealed**

##### **Historical Note**

Adopted effective October 1, 1983 (Supp. 83-5). Former Section R9-22-326 repealed, new Section R9-22-326 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (A) effective October 1, 1986 (Supp. 86-5). Amended subsection (A) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Change in heading only effective October 1, 1987 (Supp. 87-4). Amended subsection (A) effective May 30, 1989 (Supp. 89-2). Amended effective December 13, 1993 (Supp. 93-4). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

#### **R9-22-327. Repealed**

##### **Historical Note**

Former Section R9-22-324 adopted as an emergency effective July 27, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days renumbered as Section R9-22-327 and adopted as a permanent rule effective October 1, 1983 (Supp. 83-5). Former Section R9-22-327 repealed, new Section R9-22-327 adopted effective November 20,

1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended subsections (A), (D), (E), (G), (H), and (I) effective October 1, 1986 (Supp. 86-5). Amended subsection (D) and added a new subsection (J) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsections (A) and (E) effective October 1, 1987 (Supp. 87-4). Amended effective May 30, 1989 (Supp. 89-2). Amended effective April 13, 1990 (Supp. 90-2). Amended effective September 29, 1992 (Supp. 92-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

#### **R9-22-328. Repealed**

##### **Historical Note**

Adopted as an emergency effective October 6, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-5). Emergency Expired. New Section R9-22-328 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended subsections (A) and (E) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsection (D) effective October 1, 1987 (Supp. 87-4). Amended subsection (D) effective May 30, 1989 (Supp. 89-2). Amended effective April 13, 1990 (Supp. 90-2). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

#### **R9-22-329. Repealed**

##### **Historical Note**

Adopted as an emergency effective May 18, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Adopted as an emergency effective August 16, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-4). Emergency expired. New Section R9-22-329 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (B) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

#### **R9-22-330. Repealed**

##### **Historical Note**

Adopted as an emergency effective August 16, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-4). Emergency expired. New Section R9-22-330 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (A) effective October 1, 1986 (Supp. 86-5). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsection (A) effective October 1, 1987 (Supp. 87-4). Amended subsection (A) effective May 30, 1989 (Supp. 89-2). Amended effective April 13, 1990 (Supp. 90-2). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

#### **R9-22-331. Repealed**

##### **Historical Note**

Adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1 1985 (Supp. 85-5). Amended effective October 1, 1986 (Supp. 86-5). Amended effective January 1, 1987, filed December 31,

1986 (Supp. 86-6). Amended effective October 1, 1987 (Supp. 87-4). Amended effective December 13, 1993 (Supp. 93-4). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

**R9-22-332. Repealed****Historical Note**

Adopted effective November 20, 1984 (Supp. 84-6).  
Amended effective October 1, 1985 (Supp. 85-5).  
Amended effective April 13, 1990 (Supp. 90-2).  
Amended effective September 29, 1992 (Supp. 92-3).  
Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

**R9-22-333. Repealed****Historical Note**

Adopted effective November 20, 1984 (Supp. 84-6).  
Amended effective October 1, 1985 (Supp. 85-5).  
Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

**R9-22-334. Repealed****Historical Note**

Adopted effective November 20, 1984 (Supp. 84-6).  
Amended effective October 1, 1985 (Supp. 85-5).  
Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended effective December 13, 1993 (Supp. 93-4). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

**R9-22-335. Repealed****Historical Note**

Adopted effective November 20, 1984 (Supp. 84-6).  
Amended effective October 1, 1985 (Supp. 85-5).  
Amended by adding subsection (C) effective October 1, 1986 (Supp. 86-5). Amended subsection (B) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6).  
Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

**R9-22-336. Repealed****Historical Note**

Adopted effective November 20, 1984 (Supp. 84-6).  
Amended effective October 1, 1985 (Supp. 85-5).  
Amended by adding subsection (C) effective September 16, 1987 (Supp. 87-3). Amended subsection (A) effective October 1, 1987 (Supp. 87-4). Amended effective April 13, 1990 (Supp. 90-2). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

**R9-22-337. Repealed****Historical Note**

Adopted effective November 20, 1984 (Supp. 84-6).  
Amended effective October 1, 1985 (Supp. 85-5).  
Amended effective October 1, 1986 (Supp. 86-5).  
Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Correction to subsection (B), paragraph (1) (Supp. 87-3). Amended subsection (C) effective December 22, 1987 (Supp. 87-4). Amended subsection (C) effective December 22, 1987 (Supp. 87-4). Amended effective April 13, 1990 (Supp. 90-2). Section repealed

by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

**R9-22-338. Repealed****Historical Note**

Adopted effective November 20, 1984 (Supp. 84-6).  
Heading changed effective October 1, 1985 (Supp. 85-5).  
Change in heading only effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

**R9-22-339. Repealed****Historical Note**

Adopted effective October 1, 1985 (Supp. 85-5).  
Amended effective October 1, 1986 (Supp. 86-5).  
Amended subsection (B) effective October 1, 1987 (Supp. 87-4). Amended effective January 14, 1997 (Supp. 97-1). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

**R9-22-340. Repealed****Historical Note**

Adopted effective October 1, 1986 (Supp. 86-5). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

**R9-22-341. Repealed****Historical Note**

Adopted effective March 1, 1987, filed December 31, 1986 (Supp. 86-6). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

**R9-22-342. Repealed****Historical Note**

Adopted effective September 29, 1992 (Supp. 92-3).  
Amended effective September 22, 1997 (Supp. 97-3).  
Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

**R9-22-343. Repealed****Historical Note**

Adopted under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective October 26, 1993 (Supp. 93-4). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

**R9-22-344. Repealed****Historical Note**

Adopted under an exemption from the provisions of the Administrative Procedure Act, effective October 8, 1996; filed with the Office of the Secretary of State November 6, 1996 (Supp. 96-4). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1).

**ARTICLE 4. REPEALED****R9-22-401. Repealed****Historical Note**

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-401 adopted as an emergency now adopted as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective January 31, 1986

(Supp. 86-1). Amended effective January 31, 1997 (Supp. 97-1). Amended by final rulemaking at 5 A.A.R. 867, effective March 4, 1999 (Supp. 99-1). Section repealed by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1).

#### **R9-22-402. Repealed**

##### **Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-402 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective January 31, 1986 (Supp. 86-1). Amended effective January 14, 1997 (Supp. 97-1). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Section repealed by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1).

#### **R9-22-403. Repealed**

##### **Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-403 adopted as an emergency now adopted as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective January 31, 1986 (Supp. 86-1). Amended by adding subsection (C) effective October 1, 1987 (Supp. 87-4). Amended effective January 14, 1997 (Supp. 97-1). Section repealed by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1).

#### **R9-22-404. Repealed**

##### **Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-404 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective January 31, 1986 (Supp. 86-1). Amended effective January 14, 1997 (Supp. 97-1). Section repealed by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1).

#### **R9-22-405. Repealed**

##### **Historical Note**

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-405 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended as an emergency effective February 23, 1983 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Amended as a permanent rule effective May 16, 1983; text of the amended rule similar to the emergency (Supp. 83-3). Amended effective January 31, 1986 (Supp. 86-1). Amended effective January 14, 1997 (Supp. 97-1). Section repealed by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1).

#### **R9-22-406. Repealed**

##### **Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-406 adopted as an emergency now adopted and amended as a permanent rule effective

August 30, 1982 (Supp. 82-4). Former Section R9-22-406 repealed, new Section R9-22-406 adopted as an emergency effective February 23, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Former Section R9-22-316 repealed, new Section R9-22-316 adopted as a permanent rule effective May 16, 1983; text of the Section identical to the emergency (Supp. 83-3). Amended effective January 31, 1986 (Supp. 86-1). Amended effective January 14, 1997 (Supp. 97-1). Section repealed by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1).

### **ARTICLE 5. GENERAL PROVISIONS AND STANDARDS**

#### **R9-22-501. General Provisions and Standards – Related Definitions**

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

“Quality management” means a process used by professional health personnel through a formal program involving multiple organizational components and committees to:

Assess the degree to which services provided conform to desired medical standards and practices; and

Quality improvement or maintenance of care and services.

“Quality Improvement” means a process designed to achieve, through ongoing measurements and intervention, significant improvement that is sustained over time, in the areas of clinical care and non-clinical care and is expected to have a favorable effect on health outcomes and member satisfaction. Quality Improvement includes focusing organizational efforts on improving performance and utilizing data to develop intervention strategies to improve performance and outcomes.

“Utilization management/review” means a methodology used by professional health personnel to assess the medical indications, appropriateness, and efficiency of care provided. Utilization management applies to a contractor’s process to evaluate and approve or deny the medical necessity, appropriateness, efficacy and efficiency of health care services, procedures, or settings. Utilization review includes processes for prior authorization, concurrent review, retrospective review, and case management.

##### **Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-501 adopted as an emergency now adopted as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-501 repealed, former Section R9-22-502 renumbered and adopted without change as Section R9-22-501 effective October 1, 1983 (Supp. 83-5). Former Section R9-22-501 repealed, former Section R9-22-526 renumbered and amended as Section R9-22-501 effective October 1, 1985 (Supp. 85-5). Amended effective December 8, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4277, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 4330, effective January 3, 2009 (Supp. 08-4).

#### **R9-22-502. Pre-existing Conditions**

- A. A contractor shall not impose a pre-existing condition exclusion with respect to covered services.
- B. A contractor or subcontractor shall not adopt or use any procedure to identify a person who has an existing or anticipated medical or psychiatric condition in order to discourage or

exclude the person from enrolling in the contractor's health plan or encourage the person to enroll in another health plan.

#### Historical Note

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-502 adopted as an emergency now adopted as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-502 renumbered without change as Section R9-22-501, former Section R9-22-503 renumbered and amended as Section R9-22-502 effective October 1, 1983 (Supp. 83-5). Former Section R9-22-502 repealed, new Section R9-22-502 adopted effective October 1, 1985 (Supp. 85-5). Amended effective December 8, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4277, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 4330, effective January 3, 2009 (Supp. 08-4). Amended by final rulemaking at 19 A.A.R. 3309, effective November 30, 2013 (Supp. 13-4).

#### R9-22-503. Provider Requirements Regarding Records

The provider shall maintain records that meet uniform accounting standards and generally accepted practices for maintenance of medical records, including detailed specification of all patient services delivered, the rationale for delivery, and the service date. A provider shall maintain and upon request, make available to a contractor and to the Administration, financial and medical records relating to payment for not less than five years from the date of final payment, or for records relating to costs and expenses to which the Administration has taken exception, five years after the date of final disposition or resolution of the exception. Providers shall provide one copy of a medical record at no cost if requested by the member.

#### Historical Note

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-503 adopted as an emergency now adopted as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-503 renumbered and amended as Section R9-22-502, new Section R9-22-503 adopted effective October 1, 1983 (Supp. 83-5). Amended effective October 1, 1985 (Supp. 85-5). Amended effective May 30, 1986 (Supp. 86-3). Amended subsection (D) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsections (F) and (G) effective December 22, 1987 (Supp. 87-4). Amended subsection (I) effective May 30, 1989 (Supp. 89-2). Amended effective April 13, 1990 (Supp. 90-2). Amended effective September 29, 1992 (Supp. 92-3). Amended effective December 8, 1997 (Supp. 97-4). Section repealed by final rulemaking at 8 A.A.R. 3317, effective July 15, 2002 (Supp. 02-3). New Section made by final rulemaking at 11 A.A.R. 4277, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 4330, effective January 3, 2009 (Supp. 08-4).

#### R9-22-504. Marketing; Prohibition Against Inducements; Misrepresentations; Discrimination; Sanctions

A. A contractor or the contractor's marketing representative shall not offer or give any form of compensation or reward, or engage in any behavior or activity that may be reasonably construed as coercive, to induce or procure AHCCCS enrollment with the contractor. Any marketing solicitation offering a benefit, good, or service in excess of the covered services in Article 2 is deemed an inducement.

B. A marketing representative shall not misrepresent itself, the contracting health plan represented, or the AHCCCS program, through false advertising, false statements, or in any other manner to induce a member of another contractor to enroll in the represented health plan. Violations of this subsection include, but are not limited to, false or misleading claims, inferences, or representations such as:

1. A member will lose benefits under the AHCCCS program or lose any other health or welfare benefits to which a member is legally entitled, if the member does not enroll in the represented contracting health plan;
2. Marketing representatives are employees of the state or representatives of the Administration, a county, or any health plan other than the health plan by which they are employed, or by which they are reimbursed; and
3. The represented health plan is recommended or endorsed as superior to its competition by any state or county agency, or any organization, unless the organization has certified its endorsement in writing to the health plan and the Administration.

C. A marketing representative shall not engage in any marketing or pre-enrollment practice that discriminates against a member because of race, creed, age, color, sex, religion, national origin, ancestry, marital status, sexual preference, physical or mental disability, or health status.

D. The Administration shall hold a contractor responsible for a violation of this Section resulting from the performance of any marketing representative, subcontractor, agent, program, or process under the contractor's employ or direction and shall impose contract sanctions on the contractor as specified in contract.

E. A contractor shall produce and distribute informational materials that are approved by the Administration to each enrolled member or designated representative after the contractor receives notification of enrollment from the Administration. The contractor shall ensure that the informational materials include, at a minimum:

1. A description of all covered services as specified in contract;
2. An explanation of service limitations and exclusions;
3. An explanation of the procedure for obtaining services;
4. An explanation of the procedure for obtaining emergency services;
5. An explanation of the procedure for filing a grievance and appeal; and
6. An explanation of when plan changes may occur as specified in contract.

#### Historical Note

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-504 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-504 repealed, former Section R9-22-505 renumbered and adopted without change as Section R9-22-504 effective October 1, 1983 (Supp. 83-5). Former Section R9-22-504 repealed, former Section R9-22-528 renumbered and amended as Section R9-22-504 effective October 1, 1985 (Supp. 85-5). Amended effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 11 A.A.R. 4277, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 4330, effective January 3, 2009 (Supp. 08-4).



**R9-22-505. Standards, Licensure, and Certification for Providers of Hospital and Medical Services**

A provider shall not provide hospital or medical services to a member unless the provider is licensed by the Arizona Department of Health Services and meets the requirements in 42 CFR 441 and 482, as of October 1, 2007, and 42 CFR 456 Subpart C, as of October 1, 2007, incorporated by reference, on file with the Administration and available from the U.S. Government Printing Office, 732 N. Capitol St., N.W., Washington, D.C. 20401. This incorporation contains no future editions or amendments. An Indian Health Service (IHS) hospital and a Veterans Administration hospital shall not provide services to a member unless accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO).

**Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-505 adopted as an emergency expired, former Section R9-22-506 adopted as an emergency now adopted, amended and renumbered as Section R9-22-505 as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-505 renumbered without change as Section R9-22-504, new Section R9-22-505 adopted effective October 1, 1983 (Supp. 83-5). Former Section R9-22-505 renumbered and amended as Section R9-22-509, former Section R9-22-527 renumbered and amended as Section R9-22-505 effective October 1, 1985 (Supp. 85-5). Editorial correction, spelling of “paraphernalia” in subsection (A) (Supp. 87-4). Amended effective December 8, 1997 (Supp. 97-4). Section repealed by final rulemaking at 11 A.A.R. 4277, effective December 5, 2005 (Supp. 05-4). New Section made by final rulemaking at 14 A.A.R. 4330, effective January 3, 2009 (Supp. 08-4).

**R9-22-506. Repealed****Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-506 adopted as an emergency adopted, amended and renumbered as Section R9-22-505, former Section R9-22-507 adopted as an emergency now adopted, amended and renumbered as Section R9-22-506 as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-506 repealed, new Section R9-22-506 adopted effective October 1, 1983 (Supp. 83-5). Former Section R9-22-506 repealed, new Section R9-22-506 adopted effective October 1, 1985 (Supp. 85-5). Amended effective October 1, 1986 (Supp. 86-5). Amended subsection (D) effective December 22, 1987 (Supp. 87-4). Repealed effective April 13, 1990 (Supp. 90-2). New Section adopted effective December 13, 1993 (Supp. 93-4). Repealed effective December 8, 1997 (Supp. 97-4).

**R9-22-507. Repealed****Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-507 adopted as an emergency adopted, amended and renumbered as Section R9-22-506, former Section R9-22-508 adopted as an emergency now adopted, amended and renumbered as Section R9-22-507 as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-507 repealed, new Section R9-22-507 adopted effective October 1, 1985 (Supp. 85-5).

Amended effective December 8, 1997 (Supp. 97-4). Section repealed by final rulemaking at 11 A.A.R. 4277, effective December 5, 2005 (Supp. 05-4).

**R9-22-508. Repealed****Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-508 adopted as an emergency adopted, amended and renumbered as Section R9-22-507, former Section R9-22-509 adopted as an emergency now adopted, amended and renumbered as Section R9-22-508 as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective December 8, 1997 (Supp. 97-4). Section repealed by final rulemaking at 11 A.A.R. 4277, effective December 5, 2005 (Supp. 05-4).

**R9-22-509. Transition and Coordination of Member Care**

- A. A contractor shall assist in the transition of members to and from other AHCCCS contractors.
  1. Both the receiving and relinquishing contractor shall:
    - a. Coordinate with the other contractor to facilitate and schedule appointments for medically necessary services for the transitioned member within the Administration’s timelines specified in the contract. If requested by the Administration, a contractor shall submit the policies and procedures regarding transition of members to the Administration for review and approval;
    - b. Assist in the referral of transitioned members to other community health agencies or county medical assistance programs for medically necessary services not covered by the Administration, as appropriate; and
    - c. Develop policies and procedures to be followed when transitioning members who have significant medical conditions; are receiving ongoing services; or have, at the time of the transition, received prior authorization or approval for undelivered, specific services.
  2. The relinquishing contractor shall notify the receiving contractor of relevant information about the member’s medical condition and current treatment regimens within the timelines defined in contract;
  3. The relinquishing contractor shall forward medical records and other relevant materials to the receiving contractor. The relinquishing contractor shall bear the cost of reproducing and forwarding medical records and other relevant materials;
  4. Within the timelines specified in contract, the receiving contractor shall ensure that the member selects or is assigned to a primary care provider, and provide the member with:
    - a. Information regarding the contractor’s providers,
    - b. Emergency numbers, and
    - c. Instructions about how to obtain services.
- B. A contractor shall not use a county or noncontracting provider health resource alternative to diminish the contractor’s contractual responsibility or accountability for providing the full scope of covered services. The Administration may impose sanctions as described in contract if a contractor makes referrals to other agencies or programs to reduce expenses incurred by the contractor on behalf of its members.

**Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-

3). Former Section R9-22-509 adopted as an emergency adopted, amended and renumbered as Section R9-22-508, former Section R9-22-510 adopted as an emergency now adopted and renumbered as Section R9-22-509 as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-509 repealed, former Section R9-22-505 renumbered and amended as Section R9-22-509 effective October 1, 1985 (Supp. 85-5). Amended effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 11 A.A.R. 4277, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 4330, effective January 3, 2009 (Supp. 08-4).

#### **R9-22-510. Repealed**

##### **Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-510 adopted as an emergency adopted and renumbered as Section R9-22-509, former Section R9-22-511 adopted as an emergency now adopted, amended and renumbered as Section R9-22-510 as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-510 repealed, new Section R9-22-510 adopted effective October 1, 1985 (Supp. 85-5). Amended effective December 8, 1997 (Supp. 97-4). Section repealed by final rulemaking at 11 A.A.R. 4277, effective December 5, 2005 (Supp. 05-4).

#### **R9-22-511. Repealed**

##### **Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-511 adopted as an emergency adopted, amended and renumbered as Section R9-22-510, former Section R9-22-512 adopted as an emergency now adopted, amended and renumbered as Section R9-22-511 as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-511 repealed, new Section R9-22-511 adopted effective October 1, 1985 (Supp. 85-5). Amended effective December 8, 1997 (Supp. 97-4). Section repealed by final rulemaking at 11 A.A.R. 4277, effective December 5, 2005 (Supp. 05-4).

#### **R9-22-512. Release of Safeguarded Information**

- A.** The Administration, contractors, providers, and noncontracting providers shall limit the release of safeguarded information to persons or agencies for the following purposes in accordance with 45 CFR 160 and 45 CFR 164, October 1, 2004, and 42 CFR 431.300 through 431.307, October 1, 2004, incorporated by reference, on file with the Administration and available from the U.S. Government Printing Office, 732 N. Capitol St., N.W., Washington, D.C. 20401. This incorporation by reference contains no future editions or amendments:
1. Official purposes directly related to the administration of the AHCCCS program including:
    - a. Establishing eligibility and post-eligibility treatment of income, as applicable;
    - b. Determining the amount of medical assistance;
    - c. Providing services for members;
    - d. Performing evaluations and analysis of AHCCCS operations;
    - e. Filing liens on property as applicable;
    - f. Filing claims on estates, as applicable; and
    - g. Filing, negotiating, and settling medical liens and claims.
  2. Law enforcement. The Administration may release safeguarded information without the applicant's or member's

written or verbal consent, for the purpose of conducting or assisting an investigation, prosecution, or criminal or civil proceeding related to the administration of the AHCCCS program.

3. The Administration may release safeguarded member information to a review committee in accordance with the provisions of A.R.S. § 36-2917, without the consent of the applicant or member.
- B.** Except as provided in subsection (A), the Administration, contractors, providers, and noncontracting providers shall disclose safeguarded information only to:
1. An applicant;
  2. A member;
  3. An unemancipated minor, with written permission of a parent, custodial relative, or designated representative, if:
    - a. An Administration employee, authorized representative, or responsible caseworker is present during the examination of the safeguarded information; or
    - b. After written notification to the provider, and at a reasonable time and place.
  4. Persons authorized by the applicant or member; or
  5. A court order or subpoena compliant with 45 CFR 164.512(e), October 1, 2004, incorporated by reference, on file with the Administration and available from the U.S. Government Printing Office, 732 N. Capitol St., N.W., Washington, D.C. 20401. This incorporation by reference contains no future editions or amendments.
- C.** The Administration, contractors, providers, and noncontracting providers shall safeguard identifiable information, protected health information as specified in 45 CFR 160, and information obtained in the course of application for or re-determination of eligibility concerning an applicant or member, that includes, but is not limited to the following:
1. Name and address;
  2. Social Security number;
  3. Social and economic conditions or circumstances;
  4. Agency evaluation of personal information;
  5. Medical data and information concerning medical services received, including diagnosis and history of disease or disability;
  6. State Data Exchange (SDX) tapes, and other types of information received from outside sources for the purpose of verifying income eligibility and amount of medical assistance payments; and
  7. Any information received in connection with the identification of legally liable third-party resources.
- D.** The restriction upon disclosure of information in this Section does not apply to:
1. De-identified information as described by 45 CFR 164.514, October 1, 2004, incorporated by reference in subsection (A); or
  2. A disclosure, in response to a request for information, that complies with 45 CFR 160 and 45 CFR 164, October 1, 2004, and 42 CFR 431.300 through 431.307, October 1, 2004, incorporated by reference in subsection (A).
- E.** A provider shall furnish records requested by the Administration or a contractor to the Administration or the contractor at no charge.

##### **Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-512 adopted as an emergency adopted, amended and renumbered as Section R9-22-511, former Section R9-22-513 adopted as an emergency now adopted and renumbered as Section R9-22-512 as a permanent rule effective August 30, 1982 (Supp. 82-4). For-

mer Section R9-22-512 repealed, new Section R9-22-512 adopted effective October 1, 1985 (Supp. 85-5). Amended effective December 13, 1993 (Supp. 93-4). Amended effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 11 A.A.R. 4277, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 4330, effective January 3, 2009 (Supp. 08-4).

**R9-22-513. Repealed****Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-513 adopted as an emergency adopted and renumbered as Section R9-22-512, former Section R9-22-514 adopted as an emergency now adopted, amended and renumbered as Section R9-22-513 as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-513 repealed, former Section R9-22-526 renumbered and amended as Section R9-22-513 effective October 1, 1985 (Supp. 85-5). Amended effective December 8, 1997 (Supp. 97-4). Section repealed by final rulemaking at 11 A.A.R. 4277, effective December 5, 2005 (Supp. 05-4).

**R9-22-514. Repealed****Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-514 adopted as an emergency adopted, amended and renumbered as Section R9-22-513, former Section R9-22-515 adopted as an emergency now adopted, amended and renumbered as Section R9-22-514 as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-514 repealed, former Section R9-22-517 renumbered and amended as Section R9-22-514 effective October 1, 1985 (Supp. 85-5). Amended effective December 8, 1997 (Supp. 97-4). Section repealed by final rulemaking at 11 A.A.R. 4277, effective December 5, 2005 (Supp. 05-4).

**R9-22-515. Repealed****Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-515 adopted as an emergency adopted, amended and renumbered as Section R9-22-514, former Section R9-22-517 adopted as an emergency now adopted, amended and renumbered as Section R9-22-515 as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-515 repealed, former Section R9-22-522 renumbered and amended as Section R9-22-515 effective October 1, 1985 (Supp. 85-5). Repealed effective December 8, 1997 (Supp. 97-4).

**R9-22-516. Renumbered****Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-516 adopted as an emergency expired, former Section R9-22-518 adopted as an emergency now adopted, amended and renumbered as Section R9-22-516 as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-516 renumbered as Section R9-22-513 effective October 1, 1985 (Supp. 85-5).

**R9-22-517. Renumbered****Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-517 adopted as an emergency adopted, amended and renumbered as Section R9-22-515, former Section R9-22-519 adopted as an emergency now adopted and renumbered and amended as Section R9-22-517 as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-517 renumbered and amended as Section R9-22-514 effective October 1, 1985 (Supp. 85-5).

**R9-22-518. Information to Enrolled Members**

- A. Each contractor shall produce and distribute printed informational materials to each member or family unit no later than 10 days of receipt of notification of enrollment from the Administration. The contractor shall ensure that the informational materials meet the requirements specified in the contractor's current contract.
- B. A contractor shall provide a member with the name, address, and telephone number of the member's primary care provider no later than 10 days from the date of enrollment. The contractor shall include information on how the member may change primary care providers.

**Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-518 adopted as an emergency adopted, amended and renumbered as Section R9-22-516, former Section R9-22-520 adopted as an emergency now adopted, amended and renumbered as Section R9-22-518 as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-518 repealed, new Section R9-22-518 adopted effective October 1, 1985 (Supp. 85-5). Amended effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 11 A.A.R. 4277, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 4330, effective January 3, 2009 (Supp. 08-4).

**R9-22-519. Repealed****Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-519 adopted as an emergency adopted, amended and renumbered as Section R9-22-517, former Section R9-22-521 adopted as an emergency now adopted, amended and renumbered as Section R9-22-519 as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-519 repealed, new Section R9-22-519 adopted effective October 1, 1985 (Supp. 85-5). Repealed effective December 8, 1997 (Supp. 97-4).

**R9-22-520. Expired****Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-520 adopted as an emergency adopted, amended and renumbered as Section R9-22-518, former Section R9-22-522 adopted as an emergency now adopted, amended and renumbered as Section R9-22-520 as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-520 repealed, new Section R9-22-520 adopted effective October 1, 1985 (Supp. 85-5).

Amended effective December 13, 1993 (Supp. 93-4).  
Amended effective December 8, 1997 (Supp. 97-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4851, effective October 9, 2002 (Supp. 02-4).

#### **R9-22-521. Program Compliance Audits**

- A.** The Administration shall conduct an onsite program compliance audit of a contractor at least once every three years during the term of the Administration's contract with the contractor. The Administration may conduct, without prior notice, inspections of contractor facilities or perform other elements of a program compliance audit.
- B.** An audit team may perform any or all of the following procedures:
  1. Conduct private interviews and group conferences with members, physicians, other health professionals, and members of the contractor's administrative staff including, but not limited to, the contractor's principal management persons;
  2. Examine records, books, reports, and papers of the contractor and any management company, and all providers or subcontractors providing health care and other services. The examination may include, but need not be limited to: minutes of medical staff meetings, peer review and quality of care review records, duty rosters of medical personnel, appointment records, written procedures for the internal operation of the health plan, contracts and correspondence with members and with providers of health care services and other services to the plan, and additional documentation deemed necessary by the Administration to review the quality of medical care.

#### **Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-521 adopted as an emergency adopted, amended and renumbered as Section R9-22-519, former Section R9-22-523 adopted as an emergency now adopted, amended and renumbered as Section R9-22-521 as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-521 repealed, new Section R9-22-521 adopted effective October 1, 1985 (Supp. 85-5).

Amended effective December 8, 1997 (Supp. 97-4).  
Amended by final rulemaking at 11 A.A.R. 4277, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 4330, effective January 3, 2009 (Supp. 08-4).

*Editor's Note: The following Section was amended under an exemption from the provisions of the Administrative Procedure Act which means that this rule was not reviewed by the Governor's Regulatory Review Council; the agency did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the agency was not required to hold public hearings on the rules; and the Attorney General has not certified this rule. This Section was subsequently amended through the regular rulemaking process.*

#### **R9-22-522. Quality Management/Utilization Management (QM/UM) Requirements**

- A.** A contractor shall comply with Quality Management/Utilization Management (QM/UM) requirements specified in this Section and in contract. The contractor shall ensure compliance with QM/UM requirements that are accomplished through delegation or subcontract with another party.
- B.** In addition to any requirements specified in contract, a contractor shall:
  1. Submit to the Administration a written QM/UM plan that includes a description of the systems, methodologies, protocols, and procedures to be used in:
    - a. Monitoring and evaluating the types of services provided,
    - b. Identifying the numbers and costs of services provided,
    - c. Assessing and improving the quality and appropriateness of care and services,
    - d. Evaluating the outcome of care provided to members, and
    - e. Determining the actions necessary to improve service delivery;
  2. Submit the QM/UM plan to the Administration on an annual basis within timelines specified in contract. If the QM/UM plan is changed during the year, the contractor shall submit the revised plan to the Administration before implementation;
  3. Receive approval from the Administration before implementing the initial or revised QM/UM plan;
  4. Ensure that a QM/UM committee operates under the control of the contractor's medical director and includes representation from medical and executive management personnel. The committee shall:
    - a. Oversee the development, revision, and implementation of the QM/UM plan; and
    - b. Ensure that there are qualified QM/UM personnel and sufficient resources to implement the contractor's QM/UM activities; and
  5. Ensure that the QM/UM activities include at least:
    - a. Prior authorization for non-emergency or scheduled hospital admissions;
    - b. Concurrent review of inpatient hospitalization;
    - c. Retrospective review of hospital claims;
    - d. Program and provider audits designed to detect over- or under-utilization, service delivery effectiveness, and outcome;
    - e. Medical records audits;
    - f. Surveys to determine satisfaction of members;
    - g. Assessment of the adequacy and qualifications of the contractor's provider network;
    - h. Review and analysis of QM/UM data;
    - i. Measurement of performance using objective quality indicators;
    - j. Ensuring individual and systemic quality of care;
    - k. Integrating quality throughout the organization;
    - l. Process improvement;
    - m. Credentialing a provider network;
    - n. Resolving quality of care grievances; and
    - o. Quality improvement activities focused on improving the quality of care and the efficient, cost-effective delivery and utilization of services.

- C.** A member's primary care provider shall maintain medical records that:
  1. Conform to professional medical standards and practices for documentation of medical diagnostic and treatment data;
  2. Facilitate follow-up treatment; and
  3. Permit professional medical review and medical audit processes.
- D.** Within 30 days following termination of the contract between a subcontractor and a contractor, the subcontractor or the subcontractor's designee shall forward to the primary care provider medical records or copies of medical records of all members assigned to the subcontractor or for whom the subcontractor has provided services.

- E. The Administration shall monitor each contractor and the contractor's providers to ensure compliance with Administration QM/UM requirements and adherence to the contractor's QM/UM plan.

1. A contractor and the contractor's providers shall cooperate with the Administration in the performance of the Administration's QM/UM monitoring activities; and
2. A contractor and the contractor's providers shall develop and implement mechanisms for correcting deficiencies identified through the Administration's QM/UM monitoring.

#### Historical Note

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-522 adopted as an emergency adopted, amended and renumbered as Section R9-22-520, former Section R9-22-524 adopted as an emergency now adopted and renumbered as Section R9-22-522 as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-522 renumbered and amended as Section R9-22-515, new Section R9-22-522 adopted effective October 1, 1985 (Supp. 85-5). Amended under an exemption from the provisions of the Administrative Procedure Act, effective March 1, 1993 (Supp. 93-1). Amended effective December 13, 1993 (Supp. 93-4). Amended effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 11 A.A.R. 4277, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 4330, effective January 3, 2009 (Supp. 08-4).

#### R9-22-523. Expired

#### Historical Note

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-523 adopted as an emergency adopted, amended and renumbered as Section R9-22-521, former Section R9-22-525 adopted as an emergency now adopted, amended and renumbered as Section R9-22-523 as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective October 1, 1985 (Supp. 85-5). Amended effective December 8, 1997 (Supp. 97-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4851, effective October 9, 2002 (Supp. 02-4).

#### R9-22-524. Repealed

#### Historical Note

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-524 adopted as an emergency adopted and renumbered as Section R9-22-522, former Section R9-22-526 adopted as an emergency now adopted, amended and renumbered as Section R9-22-524 as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-524 repealed, new Section R9-22-524 adopted effective October 1, 1985 (Supp. 85-4). Amended effective December 8, 1997 (Supp. 97-4). Section repealed by final rulemaking at 11 A.A.R. 4277, effective December 5, 2005 (Supp. 05-4).

#### R9-22-525. Repealed

#### Historical Note

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-525 adopted as an emergency

adopted, amended and renumbered as Section R9-22-523, former Section R9-22-527 adopted as an emergency now adopted, amended and renumbered as Section R9-22-525 as a permanent rule effective August 30, 1982 (Supp. 82-4). Repealed effective October 1, 1985 (Supp. 85-5).

#### R9-22-526. Renumbered

#### Historical Note

Adopted as an emergency effective February 23, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Adopted as a permanent rule effective May 16, 1983; text of the permanent rule identical to the emergency (Supp. 83-3). Former Section R9-22-526 repealed, new Section R9-22-526 adopted effective October 1, 1983 (Supp. 83-5). Former Section R9-22-526 renumbered and amended as Section R9-22-501 effective October 1, 1985 (Supp. 85-1).

#### R9-22-527. Renumbered

#### Historical Note

Adopted effective October 1, 1983 (Supp. 83-5). Former Section R9-22-527 renumbered and amended as Section R9-22-505 effective October 1, 1985 (Supp. 85-5).

#### R9-22-528. Renumbered

#### Historical Note

Adopted effective October 1, 1983 (Supp. 83-5). Former Section R9-22-528 renumbered and amended as Section R9-22-504 effective October 1, 1985 (Supp. 85-5).

#### R9-22-529. Renumbered

#### Historical Note

Adopted as Section R9-22-529 effective October 1, 1985, then renumbered as Section R9-22-1002 effective October 1, 1985 (Supp. 85-5).

### ARTICLE 6. RFP AND CONTRACT PROCESS

#### R9-22-601. General Provisions

- A. The Director has full operational authority to adopt rules for the RFP process and the award of contracts under A.R.S. § 36-2906.
- B. This Article applies to the award of contracts under A.R.S. §§ 36-2904 and 36-2906 to provide services under A.R.S. § 36-2907 and the expenditure of public monies by the Administration pertaining to covered services when the procurement so states. The Administration shall establish conflict-of-interest safeguards for officers and employees of this state with responsibilities relating to contracts that comply with 42 U.S.C. 1396u-2(d)(3).
- C. The Administration is exempt from the procurement code under A.R.S. § 41-2501.
- D. The Administration and contractors shall retain all contract records for five years under A.R.S. § 36-2903 and dispose of the records under A.R.S. § 41-2550.
- E. The following terms are defined as related to this Article: "Procurement file" means the official records file of the Director whether located in the Office of the Director or at the public procurement unit. The procurement file shall include in electronic or paper form a list of notified vendors, final solicitation, solicitation amendments, bids/offers, final proposal revisions, clarifications, and final evaluation report.

#### Historical Note

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-601 adopted as an emergency

now adopted as a permanent rule effective August 30, 1982 (Supp. 82-4). Repealed effective October 1, 1983 (Supp. 83-5). Adopted effective July 16, 1985 (Supp. 85-4). Amended effective December 13, 1993 (Supp. 93-4). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 607, effective February 5, 1999 (Supp. 99-1). Amended by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 18 A.A.R. 2340, effective November 11, 2012 (Supp. 12-3).

#### **R9-22-602. RFP**

##### **A. RFP content.** The Administration shall include the following items in any RFP under this Article:

1. Instructions and information to an offeror concerning the proposal submission including:
  - a. The deadline for submitting a proposal,
  - b. The address of the office at which a proposal is to be received,
  - c. The period during which the RFP remains open, and
  - d. Any special instructions and information;
2. The scope of covered services under Article 2 of this Chapter and A.R.S. §§ 36-2906 and 36-2907, covered populations, geographic coverage, service and performance requirements, and a delivery or performance schedule;
3. The contract terms and conditions, including bonding or other security requirements, if applicable;
4. The factors used to evaluate a proposal;
5. The location and method of obtaining documents that are incorporated by reference in the RFP;
6. A requirement that the offeror acknowledge receipt of all RFP amendments issued by the Administration;
7. The type of contract to be used and a copy of a proposed contract form or provisions;
8. The length of the contract service;
9. A requirement for cost or pricing data;
10. The minimum RFP requirements; and
11. A provision requiring an offeror to certify that a submitted proposal does not involve collusion or other anti-competitive practices.

##### **B. Proposal process.**

1. After the deadline for submitting proposals, the Administration may open a proposal publicly and announce and record the name of the offeror. The Administration shall keep all other information contained in a proposal confidential. The Administration shall open a proposal for public inspection after contract award unless the Administration determines that disclosure is not in the best interest of the state.
2. The Administration shall evaluate a proposal based on the GSA and the evaluation factors listed in the RFP.
3. The Administration may initiate discussions with a responsive and responsible offeror to clarify and assure full understanding of an offeror's proposal. The Administration shall provide an offeror fair treatment with respect to discussion and revision of a proposal. The Administration shall not disclose information derived from a proposal submitted by a competing offeror.
4. The Administration shall allow for the adjustment of covered services by expansion, deletion, segregation, or combination in order to secure the most financially advantageous proposals for the state.
5. The Administration may conduct an investigation of a person or organization who has ownership or management interests in corporate offerors or affiliated corporate organizations of an offeror.

6. The Administration may issue a written request for best and final offers. The Administration shall state in the request the date, time, and place for the submission of best and final offers.
7. The Administration shall not request best and final offers more than once unless the Administration determines that it is advantageous to the state to request additional best and final offers. The Administration shall state in the written request for best and final offers that if the offeror does not submit a notice of withdrawal or a best and final offer, the Administration shall take the most recent offer as the offeror's best and final offer.

##### **C. Proposal rejection.**

1. The Administration may reject an offeror's proposal if the offeror fails to supply the information requested by the Administration.
2. The offeror shall not disclose information pertaining to its proposal to any other offeror prior to contract award. The offeror may disclose proposal information to a person other than another offeror if the recipient agrees to keep the information confidential until contract award. Disclosure in violation of this subsection may be grounds for rejecting a proposal.
3. The Administration shall provide written notification to an offeror whose proposal is rejected. The rejection notice shall be part of the contract file and a public record.
4. If the Administration determines that it is in the best interest of the state, the Administration may reject any and all proposals, in whole or in part, under the RFP. The reasons for rejection shall be part of the contract file. An offeror shall have no right to damages for any claims against the state, the state's employees, or agents if a proposal is rejected in whole or in part.

##### **D. Proposal cancellation.** If the Administration determines that it is in the best interest of the state, the Administration may cancel a RFP. The reasons for cancellation shall be part of the contract file. An offeror shall have no right to damages for any claims against the state, the state's employees, or agents if a RFP is cancelled.

#### **Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-602 adopted as an emergency now adopted as a permanent rule effective August 30, 1982 (Supp. 82-4). Repealed effective October 1, 1983 (Supp. 83-5). Adopted effective July 16, 1985 (Supp. 85-4). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 607, effective February 5, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1).

#### **R9-22-603. Contract Award**

The Administration shall award a contract to the responsible and responsive offeror whose proposal is determined most advantageous to the state under A.R.S. § 36-2906. If the Administration determines that multiple contracts are in the best interest of the state, the Administration may award multiple contracts. The contract file shall contain the basis on which the award is made.

#### **Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-603 adopted as an emergency now adopted as a permanent rule effective August 30, 1982 (Supp. 82-4). Repealed effective October 1, 1983

(Supp. 83-5). Adopted effective July 16, 1985 (Supp. 85-

4). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 607, effective February 5, 1999

(Supp. 99-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1).

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

- A.** Disputes related to contract performance. This Section does not apply to a dispute related to contract performance. A contract performance dispute is governed by 9 A.A.C. 34.
- B.** Resolution of a proposal protest. The procurement officer issuing a RFP shall have the authority to resolve proposal protests. An appeal from the decision of the procurement officer shall be made to the Director.
- C.** Filing of a protest.
  1. A person may file a protest with the procurement officer regarding:
    - a. A RFP issued by the Administration,
    - b. A proposed award, or
    - c. An award of a contract.
  2. A protester shall submit a written protest and include the following information:
    - a. The name, address, and telephone number of the protester;
    - b. The signature of the protester or protester's representative;
    - c. Identification of a RFP or contract number;
    - d. A detailed statement of the legal and factual grounds of the protest including copies of any relevant documents; and
    - e. The relief requested.
- D.** Time for filing a protest.
  1. A protester filing a protest alleging improprieties in an RFP or an amendment to an RFP shall file the protest at least 14 days before the due date of receipt of proposals.
  2. Any protest alleging improprieties in an amendment issued 14 or fewer days before the due date of the proposal shall be filed before the due date for receipt of proposals.
  3. In cases other than those covered in subsections (D)(1) and (2), a protester shall file a protest no later than 10 days after the procurement officer makes the procurement file available for public inspection.
- E.** Stay of procurement during the protest. If a protester files a protest before the contract award, the procurement officer may issue a written stay of the contract award. In considering whether to issue a written stay of contract, the procurement officer shall consider but is not limited to considering whether:
  1. A reasonable probability exists that the protest will be sustained, and
  2. The stay of the contract award is in the best interest of the state.
- F.** Stay of contract award during an appeal to the Director. The Director shall automatically continue the stay of a contract award if:
  1. An appeal is filed before a contract award, and
  2. The procurement officer issues a stay of the contract award under subsection (E), unless
  3. The Director issues a written determination that the contract award is necessary to protect the best interest of the state.
- G.** Decision by the procurement officer.
  1. The procurement officer shall issue a written decision no later than 14 days after a protest has been filed. The decision shall contain an explanation of the basis of the decision.
2. The procurement officer shall furnish a copy of the decision to the protester by:
  - a. Certified mail, return receipt requested; or
  - b. Any other method that provides evidence of receipt.
3. The Administration may extend, for good cause, the time-limit for decisions in subsection (G)(1) for a time not to exceed 30 days. The procurement officer shall notify the protester in writing that the time for the issuance of a decision has been extended and the date by which a decision shall be issued.
4. If the procurement officer fails to issue a decision within the time-limits in subsection (G)(1) or (G)(3), the protester may proceed as if the procurement officer issued an adverse decision.
- H.** Remedies.
  1. If the procurement officer sustains the protest in whole or in part and determines that the RFP, proposed contract award, or contract award does not comply with applicable statutes and rules, the procurement officer shall order an appropriate remedy.
  2. In determining an appropriate remedy, the procurement officer shall consider all the circumstances of the procurement or proposed procurement, including:
    - a. Seriousness of the procurement deficiency,
    - b. Degree of prejudice to other interested parties or to the integrity of the RFP process,
    - c. Good faith of the parties,
    - d. Extent of performance,
    - e. Costs to the state, and
    - f. Urgency of the procurement.
    - g. Best interest of the state.
  3. An appropriate remedy may include one or more of the following:
    - a. Terminating the contract;
    - b. Reissuing the RFP;
    - c. Issuing a new RFP;
    - d. Awarding a contract consistent with statutes, rules, and the terms of the RFP; or
    - e. Any relief determined necessary to ensure compliance with applicable statutes and rules.
- I.** Appeals to the Director.
  1. A person may file an appeal of a procurement officer's decision with both the Director and the procurement officer no later than five days from the date the decision is received. The date the decision is received shall be determined under subsection (G)(2).
  2. The appeal shall contain:
    - a. The information required in subsection (C)(2),
    - b. A copy of the procurement officer's decision,
    - c. The alleged factual or legal error in the decision of the procurement officer on which the appeal to the Director is based, and
    - d. A request for hearing unless the person requests that the Director's decision be based solely upon the procurement file.
- J.** Dismissal. The Director shall not schedule a hearing and shall dismiss an appeal with a written determination if:
  1. The appeal does not state a basis for protest,
  2. The appeal is untimely under subsection (I)(1), or
  3. The appeal is moot.
- K.** Hearing. Hearings under this Section shall be conducted using the Arizona Administrative Procedure Act under A.R.S. Title 41, Ch. 6.

**Historical Note**

Adopted effective July 16, 1985 (Supp. 85-4). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 607, effective February 5, 1999 (Supp. 99-1). Amended by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 18 A.A.R. 2340, effective November 11, 2012 (Supp. 12-3).

**R9-22-605. Waiver of Contractor's Subcontract with Hospitals**

If a contractor is unable to obtain a subcontract with a hospital as contractually required, the contractor may request in writing a waiver from the Administration as allowed by A.R.S. § 36-2906. The contractor shall state in the request the reasons a waiver is believed to be necessary and all efforts the contractor has made to secure a subcontract.

**Historical Note**

Adopted effective January 31, 1986 (Supp. 86-1). Amended effective December 13, 1993 (Supp. 93-4). Section repealed by final rulemaking at 5 A.A.R. 607, effective February 5, 1999 (Supp. 99-1). New Section made by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 18 A.A.R. 2340, effective November 11, 2012 (Supp. 12-3).

**R9-22-606. Contract Compliance Sanction**

- A. The Director may impose sanctions upon a contractor for violation of any provision of this Chapter or of a contract. Sanctions include but are not limited to:
1. Suspension of any or all further member enrollment, by choice and/or assignment for a period of time.
  2. Imposition of a monetary sanction.
- B. The Director shall consider the nature, severity, and length of the violation when determining a sanction.
- C. The Director shall provide a contractor with written notice specifying grounds and terms for the sanction.
- D. Nothing contained in this Section shall be construed to prevent the Administration from imposing sanctions as provided in contract under A.R.S. § 36-2903.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 18 A.A.R. 2340, effective November 11, 2012 (Supp. 12-3).

**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. 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 GSA.

“AHCCCS inpatient hospital day or days of care” means each day of an inpatient stay for a member beginning with the day

of admission and including the day of death, if applicable, but excluding the day of discharge, provided that all eligibility, medical necessity, and medical review requirements are met.

“APC” means the Ambulatory Payment Classification system under 42 CFR 419.31 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 company such as a billing service or accounting firm that renders billing statements and receives payment in the name of a provider.

“Capital costs” means costs as reported by the hospital to CMS as required by 42 CFR 413.20.

“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 AHC-CCS by each hospital.

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

“CPT” means Current Procedural Terminology, published and updated by the American Medical Association. CPT is a nationally-accepted listing of descriptive terms and identifying codes for reporting medical services and procedures performed by physicians that provide 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).

“Direct graduate medical education costs” or “direct program costs” means the costs that are incurred by a hospital for the education activities of an approved graduate medical education program that are the proximate result of training medical residents in the hospital, including resident salaries and fringe benefits, the portion of teaching physician salaries and fringe benefits that are related to the time spent in teaching and supervision of residents, and other related GME overhead costs.

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

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

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

“Existing outpatient service” means a service provided by a hospital before the hospital files an increase in its charge master as defined in R9-22-712(G), 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.

“Expansion funds” means funds appropriated to support GME program expansions as described under A.R.S. § 36-2903.01(G)(9)(b) and (c)(i).



“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 organization for an added fee or a deduction of a portion of the accounts receivable. Factor does not include a business agent.

“Fiscal intermediary” means an organization authorized by CMS to make determinations and payments for Part A and Part B provider services for a given region.

“Freestanding Children’s Hospital” means a separately standing hospital with at least 120 pediatric beds that is dedicated to provide the majority of the hospital’s services to children.

“GME program approved by the Administration” or “approved GME program” means a graduate medical education program that has been approved by a national organization as described in 42 CFR 415.152.

“Graduate medical education (GME) program” means an approved residency program that prepares a physician for independent practice of medicine by providing didactic and clinical education in a medical environment to a medical student who has completed a recognized undergraduate medical education program.

“HCAC” means a health care acquired condition described under 42 U.S.C. 1395ww(d)(4)(D)(iv) but does not include Deep Vein Thrombosis (DVT)/Pulmonary Embolism (PE) as related to total knee replacement or hip replacement surgery in pediatric and obstetric patients.

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

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996, as specified under 45 CFR 162, that establishes standards and requirements for the electronic transmission of certain health information by defining code 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.

“Indirect program costs” means the marginal increase in operating costs that a hospital experiences as a result of having an approved graduate medical education program and that is not accounted for by the hospital’s direct program costs.

“Intern and Resident Information System” means a software program used by teaching hospitals and the provider community for collecting and reporting information on resident training in hospital and non-hospital settings.

“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 determining 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.

“Medicare Urban or Rural Cost-to-Charge Ratio (CCR)” means statewide average capital cost-to-charge ratio published annually by CMS added to the urban or rural statewide average operating cost-to-charge ratio published annually by CMS.

“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 rate setting 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, is not a free-standing psychiatric hospital, such as an IMD, and is paid under ADHS rates.

“Observation day” means a physician-ordered evaluation period to determine whether a person needs treatment or needs to be admitted as an inpatient. Each observation day consists of a period of 24 hours or less.

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

“OPPC” means an Other Provider Preventable Condition that is: (1) a wrong surgical or other invasive procedure performed on a patient, (2) a surgical or other invasive procedure performed on the wrong body part, or (3) a surgical or other invasive procedure performed on the wrong patient.

“Organized health care delivery system” means a public or private organization that delivers 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 this Article and A.R.S. § 36-2903.01(G).

“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).

“Participating institution” means an institution at which portions of a graduate medical education program are regularly conducted and to which residents rotate for an educational experience for at least one month.

“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.

“PPC” means prior period coverage. PPC is the period of time, prior to the member’s enrollment, during which a member is eligible for covered services. The time-frame is the first day of the month of application or the first eligible month, whichever is later, until the day a member is enrolled with a contractor.

“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 set 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 Medicare Cost Report data for a year and AHCCCS claim and encounter data for the same 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 specified 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.

“Resident” means a physician engaged in postdoctoral training in an accredited graduate medical education program, including an intern and a physician who has completed the requirements for the physician’s eligibility for board certification.

“Revenue code” means a numeric code, that identifies a specific accommodation, ancillary service, or billing calculation, as defined by the National Uniform Billing committee for UB-04 forms.

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

“Sponsoring institution” means the institution or entity that is recognized by the GME accrediting organization and designated as having ultimate responsibility for the assurance of academic quality and compliance with the terms of accreditation.

“Tier” means a grouping of inpatient hospital services into levels of care based on diagnosis, procedure, or revenue codes, peer group, 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.

“Trip” means a one-way transport each time a taxi is called. If the taxi waits for the member then the transport continues to be part of the one-way trip. If the taxi leaves and is called to pick up the member, that is considered a new one-way trip.

#### Historical Note

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-701 adopted as an emergency now adopted as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-701 repealed, new Section R9-22-701 adopted effective October 1, 1983 (Supp. 83-5). Amended effective October 1, 1985 (Supp. 85-5). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R.

424, effective January 10, 2002 (Supp. 02-1). Section repealed; new Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2).

Amended by final rulemaking at 12 A.A.R. 2188, effective June 6, 2006 (Supp. 06-2). Amended by final rulemaking at 13 A.A.R. 662, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 13 A.A.R. 1782, effective June 30, 2007 (Supp. 07-2). Amended by exempt rulemaking at 13 A.A.R. 3190, effective October 1, 2007 (Supp. 07-3). Amended by exempt rulemaking at 13 A.A.R. 4032, effective November 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 1956, effective September 6, 2014; amended by exempt rulemaking at 20 A.A.R. 2755, effective January 1, 2015 (Supp. 14-3).

#### R9-22-701.01. Reserved

#### R9-22-701.02. Reserved

#### R9-22-701.03. Reserved

#### R9-22-701.04. Reserved

#### R9-22-701.05. Reserved

#### R9-22-701.06. Reserved

#### R9-22-701.07. Reserved

#### R9-22-701.08. Reserved

#### R9-22-701.09. Reserved

#### R9-22-701.10 Scope of the Administration’s and Contractor’s Liability

The Administration shall bear no liability for providing covered services for any member beyond the date of termination of the member’s eligibility or during the member’s enrollment with a contractor. A contractor has no financial responsibility for services provided to a member beyond the last date of enrollment except as provided in Articles 2 and 5 of this Chapter and as specified in contract.

#### Historical Note

New Section made by final rulemaking at 13 A.A.R. 662, effective April 7, 2007 (Supp. 07-1).

#### R9-22-702. Charges to Members

- A. For purposes of this subsection, the term “member” includes the member’s financially responsible representative as described under A.R.S. § 36-2903.01.
- B. Registered providers must accept payment from the Administration or a contractor as payment in full.
- C. Except as provided in subsection (D) a registered provider shall not request or collect payment from, refer to a collection agency, or report to a credit reporting agency an eligible person or a person claiming to be an eligible person.
- D. An AHCCCS registered provider may charge, submit a claim to, or demand or collect payment from a member:
  1. To collect the copayment described in R9-22-711;
  2. To recover from a member that portion of a payment made by a third party to the member for an AHCCCS covered service if the member has not transferred the payment to the Administration or the contractor as required by the statutory assignment of rights to AHCCCS;
  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;

4. For a service that is excluded by statute or rule, or provided in an amount that exceeds a limitation in statute or rule, if the member signs a document in advance of receiving the service stating that the member understands the service is excluded or is subject to a limit and that the member will be financially responsible for payment for the excluded service or for the services in excess of the limit;
  5. When the contractor or the Administration has denied authorization for a service if the member signs a document in advance of receiving the service stating that the member understands that authorization has been denied and that the member will be financially responsible for payment for the service;
  6. For services requested for a member enrolled with a contractor, and rendered by a noncontracting provider under circumstances where the member's contractor is not responsible for payment of "out of network" services under R9-22-705(A), if the member signs a document in advance of receiving the service stating that the member understands the provider is out of network, that the member's contractor is not responsible for payment, and that the member will be financially responsible for payment for the excluded service;
  7. For services rendered to a person eligible for the FESP if the provider submits a claim to the Administration in the reasonable belief that the service is for treatment of an emergency medical condition and the Administration denies the claim because the service does not meet the criteria of R9-22-217; or
  8. If the provider has received verification from the Administration that the person was not an eligible person on the date of service.
- E.** The signature requirement of subsections (D)(4), (D)(5), and (D)(6) do not apply if:
1. The member is unable or incompetent to sign such a document, or
  2. When services are rendered for the purpose of treating an emergency medical condition as defined in R9-22-217 and a delay in providing treatment to obtain a signature would have a significant adverse affect on the member's health.
- F.** Except as provided for in this Section, registered providers shall not bill a member when the provider could have received reimbursement from the Administration or a contractor but for the provider's failure to file a claim in accordance with the requirements of AHCCCS statutes, rules, the provider agreement, or contract, such as, but not limited to, requirements to request and obtain prior authorization, timely filing, and clean claim requirements.

#### Historical Note

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-702 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended as an emergency effective February 23, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Amended as a permanent rule effective May 16, 1983; text identical to the emergency (Supp. 83-3). Former Section R9-22-702 repealed, new Section R9-22-702 adopted effective October 1, 1983 (Supp. 83-5). Amended by adding subsection (B) effective October 1, 1985 (Supp. 85-5). Amended by adding subsection (C) effective October 1, 1987 (Supp. 87-4). Amended effective April 13, 1990 (Supp. 90-2).

Amended effective December 13, 1993 (Supp. 93-4).  
Amended effective September 22, 1997 (Supp. 97-3).  
Amended by final rulemaking at 8 A.A.R. 3317, effective July 15, 2002 (Supp. 02-3). Amended by final rulemaking at 11 A.A.R. 3217, effective October 1, 2005 (Supp. 05-3). Amended by exempt rulemaking at 17 A.A.R. 1707, effective October 1, 2011 (Supp. 11-3). Amended by final rulemaking at 19 A.A.R. 2747, effective October 8, 2013 (Supp. 13-3).

#### 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 October 1, 2012, 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 to be 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, 12 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 12 months from the date of service, date of discharge, or eligibility posting, whichever is later.
- 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, covered services as specified in Articles 2 and 12 of this Chapter, and for administrative days as described in R9-22-712.75,
    - 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 may deny a claim if the provider fails to comply with subsection (D)(1).
  - 3. If the Administration issues prior authorization for an inpatient hospital admission, a specific service, or level of care but subsequent medical review indicates that the admission, the service, or level of care was not medically appropriate, the Administration shall adjust the claim payment.
- E. Review of claims and coverage for hospital supplies.**
  - 1. The Administration may conduct prepayment and post-payment 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 Article 2;
    - 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. § 36-2903.01.
- 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 a recoupment action.
- G. For services subject to limitations or exclusions such as the number of hours, days, or visits covered as described in Article 2 of this Chapter, once the limit is reached the Administration will not reimburse the services.**
- H. Prior quarter reimbursement. A provider shall:**
  - 1. Bill the Administration for services provided during a prior quarter eligibility period upon verification of eligibility or upon notification from a member of AHCCCS eligibility.
  - 2. Reimburse a member when payment has been received from the Administration for covered services during a prior quarter eligibility period. All funds paid by the member shall be reimbursed.
  - 3. Accept payment received by the Administration as payment in full.
- I. Payment for in-state inpatient hospital services for claims with discharge dates on or before September 30, 2014. The Administration shall reimburse an in-state provider of inpatient hospital services rendered with a discharge date on or before September 30, 2014, the prospective tiered-per-diem amount in A.R.S. § 36-2903.01 and this Article.**
- J. Payment for out-of-state inpatient hospital services for claims with discharge dates on or before September 30, 2014. The Administration shall reimburse an out-of-state provider of inpatient hospital services rendered with a discharge date on or before September 30, 2014, for covered inpatient services by multiplying covered charges by the most recent statewide urban cost-to-charge ratio as determined in R9-22-712.01(6)(b).**
- K. Payment for inpatient hospital services for claims with discharge dates on and after October 1, 2014 regardless of admission date. The Administration shall reimburse an in-state or out-of-state provider of inpatient hospital services rendered with a discharge date on or after October 1, 2014, the DRG rate established by the Administration.**
- L. The Administration may enter into contracts for the provisions of transplant services.**

#### Historical Note

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R-22-703 adopted as an emergency now adopted as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-703 repealed,

new Section R9-22-703 adopted effective October 1, 1983 (Supp. 83-5). Amended effective October 1, 1985 (Supp. 85-5). Amended effective October 1, 1986 (Supp. 86-5). Amended subsection (B), paragraph (1) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsection (A) effective September 16, 1987 (Supp. 87-3). Amended effective May 30, 1989 (Supp. 89-2). Amended effective September 29, 1992 (Supp. 92-3). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 3317, effective July 15, 2002 (Supp. 02-3). Amended by final rulemaking at 11 A.A.R. 3222, effective October 1, 2005 (Supp. 05-3). Amended by final rulemaking at 13 A.A.R. 662, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 17 A.A.R. 1658, effective August 2, 2011 (Supp. 11-3). Amended by exempt rulemaking at 17 A.A.R. 1707, effective October 1, 2011 (Supp. 11-3). Amended by final rulemaking at 19 A.A.R. 2747, effective October 8, 2013 (Supp. 13-3). Amended by final rulemaking at 19 A.A.R. 3309, November 30, 2013 (Supp. 13-4). Amended by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

#### **R9-22-704. Repealed**

##### **Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-704 adopted as an emergency now adopted and amended as a permanent rule effective August 30 1982 (Supp. 82-4). Amended effective October 1, 1983 (Supp. 83-5). Amended subsection A., Paragraph 2. effective October 1, 1985 (Supp. 85-5). Amended by final rulemaking at 8 A.A.R. 3317, effective July 15, 2002 (Supp. 02-3). Section repealed by final rulemaking at 13 A.A.R. 662, effective April 7, 2007 (Supp. 07-1).

#### **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 reimbursing providers and coordinating care for services 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.
- 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.
  - A contractor shall reimburse a noncontracting provider for services rendered to a member enrolled with the contractor as specified in this Article if:
    - 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
    - The service is emergent under Article 2 of this Chapter.
- B.** Timely submission of claims.
- 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:

- Place a date stamp on the face of the claim,
  - Assign a system-generated claim reference number, or
  - Assign a system-generated date-specific number.
- Unless a shorter time period is specified in subcontract, 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:
    - Six months from the date of service or for an inpatient hospital claim, six months from the date of discharge; or
    - Six months from the date of eligibility posting.
  - Unless a shorter time period is specified in subcontract, a contractor shall not pay a claim for a covered service unless the claim is submitted within one of the following time limits, whichever is later:
    - Twelve months from the date of service or for an inpatient hospital claim, 12 months from the date of discharge; or
    - 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 in-state inpatient hospital services for claims with discharge dates on or before September 30, 2014. A contractor shall reimburse an in-state provider of inpatient hospital services rendered with a discharge date on or before September 30, 2014, 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 Inpatient out-of-state hospital payments for claims with discharge dates on or before September 30, 2014. In the absence of a contract with an out-of-state hospital that specifies payment rates, a contractor shall reimburse out-of-state hospitals for covered inpatient services by multiplying covered charges by the most recent statewide urban cost-to-charge ratio as determined in R9-22-712.01(6)(b).
- F.** Payment for inpatient hospital services for claims with discharge dates on and after October 1, 2014 regardless of admission date. Subject to R9-22-718 and A.R.S. § 36-2905.01

regarding urban hospitals, a contractor shall reimburse an in-state or out-of-state provider of inpatient hospital services, at either a rate specified by subcontract or, in absence of a subcontract, the DRG rate established by the Administration 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.

**G. Payment for in-state outpatient hospital services.**

A contractor shall reimburse an in-state provider of 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, A.R.S. § 36-2903.01 and other sections of this Article. The terms of the subcontract are subject to review and approval or disapproval under A.R.S. § 36-2904 and R9-22-715.

**H. Outpatient out-of-state hospital payments.** In the absence of a contract with an out-of-state hospital that specifies payment rates, a contractor shall reimburse out-of-state hospitals for covered outpatient services by applying the methodology described in R9-22-712.10 through R9-22-712.50. If the outpatient procedure is not assigned a fee schedule amount, the contractor shall pay the claim by multiplying the covered charges for the outpatient services by the statewide outpatient cost-to-charge ratio.

**I. 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.

**J. 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 an inpatient hospital admission, a specific service, or level of care but subsequent medical review indicates that the admission, the service, or level of care was not medically appropriate, the contractor shall adjust the claim payment.
4. A contractor and a hospital may enter into a subcontract that includes hospital claims review criteria and procedures if the subcontract 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,
- 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 R9-22-201;
- 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.**

**K. 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 or at a lower rate if negotiated between the two parties.

**L. 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 of the rate plus a 1 percent penalty of the rate for each month or portion of the month following the 60th day of receipt of the bill until date of payment.

**M. Interest payment.** In addition to the requirements in subsection (L), a contractor shall pay interest for late claims as defined by contract.

**N. For services subject to limitations or exclusions such as the number of hours, days, or visits covered as described in Article**

2 of this Chapter, once the limit is reached the Administration will not reimburse the services.

#### Historical Note

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-705 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended as an emergency effective February 23, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Amended as a permanent rule effective May 16, 1983; text of the amended rule identical to emergency (Supp. 83-3). Former Section R9-22-705 repealed, new Section R9-22-705 adopted effective October 1, 1983 (Supp. 83-5). Amended as an emergency effective October 25, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-5). Emergency expired. Permanent amendment adopted effective February 1, 1985 (Supp. 85-1). Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (C) effective October 1, 1986 (Supp. 86-5). Amended subsection (C) effective October 1, 1987; amended subsection (C) effective December 22, 1987 (Supp. 87-4). Amended subsections (A) and (C) effective May 30, 1989 (Supp. 89-2). Amended effective April 13, 1990 (Supp. 90-2). Amended under an exemption from the provisions of the Administrative Procedure Act, effective March 1, 1993 (Supp. 93-1). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 5 A.A.R. 867, effective March 4, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 179, effective December 13, 1999 (Supp. 99-4). Amended by final rulemaking at 11 A.A.R. 3222, effective October 1, 2005 (Supp. 05-3). Amended by final rulemaking at 13 A.A.R. 662, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 1439, effective May 31, 2008 (Supp. 08-2). Amended by exempt rulemaking at 17 A.A.R. 1707, effective October 1, 2011 (Supp. 11-3). Amended by final rulemaking at 19 A.A.R. 2747, effective October 8, 2013 (Supp. 13-3). Amended by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

#### R9-22-706. Repealed

#### Historical Note

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-706 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-706 repealed, new Section R9-22-706 adopted effective October 1, 1983 (Supp. 83-5). Adopted as an emergency effective May 18, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Amended as an emergency effective August 16, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-4). Amended as an emergency effective October 25, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-5). Emergency expired. Permanent amendment adopted effective February 1, 1985 (Supp. 85-1). Amended effective October 1, 1985 (Supp. 85-5). Amended effective October 1, 1986 (Supp. 86-5). Amended subsections (A), (D), (E), (F), and (G) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsection

(F) effective December 22, 1987 (Supp. 87-4). Amended subsections (A) and (F) effective May 30, 1989 (Supp. 89-2). Amended effective April 13, 1990 (Supp. 90-2). Amended effective September 29, 1992 (Supp. 92-3). Amended effective September 22, 1997 (Supp. 97-3). Section repealed by final rulemaking at 10 A.A.R. 4656, effective January 1, 2005 (Supp. 04-4).

#### R9-22-707. Repealed

#### Historical Note

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-707 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Repealed as an emergency effective February 23, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Repealed as a permanent action effective May 16, 1983 (Supp. 83-3). New Section R9-22-707 adopted effective October 1, 1983 (Supp. 83-5). Adopted as an emergency effective May 18, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Adopted as an emergency effective August 16, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-4). Former Section R9-22-707 repealed, new Section R9-22-707 adopted effective October 1, 1985 (Supp. 85-5). Former Section R9-22-707 repealed, new Section R9-22-707 adopted effective October 1, 1986 (Supp. 86-5). Amended subsection (A) effective October 1, 1987 (Supp. 87-4). Amended effective September 29, 1992 (Supp. 92-3). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 3317, effective July 15, 2002 (Supp. 02-3). Section repealed by final rulemaking at 13 A.A.R. 856, effective May 5, 2007 (Supp. 07-1).

#### R9-22-708. Payments for Services Provided to Eligible American Indians

- A. For purposes of this Article “IHS enrolled” or “enrolled with IHS” means an American Indian who has elected to receive covered services through IHS instead of a contractor.
- B. For an American Indian who is enrolled with IHS, AHCCCS shall pay IHS the most recent all-inclusive inpatient, outpatient or ambulatory surgery rates published by Health and Human Services (HHS) in the Federal Register, or a separately contracted rate with IHS, for AHCCCS-covered services provided in an IHS facility. AHCCCS shall reimburse providers for the Medicare coinsurance and deductible amounts required to be paid by the Administration or contractor in Chapter 29, Article 3 of this Title.
- C. When IHS refers an American Indian enrolled with IHS to a provider other than an IHS or tribal facility, the provider to whom the referral is made shall obtain prior authorization from AHCCCS for services as required under Articles 2, 7 or 12 of this Chapter.
- D. For an American Indian enrolled with a contractor, AHCCCS shall pay the contractor a monthly capitation payment.
- E. Once an American Indian enrolls with a contractor, AHCCCS shall not reimburse any provider other than IHS or a Tribal facility.

#### Historical Note

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-708 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-708 repealed, new Section R9-22-708 adopted effective

October 1, 1983 (Supp. 83-5). Former Section R9-22-708 renumbered and amended as Section R9-22-709, new Section R9-22-708 adopted effective October 1, 1985 (Supp. 85-5). Amended effective October 1, 1986 (Supp. 86-5). Amended by final rulemaking at 10 A.A.R. 4656, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

**R9-22-709. Contractor's Liability to Hospitals for the Provision of Emergency and Post-stabilization Care**

A contractor is liable for emergency hospitalization and post-stabilization care as described in R9-22-210 and R9-22-210.01.

**Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-709 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-709 repealed, new Section R9-22-709 adopted effective October 1, 1983 (Supp. 83-5). Former Section R9-22-709 renumbered and amended as Section R9-22-713, former Section R9-22-708 renumbered and amended as Section R9-22-709 effective October 1, 1985 (Supp. 85-5).

Amended under an exemption from the provisions of the Administrative Procedure Act, effective March 1, 1993 (Supp. 93-1). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 13 A.A.R. 856, effective May 5, 2007 (Supp. 07-1).

*Editor's Note: The following Section was amended under an exemption from the provisions of the Administrative Procedure Act which means that this rule was not reviewed by the Governor's Regulatory Review Council; the agency did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the agency was not required to hold public hearings on the rules; and the Attorney General did not certify this rule. This Section was subsequently amended through the regular rulemaking process.*

**R9-22-710. Payments for Non-hospital Services**

**A.** Capped fee-for-service. The Administration shall provide notice of changes in methods and standards for setting payment rates for services in accordance with 42 CFR 447.205, December 19, 1983, 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.

1. Non-contracted services. In the absence of a contract that specifies otherwise, a contractor shall reimburse a provider or noncontracting provider for non-hospital services according to the Administration's capped-fee-for-service schedule.
2. Procedure codes. The Administration shall maintain a current copy of the National Standard Code Sets mandated under 45 CFR 160 (October 1, 2004) and 45 CFR 162 (October 1, 2004), 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.

- a. A person shall submit an electronic claim consistent with 45 CFR 160 (October 1, 2004) and 45 CFR 162 (October 1, 2004).
  - b. A person shall submit a paper claim using the National Standard Code Sets as described under 45 CFR 160 (October 1, 2004) and 45 CFR 162 (October 1, 2004).
  - c. The Administration may deny a claim for failure to comply with subsection (A) (2) (a) or (b).
3. Fee schedule. The Administration shall pay providers, including noncontracting providers, at the lesser of billed charges or the capped fee-for-service rates specified in subsections (A)(3)(a) through (A)(3)(d) unless a different fee is specified in a contract between the Administration and the provider, or is otherwise required by law.
- a. Physician services. Fee schedules for payment for physician services are on file at the central office of the Administration for reference use during customary business hours.
  - b. Dental services. Fee schedules for payment for dental services are on file at the central office of the Administration for reference use during customary business hours.
  - c. Transportation services. Fee schedules for payment for transportation services are on file at the central office of the Administration for reference use during customary business hours. For dates of service beginning:
    - i. October 1, 2012 through September 30, 2013, the Administration and its contractors shall reimburse ambulance services at 68.59 percent of the ADHS rates that are in effect as of August 2, 2012.
    - ii. October 1, 2013 through September 30, 2014, the Administration and its contractors shall reimburse ambulance services at 68.59 percent of the ADHS rates that are in effect as of August 2, 2013.
    - iii. October 1, 2014 through September 30, 2015, the Administration and its contractors shall reimburse ambulance services at 74.74 percent of the ADHS rates that are in effect as of August 2, 2014.
  - d. Medical supplies and durable medical equipment (DME). Fee schedules for payment for medical supplies and DME are on file at the central office of the Administration for reference use during customary business hours. The Administration shall reimburse a provider once for purchase of DME during any two-year period, unless the Administration determines that DME replacement within that period is medically necessary for the member. Unless prior authorized by the Administration, no more than one repair and adjustment of DME shall be reimbursed during any two-year period.
- B.** Pharmacy services. The Administration shall not reimburse pharmacy services unless the services are provided by a pharmacy having a subcontract with a Pharmacy Benefit Manager (PBM) contracted with AHCCCS. Except as specified in subsection (C), the Administration shall reimburse pharmacy services according to the terms of the contract.
- C.** FQHC Pharmacy reimbursement.
1. For purposes of this Section the following terms are defined:



## Arizona Health Care Cost Containment System – Administration

- a. “340B Drug Pricing Program” means the discount drug purchasing program described in 42 U.S.C 256b.
  - b. “340B Ceiling Price” means the maximum price that drug manufacturers can charge covered entities participating in the 340B Drug Pricing Program as reported by the drug manufacturer to HRSA.
  - c. “340B entity” means a covered entity, eligible to participate in the 340B Drug Pricing Program, as defined by the Health Resources and Human Services Administration.
  - d. “Actual Acquisition Cost (AAC)” means the purchase price of a drug paid by a pharmacy net of discounts, rebates, chargebacks and other adjustments to the price of the drug. The AAC excludes dispensing fees.
  - e. “Contracted Pharmacy” means an arrangement through which a 340B entity may contract with an outside pharmacy to provide comprehensive pharmacy services utilizing medications subject to 340B pricing.
  - f. “Dispensing Fee” means the amount paid for the professional services provided by the pharmacist for dispensing a prescription. The Dispensing Fee does not include any payment for the drugs being dispensed.
  - g. “Federally Qualified Health Center” means a public or private non-profit health care organization that has been identified by HRSA and certified by CMS as meeting the criteria under sections 1861(aa)(4) and 1905(l)(2)(B) of the Social Security Act and receives funds under section 330 of the Public Health Service Act.
  - h. “Federally Qualified Health Center Look-Alike” means a public or private non-profit health care organization that has been identified by HRSA and certified by CMS as meeting the definition of “health center” under section 330 of the Public Health Service Act, but does not receive grant funding under section 330.
  - i. “FQHC or FQHC Look-Alike pharmacy” means a pharmacy that dispenses drugs to FQHC or FQHC-LA patients and that is owned and/or operated by an FQHC/FQHC-LA or by an entity that reports the costs of an FQHC/FQHC-LA on its Medicare Cost Report, whether or not collocated with an FQHC or an FQHC Look-Alike.
2. Effective the later of February 1, 2012, or CMS approval of a State Plan Amendment, an FQHC or FQHC Look-Alike shall:
    - a. Notify the AHCCCS provider registration unit of its status as a 340B covered entity no later than:
      - i. 30 days after the effective date of this Section;
      - ii. 30 days after registration with the Health Resources and Services Administration (HRSA) for participation in the 340B program, or
      - iii. The time of application to become an AHCCCS provider.
    - b. Provide the 340B pricing file to the AHCCCS Administration upon request. The 340B pricing file shall be provided in the file format as defined by AHCCCS.
    - c. Identify 340B drug claims submitted to the AHCCCS FFS PBM or the Managed Care Contractors’ PBMs for reimbursement. The 340B drug claim identification and claims processing for a drug claim submission shall be consistent with claim instructions issued and required by AHCCCS to identify such claims.
  3. The FQHC and the FQHC Look-Alike pharmacies shall submit claims for AHCCCS members for drugs that are identified in the 340B pricing file, whether or not purchased under the 340B pricing file, with the lesser of:
    - a. The actual acquisition cost, or
    - b. The 340B ceiling price.
  4. The AHCCCS Fee-for-Service and Managed Care Contractors’ PBMs shall reimburse claims for drugs which are identified in the 340B pricing file dispensed by FQHC and FQHC Look -Alike pharmacies, whether or not purchased under the 340B pricing file, at the amount submitted under subsection (C)(3) plus a dispensing fee listed in the AHCCCS Capped Fee-For-Service Schedule unless a contract between the 340B entity and a Managed Care Contractor’s PBM specifies a different dispensing fee.
  5. Contracted pharmacies shall not submit claims for drugs dispensed under an agreement with the 340B entity as part of the 340B drug pricing program, and the AHCCCS Administration and Managed Care Contractors shall not reimburse such claims.
  6. The AHCCCS Administration and Managed Care Contractors shall reimburse contracted pharmacies for drugs not dispensed under an agreement with the 340B entity as part of the 340B program at the price and dispensing fee set forth in the contract between the contracted pharmacy and the AHCCCS or its Managed Care Contractors’ PBMs. Neither the Administration nor its Managed Care Contractors will reimburse a contracted pharmacy that does not have a contract with the Administration or MCO’s PBM.
  7. The AHCCCS Administration and its Managed Care Contractors shall reimburse FQHC and FQHC Look-Alike pharmacies for drugs that are not eligible under the 340B Drug Pricing Program at the price and dispensing fee set forth in their contract with the AHCCCS or its Managed Care Contractors’ PBMs.
  8. AHCCCS may periodically conduct audits to ensure compliance with this Section.

**Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-710 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended as an emergency effective February 23, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Amended as a permanent rule effective May 16, 1983; text of amended rule identical to emergency (Supp. 83-3). Former Section R9-22-710 repealed, new Section R9-22-710 adopted effective October 1, 1983 (Supp. 83-5). Amended effective October 1, 1985. The capped fee-for-service schedules, deleted from Section R9-22-710, are now on file at the central office of the Administration (Supp. 85-5). Amended subsections (B) through (D) effective October 1, 1986 (Supp. 86-5). Amended subsection (B) effective July 1, 1988 (Supp. 88-3). Amended subsection (B) effective April 27, 1989 (Supp. 89-2). Amended under an exemption from the provisions of the Administrative Procedure Act, effective March 1, 1993 (Supp. 93-1). Amended effective December 13, 1993 (Supp. 93-4). Amended effective September 22, 1997 (Supp. 97-3).

Amended by final rulemaking at 11 A.A.R. 3830, effective November 12, 2005 (Supp. 05-3). Amended by exempt rulemaking at 18 A.A.R. 212, effective February 1, 2012 (Supp. 12-1). Amended by exempt rulemaking at 18 A.A.R. 1971, effective August 1, 2012 (Supp. 12-3).

Amended by exempt rulemaking at 18 A.A.R. 2630, effective October 1, 2012 (Supp. 12-4). Amended by final rulemaking at 19 A.A.R. 1681, effective August 9, 2013 (Supp. 13-2). Amended by exempt rulemaking at 19 A.A.R. 3525, effective October 18, 2013 (Supp. 13-4)

#### **R9-22-711. Copayments**

##### **A. For purposes of this Article:**

1. A copayment is a monetary amount that a member pays directly to a provider at the time a covered service is rendered.
2. An eligible individual is assigned to a hierarchy established in subsections (B) through (E), for the purposes of establishing a copayment amount.
3. No refunds shall be made for a retroactive period if there is a change in an individual's status that alters the amount of a copayment.

##### **B. The following services are exempt from AHCCCS copayments for all members:**

1. Family planning services and supplies,
2. Services related to a pregnancy or any other medical condition that may complicate the pregnancy, including tobacco cessation treatment for a pregnant woman,
3. Emergency services as described in 42 CFR 447.56(2)(i),
4. All services paid on a fee-for-service basis,
5. Preventive services, such as well visits, immunizations, pap smears, colonoscopies, and mammograms,
6. Provider preventable services.

##### **C. The following individuals are exempt from AHCCCS copayments:**

1. An individual under age 19, including individuals eligible for the KidsCare Program in A.R.S. § 36-2982;
2. An individual determined to be Seriously Mentally Ill (SMI) by the Arizona Department of Health Services;
3. An individual eligible for the Arizona Long-Term Care Program in A.R.S. § 36-2931;
4. An individual eligible for QMB under Chapter 29;
5. An individual eligible for the Children's Rehabilitative Services program under A.R.S. § 36-2906(E);
6. An individual receiving nursing facility or HCBS services under R9-22-216;
7. An individual receiving hospice care as defined in 42 U.S.C. 1396d(o);
8. An American Indian individual enrolled in a health plan and has received services through an IHS facility, tribal 638 facility or urban Indian health program;
9. An individual eligible in the Breast and Cervical Cancer program as described under Article 20;
10. An individual who is pregnant and through the postpartum period following the pregnancy;
11. An individual with respect to whom child welfare services are made available under Part B of Title IV of the Social Security Act on the basis of being a child in foster care, without regard to age;
12. An individual with respect to whom adoption or foster care assistance is made available under Part E of Title IV of the Social Security Act, without regard to age ; and
13. An adult eligible under R9-22-1427(E), with income at or below 106% of the FPL.

##### **D. Non-mandatory copayments. Unless otherwise listed in subsection (B) or (C), individuals under subsections (D)(1) through (6) are subject to the copayments listed in this subsection.**

A provider shall not deny a service when a member states to the provider an inability to pay a copayment.

1. A caretaker relative eligible under R9-22-1427(A);
2. An individual eligible for Young Adult Transitional Insurance (YATI) in A.R.S. § 36-2901(6)(a)(iii);
3. An individual eligible for State Adoption Assistance in R9-22-1433;
4. An individual eligible for Supplemental Security Income (SSI);
5. An individual eligible for SSI Medical Assistance Only (SSI/MAO) in Article 15; and
6. An individual eligible for the Freedom to Work program in A.R.S. § 36-2901(6)(g).
7. Copayment amount per service:
  - a. \$2.30 per prescription drug.
  - b. \$3.40 per outpatient visit, excluding an emergency room visit, if any of the services rendered during the visit are coded as evaluation and management services or non-emergent surgical procedures according to the National Standard Code Sets. An outpatient visit includes any setting where these services are performed such as a physician's office, an Ambulatory Surgical Center (ASC), or a clinic.
  - c. \$2.30 per visit, if a copayment is not being imposed under subsection (D)(7)(b) and any of the services rendered during the visit are coded as physical, occupational or speech therapy services according to the National Standard Code Sets.

##### **E. Mandatory copayments.**

1. Copayments for individuals eligible for Transitional Medical Assistance (TMA) under R9-22-1427(B)(1)(c)(i). Unless otherwise listed in subsection (C), an individual is required to pay the following copayments for prescription drugs and outpatient services unless the service is provided during an emergency room visit or the service is otherwise exempt under subsection (B). An outpatient visit includes any setting where these outpatient services are performed such as, an outpatient hospital, a physician's provider's office, HCBS setting, an Ambulatory Surgical Center (ASC), or a clinic:
  - a. \$2.30 per prescription drug.
  - b. \$4.00 per outpatient visit, if any of the services rendered during the visit are coded as evaluation and management services according to the National Standard Code Sets.
  - c. If a copayment is not being imposed under subsection (E)(1)(b), \$3.00 per visit if any of the services rendered during the visit are coded as physical, occupational or speech therapy services according to the National Standard Code Sets.
  - d. If a copayment is not being imposed under subsection (E)(1)(b) or (c), \$3.00 per visit, if any of the services rendered during the visit are coded as non-emergent surgical procedures according to the National Standard Code Sets.
2. Copayments for persons eligible under R9-22-1427(E) with income above 106% of the FPL and for persons eligible under A.R.S. §§ 36-2907.10 and 36-2907.11. Subject to CMS approval, unless otherwise listed in subsection (C), these individuals are required to pay the following copayments for prescription drugs and outpatient services unless the service is provided during an emergency room visit or the service is otherwise exempt under subsection (B). An outpatient visit includes any setting where these outpatient services are performed such as, an outpatient hospital, a physician's provider's

office, HCBS setting, an Ambulatory Surgical Center (ASC), or a clinic:

- a. \$4.00 per prescription drug.
  - b. \$5.00 per outpatient visit when the AHCCCS fee schedule for the visit code is a rate from \$50 to less than \$100, if any of the services rendered during the visit are coded as evaluation and management services according to the National Standard Code Sets.
  - c. \$10.00 per outpatient visit when the AHCCCS fee schedule for the visit code is a rate of \$100 or greater, if any of the services rendered during the visit are coded as evaluation and management services according to the National Standard Code Sets.
  - d. If a copayment is not being imposed under subsection (E)(2)(b) or (E)(2)(c), for services coded as physical, occupational or speech therapy services according to the National Standard Code Sets.
    - i. \$2.00 if the rate on the fee schedule is \$20 to \$39.99,
    - ii. \$4.00 if the rate on the fee schedule is \$40 to \$49.99, or
    - iii. \$5.00 if the rate on the fee schedule is \$50 and above per visit.
  - e. If a copayment is not being imposed under subsection (E)(2)(b) – (E)(2)(d), for services coded as non-emergent surgical procedures according to the National Standard Code Sets,
    - i. \$30.00 if the rate on the fee schedule is \$300 to \$499.99, or
    - ii. \$50.00 if the rate on the fee schedule is \$500 and above per visit.
  - f. Unless the individual is otherwise exempt in subsection (C) or the service is exempted under subsection (B) the individual is required to pay \$2.00 per trip for non-emergency transportation in an urban area.
  - g. Unless the individual is otherwise exempt in subsection (C) or the service is exempted under subsection (B) the individual is required to pay \$8.00 for non-emergency use of the emergency room.
  - h. Unless the individual is otherwise exempt in subsection (C) or the service is exempted under subsection (B) the individual is required to pay \$75 for an Inpatient stay.
  3. The provider may deny a service if the member does not pay the copayment required by subsection (E), however, a provider may choose to reduce or waive copayments under this subsection on a case-by-case basis.
- F.** A provider is responsible for collecting any copayment imposed under this Section.
- G.** The total aggregate amount of copayments under subsections (D) or (E) may not exceed 5% of the family's income as applied on a quarterly basis. The member may establish that the aggregate limit has been met on a quarterly basis by providing the Administration with records of copayments incurred during the quarter. In addition, the Administration shall also use claims and encounters information available to the Administration to establish when a member's copayment obligation has reached 5% of the family's income.
- H.** Reduction in payments to providers. The Administration and its contractors shall reduce the payment it makes to any provider by the amount of a member's copayment obligation under subsection (E), regardless of whether the provider successfully collects the copayments described in this Section.

### Historical Note

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Sections R9-22-711 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-711 repealed, new Section R9-22-711 adopted effective October 1, 1983 (Supp. 83-5). Amended effective October 1, 1985 (Supp. 85-5). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective October 26, 1993 (Supp. 93-4). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 3317, effective July 15, 2002 (Supp. 02-3). Amended by exempt rulemaking at 9 A.A.R. 4557, effective October 1, 2003 (Supp. 03-4). Amended by exempt rulemaking at 10 A.A.R. 2194, effective May 3, 2004 (Supp. 04-2). Amended by exempt rulemaking at 10 A.A.R. 4266, effective October 1, 2004 (Supp. 04-3). Amended by final rulemaking at 16 A.A.R. 1449, effective October 1, 2010 (Supp. 10-3). Section amended by exempt rulemaking at 18 A.A.R. 461, effective April 1, 2012 (Supp. 12-1). Section amended by final rulemaking at 19 A.A.R. 2954, effective November 11, 2013 (Supp. 13-3). Amended by exempt rulemaking at 20 A.A.R. 128, effective December 30, 2013 (Supp. 13-4). Amended by exempt rulemaking at 20 A.A.R. 2755, effective January 1, 2015 (Supp. 14-3).

*Editor's Note: The following Section was adopted and amended under an exemption from the provisions of the Administrative Procedure Act which means that this rule was not reviewed by the Governor's Regulatory Review Council; the agency did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the agency was not required to hold public hearings on the rules; and the Attorney General did not certify this rule. This Section was subsequently amended through the regular rulemaking process.*

### R9-22-712. Reimbursement: General

- A.** Inpatient and outpatient discounts and penalties. If a claim is pending for additional documentation required under A.R.S. § 36-2903.01(G)(4), the period during which the claim is pending is not used in the calculation of the quick-pay discounts and slow-pay penalties under A.R.S. § 36-2903.01(G)(5).
- B.** Inpatient and outpatient in-state or out-of-state hospital payments.
1. Payment for inpatient out-of-state hospital services for claims with discharge dates on or before September 30, 2014. In the absence of a contract with an out-of-state hospital that specifies payment rates, AHCCCS shall reimburse out-of-state hospitals for covered inpatient services by multiplying covered charges by the most recent statewide urban cost-to-charge ratio as determined in R9-22-712.01(6)(d).
  2. Payment for inpatient in-state hospital services for claims with discharge dates on or before September 30, 2014. AHCCCS shall reimburse an in-state provider of inpatient hospital services rendered with a discharge date on or before September 30, 2014, at the prospective tiered-per-diem amount in A.R.S. § 36-2903.01 and this Article.
  3. Payment for inpatient in-state or out-of-state hospital services for claims with discharge dates on and after October 1, 2014 regardless of admission date. Subject to R9-22-

- 718 and A.R.S. § 36-2905.01 regarding urban hospitals, a contractor shall reimburse an in-state or out-of-state provider of inpatient hospital services, at either a rate specified by subcontract or, in the absence of a subcontract, the DRG rate established by the Administration 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.
4. Outpatient out-of-state hospital payments. In the absence of a contract with an out-of-state hospital that specifies payment rates, AHCCCS shall reimburse an out-of-state hospital for covered outpatient services by applying the methodology described in R9-22-712.10 through R9-22-712.50. If the outpatient procedure is not assigned a fee schedule amount, the Administration shall pay the claim by multiplying the covered charges for the outpatient services by the statewide outpatient cost-to-charge ratio.
  5. Outpatient in-state hospital payments. A contractor shall reimburse an in-state provider of 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, A.R.S. § 36-2903.01 and other sections of this Article. The terms of the subcontract are subject to review and approval or disapproval under A.R.S. § 36-2904 and R9-22-715.
- C. Access to records. Subcontracting and noncontracting providers of outpatient or inpatient hospital services shall allow the Administration access to medical records regarding eligible persons and shall in all other ways fully cooperate with the Administration or the Administration's designated representative in performance of the Administration's utilization control activities. The Administration shall deny a claim for failure to cooperate.
- D. Prior authorization. The Administration or contractor may deny a claim if a provider fails to obtain prior authorization as required under R9-22-210.
- E. Review of claims. Regardless of prior authorization or concurrent review activities, the Administration may subject all hospital claims, including outliers, to prepayment medical review or post-payment review, or both. The Administration shall conduct post-payment reviews consistent with A.R.S. § 36-2903.01 and may recoup erroneously paid claims.
- F. Claim receipt.
1. The Administration's date of receipt of inpatient or outpatient hospital claims is the date the claim is received by the Administration as indicated by the date stamp on the claim and the system-generated claim reference number or system-generated date-specific number.
  2. Hospital claims are considered paid on the date indicated on disbursement checks.
  3. A denied claim is considered adjudicated on the date the claim is denied.
  4. Claims that are denied and are resubmitted are assigned new receipt dates.
  5. For a claim that is pending for additional supporting documentation specified in A.R.S. § 36-2903.01 or 36-2904, the Administration shall assign a new date of receipt upon receipt of the additional documentation.
  6. 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 Administration shall not assign a new date of receipt.
- G. Outpatient hospital reimbursement. The Administration shall pay for covered outpatient hospital services provided to eligible persons with dates of service from March 1, 1993 through June 30, 2005, at the AHCCCS outpatient hospital cost-to-charge ratio, multiplied by the amount of the covered charges.
1. Computation of outpatient hospital reimbursement. The Administration shall compute the cost-to-charge ratio on a hospital-specific basis by determining the covered charges and costs associated with treating eligible persons in an outpatient setting at each hospital. Outpatient operating and capital costs are included in the computation but outpatient medical education costs that are included in the inpatient medical education component are excluded. To calculate the outpatient hospital cost-to-charge ratio annually for each hospital, the Administration shall use each hospital's Medicare Cost Reports and a database consisting of outpatient hospital claims paid and encounters processed by the Administration for each hospital, subjecting both to the data requirements specified in R9-22-712.01. The Administration shall use the following methodology to establish the outpatient hospital cost-to-charge ratios:
    - a. Cost-to-charge ratios. The Administration shall calculate the costs of the claims and encounters for outpatient hospital services by multiplying the ancillary line item cost-to-charge ratios by the covered charges for corresponding revenue codes on the claims and encounters. Each hospital shall provide the Administration with information on how the revenue codes used by the hospital to categorize charges on claims and encounters correspond to the ancillary line items on the hospital's Medicare Cost Report. The Administration shall then compute the overall outpatient hospital cost-to-charge ratio for each hospital by taking the average of the ancillary line items cost-to-charge ratios for each revenue code weighted by the covered charges.
    - b. Cost-to-charge limit. To comply with 42 CFR 447.325, the Administration may limit cost-to-charge ratios to 1.00 for each ancillary line item from the Medicare Cost Report. The Administration shall remove ancillary line items that are non-covered or not applicable to outpatient hospital services from the Medicare Cost Report data for purposes of computing the overall outpatient hospital cost-to-charge ratio.
  2. New hospitals. The Administration shall reimburse new hospitals at the weighted statewide average outpatient hospital cost-to-charge ratio multiplied by covered charges. The Administration shall continue to use the statewide average outpatient hospital cost-to-charge ratio for a new hospital until the Administration rebases the outpatient hospital cost-to-charge ratios and the new hospital has a Medicare Cost Report for the fiscal year being used in the rebasing.
  3. Specialty outpatient services. The Administration may negotiate, at any time, reimbursement rates for outpatient hospital services in a specialty facility.
  4. Reimbursement requirements. To receive payment from the Administration, a hospital shall submit claims that are legible, accurate, error free, and have a covered charge greater than zero. The Administration shall not reimburse hospitals for emergency room treatment, observation hours or days, or other outpatient hospital services performed on an outpatient basis, if the eligible person is admitted as an inpatient to the same hospital directly from the emergency room, observation area, or other outpatient department. Services provided in the emergency room, observation area, and other outpatient hospital services

provided before the hospital admission are included in the tiered per diem payment.

5. Rebasement. The Administration shall rebase the outpatient hospital cost-to-charge ratios at least every four years but no more than once a year using updated Medicare Cost Reports and claim and encounter data.

6. If a hospital files an increase in its charge master for an existing outpatient service provided on or after July 1, 2004, and on or before June 30, 2005, which represents an aggregate increase in charges of more than 4.7%, the Administration shall adjust the hospital-specific cost-to-charge ratio as calculated under subsection (G)(1) through (5) by applying the following formula:

$$CCR * [1.047 / (1 + \% \text{ increase})]$$

Where “CCR” means the hospital-specific cost-to-charge ratio as calculated under subsection (G)(1) through (5) and “% increase” means the aggregate percentage increase in charges for outpatient services shown on the hospital charge master.

“Charge master” means the schedule of rates and charges as described under A.R.S. § 36-436 and the rules that relate to those rates and charges that are filed with the Director of the Arizona Department of Health Services.

#### Historical Note

Adopted as an emergency effective February 23, 1983 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Adopted as a permanent rule effective May 16, 1983; text of adopted rule identical to emergency (Supp. 83-3). Former Section R9-22-712 repealed, new Section R9-22-712 adopted effective October 1, 1983 (Supp. 83-5). Former Section R9-22-712 renumbered and amended as Section R9-22-1001 effective October 1, 1985 (Supp. 85-5). New Section R9-22-712 adopted under an exemption from the provisions of the Administrative Procedure Act, effective March 1, 1993 (Supp. 93-1). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Amended effective January 14, 1997 (Supp. 97-1). Amended by exempt rulemaking at 10 A.A.R. 3831, effective August 25, 2004 (Supp. 04-3). Amended by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2). Amended by final rulemaking at 11 A.A.R. 3231, effective October 1, 2005 (Supp. 05-3). Amended by final rulemaking at 14 A.A.R. 1439, effective May 31, 2008 (Supp. 08-2). Amended by exempt rulemaking at 17 A.A.R. 1337, effective October 1, 2011 (Supp. 11-3). Amended by final rulemaking at 17 A.A.R. 1658, effective August 2, 2011 (Supp. 11-3). Amended by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

#### **R9-22-712.01. Inpatient Hospital Reimbursement for claims with admission dates and discharge dates from October 1, 1998 through September 30, 2014**

Inpatient hospital reimbursement. The Administration shall pay for covered inpatient acute care hospital services provided to eligible persons for claims with admission dates and discharge dates from October 1, 1998 through September 30, 2014, on a prospective reimbursement basis. The prospective rates represent payment in full, excluding quick-pay discounts, slow-pay penalties, and third-party payments for both accommodation and ancillary department services. The rates include reimbursement for operating and capital costs. The Administration shall make reimbursement for direct

graduate medical education as described in A.R.S. § 36-2903.01. For payment purposes, the Administration shall classify each AHC-CCS inpatient hospital day of care into one of several tiers appropriate to the services rendered. The rate for a tier is referred to as the tiered per diem rate of reimbursement. The number of tiers is seven and the maximum number of tiers payable per continuous stay is two. Payment of outlier claims, transplant claims, or payment to out-of-state hospitals, freestanding psychiatric hospitals, and other specialty facilities may differ from the inpatient hospital tiered per diem rates of reimbursement described in this Section.

1. Tier rate data. The Administration shall base tiered per diem rates effective on and after October 1, 1998 on Medicare Cost Reports for Arizona hospitals for the fiscal year ending in 1996 and a database consisting of inpatient hospital claims and encounters for dates of service matching each hospital's 1996 fiscal year end.

a. Medicare Cost Report data. Because Medicare Cost Report years are not standard among hospitals and were not audited at the time of the rate calculation, the Administration shall inflate all the costs to a common point in time as described in subsection (2) for each component of the tiered per diem rates. The Administration shall not make any changes to the tiered per diem rates if the Medicare Cost Report data are subsequently updated or adjusted. If a single Medicare Cost Report is filed for more than one hospital, the Administration shall allocate the costs to each of the respective hospitals. A hospital shall submit information to assist the Administration in this allocation.

b. Claim and encounter data. For the database, the Administration shall use only those inpatient hospital claims paid by the Administration and encounters that were accepted and processed by the Administration at the time the database was developed for rates effective on and after October 1, 1998. The Administration shall subject the claim and encounter data to a series of data quality, reasonableness, and integrity edits and shall exclude from the database or adjust claims and encounters that fail these edits. The Administration shall also exclude from the database the following claims and encounters:

- i. Those missing information necessary for the rate calculation,
- ii. Medicare crossovers,
- iii. Those submitted by freestanding psychiatric hospitals, and
- iv. Those for transplant services or any other hospital service that the Administration would pay on a basis other than the tiered per diem rate.

2. Tier rate components. The Administration shall establish inpatient hospital prospective tiered per diem rates based on the sum of the operating and capital components. The rate for the operating component is a statewide rate for each tier except for the NICU and Routine tiers, which are based on peer groups. The rate for the capital component is a blend of statewide and hospital-specific values, as described in A.R.S. § 36-2903.01. The Administration shall use the following methodologies to establish the rates for each of these components.

a. Operating component. Using the Medicare Cost Reports and the claim and encounter database, the Administration shall compute the rate for the operating component as follows:

- i. Data preparation. The Administration shall identify and group into department categories,

- the Medicare Cost Report data that provide ancillary department cost-to-charge ratios and accommodation costs per day. To comply with 42 CFR 447.271, the Administration shall limit cost-to-charge ratios to 1.00 for each ancillary department.
- ii. Operating cost calculation. To calculate the rate for the operating component, the Administration shall derive the operating costs from claims and encounters by combining the Medicare Cost Report data and the claim and encounter database for all hospitals. In performing this calculation, the Administration shall match the revenue codes on the claims and encounters to the departments in which the line items on the Medicare Cost Reports are grouped. The ancillary department cost-to-charge ratios for a particular hospital are multiplied by the covered ancillary department charges on each of the hospital's claims and encounters. The AHCCCS inpatient days of care on the particular hospital's claims and encounters are multiplied by the corresponding accommodation costs per day from the hospital's Medicare Cost Report. The ancillary cost-to-charge ratios and accommodation costs per day do not include medical education and capital costs. The Administration shall inflate the resulting operating costs for the claims and encounters of each hospital to a common point in time, December 31, 1996, using the DRI inflation factor and shall reduce the operating costs for the hospital by an audit adjustment factor based on available national data and Arizona historical experience in adjustments to Medicare reimbursable costs. The Administration shall further inflate operating costs to the midpoint of the rate year (March 31, 1999).
  - iii. Operating cost tier assignment. After calculating the operating costs, the Administration shall assign the claims and encounters used in the calculation to tiers based on diagnosis, procedure, or revenue codes, or NICU classification level, or a combination of these. For the NICU tier, the Administration shall further assign claims and encounters to NICU Level II or NICU Level III peer groups, based on the hospital's certification by the Arizona Perinatal Trust. For the Routine tier, the Administration shall further assign claims and encounters to the general acute care hospital or rehabilitation hospital peer groups, based on state licensure by the Department of Health Services. For claims and encounters assigned to more than one tier, the Administration shall allocate ancillary department costs to the tiers in the same proportion as the accommodation costs. Before calculating the rate for the operating component, the Administration shall identify and exclude any claims and encounters that are outliers as defined in subsection (6).
  - iv. Operating rate calculation. The Administration shall set the rate for the operating component for each tier by dividing total statewide or peer group hospital costs identified in this subsection within the tier by the total number of AHCCCS inpatient hospital days of care reflected in the claim and encounter database for that tier.
- b. Capital component. For rates effective October 1, 1999 the capital component is calculated as described in A.R.S. § 36-2903.01.
  - c. Statewide inpatient hospital cost-to-charge ratio. For dates of service prior to October 1, 2007, the statewide inpatient hospital cost-to-charge ratio is used for payment of outliers, as described in subsections (4), (5), and (6), and out-of-state hospitals, as described in R9-22-712(B). The Administration shall calculate the AHCCCS statewide inpatient hospital cost-to-charge ratio by using the Medicare Cost Report data and claim and encounter database described in subsection (1) and used to determine the tiered per diem rates. For each hospital, the covered inpatient days of care on the claims and encounters are multiplied by the corresponding accommodation costs per day from the Medicare Cost Report. Similarly, the covered ancillary department charges on the claims and encounters are multiplied by the ancillary department cost-to-charge ratios. The accommodation costs per day and the ancillary department cost-to-charge ratios for each hospital are determined in the same way described in subsection (2)(a) but include costs for operating and capital. The Administration shall then calculate the statewide inpatient hospital cost-to-charge ratio by summing the covered accommodation costs and ancillary department costs from the claims and encounters for all hospitals and dividing by the sum of the total covered charges for these services for all hospitals.
  - d. Unassigned tiered per diem rates. If a hospital has an insufficient number of claims to set a tiered per diem rate, the Administration shall pay that hospital the statewide average rate for that tier.
3. Tier assignment. The Administration shall assign AHCCCS inpatient hospital days of care to tiers based on information submitted on the inpatient hospital claim or encounter including diagnosis, procedure, or revenue codes, peer group, NICU classification level, or a combination of these.
    - a. Tier hierarchy. In assigning claims for AHCCCS inpatient hospital days of care to a tier, the Administration shall follow the Hierarchy for Tier Assignment through September 30, 2014 in R9-22-712.09. The Administration shall not pay a claim for inpatient hospital services unless the claim meets medical review criteria and the definition of a clean claim. The Administration shall not pay for a hospital stay on the basis of more than two tiers, regardless of the number of interim claims that are submitted by the hospital.
    - b. Tier exclusions. The Administration shall not assign to a tier or pay AHCCCS inpatient hospital days of care that do not occur during a period when the person is eligible. Except in the case of death, the Administration shall pay claims in which the day of admission and the day of discharge are the same, termed a same day admit and discharge, including same day transfers, as an outpatient hospital claim. The Administration shall pay same day admit and discharge claims that qualify for either the maternity or nursery tiers based on the lesser of the rate for the

- maternity or nursery tier, or the outpatient hospital fee schedule.
- c. Seven tiers. The seven tiers are:
- i. Maternity. The Administration shall identify the Maternity Tier by a primary diagnosis code. If a claim has an appropriate primary diagnosis, the Administration shall pay the AHCCCS inpatient hospital days of care on the claim at the maternity tiered per diem rate.
  - ii. NICU. The Administration shall identify the NICU Tier by a revenue code. A hospital does not qualify for the NICU tiered per diem rate unless the hospital is classified as either a NICU Level II or NICU Level III perinatal center by the Arizona Perinatal Trust. The Administration shall pay AHCCCS inpatient hospital days of care on the claim that meet the medical review criteria for the NICU tier and have a NICU revenue code at the NICU tiered per diem rate. The Administration shall pay any remaining AHCCCS inpatient hospital day on the claim that does not meet NICU Level II or NICU Level III medical review criteria at the nursery tiered per diem rate.
  - iii. ICU. The Administration shall identify the ICU Tier by a revenue code. The Administration shall pay AHCCCS inpatient hospital days of care on the claim that meets the medical review criteria for the ICU tier and has an ICU revenue code at the ICU tiered per diem rate. The Administration may classify any AHCCCS inpatient hospital days on the claim without an ICU revenue code, as surgery, psychiatric, or routine tiers.
  - iv. Surgery. The Administration shall identify the Surgery Tier by a revenue code and a valid surgical procedure code that is not on the AHCCCS excluded surgical procedure list. The excluded surgical procedure list identifies minor procedures such as sutures that do not require the same hospital resources as other procedures. The Administration shall only split a surgery tier with an ICU tier. AHCCCS shall pay at the surgery tier rate only when the surgery occurs on a date during which the member is eligible.
  - v. Psychiatric. The Administration shall identify the Psychiatric Tier by either a psychiatric revenue code and a psychiatric diagnosis or any routine revenue code if all diagnosis codes on the claim are psychiatric. The Administration shall not split a claim with AHCCCS inpatient hospital days of care in the psychiatric tier with any tier other than the ICU tier.
  - vi. Nursery. The Administration shall identify the Nursery Tier by a revenue code. The Administration shall not split a claim with AHCCCS inpatient hospital days of care in the nursery tier with any tier other than the NICU tier.
  - vii. Routine. The Administration shall identify the Routine Tier by revenue codes. The routine tier includes AHCCCS inpatient hospital days of care that are not classified in another tier or paid under any other provision of this Section. The Administration shall not split the routine tier with any tier other than the ICU tier.
4. Annual update. The Administration shall annually update the inpatient hospital tiered per diem rates through September 30, 2011.
  5. New hospitals. For rates effective on and after October 1, 1998, the Administration shall pay new hospitals the statewide average rate for each tier, as appropriate. The Administration shall update new hospital tiered per diem rates through September 30, 2011.
  6. Outliers. The Administration shall reimburse hospitals for AHCCCS inpatient hospital days of care identified as outliers under this Section by multiplying the covered charges on a claim by the Medicare Urban or Rural Cost-to-Charge Ratio. The Urban cost-to-charge ratio will be used for hospitals located in a county of 500,000 residents or more. The Rural cost-to-charge ratio will be used for hospitals located in a county of fewer than 500,000 residents.
    - a. Outlier criteria. For rates effective on and after October 1, 1998, the Administration set the statewide outlier cost threshold for each tier at the greater of three standard deviations from the statewide mean operating cost per day within the tier, or two standard deviations from the statewide mean operating cost per day across all the tiers. If the covered costs per day on a claim exceed the urban or rural cost threshold for a tier, the claim is considered an outlier. Outliers will be paid by multiplying the covered charges by the applicable Medicare Urban or Rural CCR. The resulting amount will be the outlier payment. If there are two tiers on a claim, the Administration shall determine whether the claim is an outlier by using a weighted threshold for the two tiers. The weighted threshold is calculated by multiplying each tier rate by the number of AHCCCS inpatient hospital days of care for that tier and dividing the product by the total tier days for that hospital. Routine maternity stays shall be excluded from outlier reimbursement. A routine maternity is any one-day stay with a delivery of one or two babies. A routine maternity stay will be paid at tier.
    - b. Update. The CCR is updated annually by the Administration for dates of service beginning October 1, using the most current Medicare cost-to-charge ratios published or placed on display by CMS by August 31 of that year. The Administration shall update the outlier cost thresholds for each hospital through September 30, 2011 as described under A.R.S. § 36-2903.01. For inpatient hospital admissions with begin dates of service on and after October 1, 2011, AHCCCS will increase the outlier cost thresholds by 5% of the thresholds that were effective on September 30, 2011.
    - c. Medicare Cost-to-Charge Ratio Phase-In. AHCCCS shall phase in the use of the Medicare Urban or Rural Cost-to-Charge Ratios for outlier determination, calculation and payment. The three-year phase-in does not apply to out-of-state or new hospitals.
      - i. Medicare Cost-to-Charge Ratio Phase-In outlier determination and threshold calculation. For outlier claims with dates of service on or after October 1, 2007 through September 30, 2008, AHCCCS shall adjust each hospital specific inpatient cost-to-charge ratio in effect on September 30, 2007 by subtracting one-third of the difference between the hospital specific inpatient cost-to-charge ratio and the effective

- Medicare Urban or Rural Cost-to-Charge Ratio. For outlier claims with dates of service on or after October 1, 2008 through September 30, 2009, AHCCCS shall adjust each hospital specific inpatient cost-to-charge ratio in effect on September 30, 2007 by subtracting two-thirds of the difference between the hospital specific inpatient cost-to-charge ratio and the effective Medicare Urban or Rural Cost-to-Charge Ratio. The adjusted hospital specific inpatient cost-to-charge ratios shall be used for all calculations using the Medicare Urban or Rural Cost-to-Charge Ratios, including outlier determination, and threshold calculation.
- ii. Medicare Cost-to-Charge Ratio Phase-In calculation for payment. For payment of outlier claims with dates of service on or after October 1, 2007 through September 30, 2008, AHCCCS shall adjust the statewide inpatient hospital cost-to-charge ratio in effect on September 30, 2007 by subtracting one-third of the difference between the statewide inpatient hospital cost-to-charge ratio and the effective Medicare urban or rural cost-to-charge ratio. For payment of outlier claims with dates of service on or after October 1, 2008 through September 30, 2009, AHCCCS shall adjust the statewide inpatient hospital cost-to-charge ratio in effect on September 30, 2007 by subtracting two-thirds of the difference between the statewide inpatient hospital cost-to-charge ratio and the effective Medicare urban or rural cost-to-charge ratio.
  - iii. Medicare Cost-to-Charge Ratio for outlier determination, threshold calculation, and payment. For outlier claims with dates of service on or after October 1, 2009, the full Medicare Urban or Rural Cost-to-Charge Ratios shall be utilized for all outlier calculations.
  - d. Cost-to-Charge Ratio used for qualification and payment of outlier claims.
    - i. For qualification and payment of outlier claims with begin dates of service on or after April 1, 2011 through September 30, 2011, the CCR will be equal to 95% of the ratios in effect on October 1, 2010.
    - ii. For qualification and payment of outlier claims with begin dates of service on or after October 1, 2011, the CCR will be equal to 90.25% of the most recent published Urban or Rural Medicare CCR as described in subsection (6)(b).
    - iii. For qualification and payment of outlier claims with begin dates of service on or after October 1, 2011 through September 30, 2012, AHCCCS will reduce the cost-to-charge ratio determined under subsection (6)(d)(ii) for a hospital that filed a charge master with ADHS on or after April 1, 2011 by an additional percentage equal to the total percent increase reported on the charge master.
    - iv. Subject to approval by CMS, for qualification and payment of outlier claims with begin dates of service on or after October 1, 2012, AHCCCS will reduce the cost-to-charge ratio determined under subsection (6)(d)(ii) for a hospital that filed a charge master with ADHS on or after June 1, 2012 by an additional percentage equal to the total percent increase reported on the charge master.
  7. Transplants. The Administration shall reimburse hospitals for an AHCCCS inpatient stay in which a covered transplant as described in R9-22-206 is performed through the terms of the relevant contract. If the Administration and a hospital that performs transplant surgery on an eligible person do not have a contract for the transplant surgery, the Administration shall not reimburse the hospital more than what would have been paid to the contracted hospital for that same surgery.
  8. Ownership change. The Administration shall not change any of the components of a hospital's tiered per diem rates upon an ownership change.
  9. Psychiatric hospitals. The Administration shall pay free-standing psychiatric hospitals an all-inclusive per diem rate based on the contracted rates used by the Department of Health Services.
  10. Specialty facilities. The Administration may negotiate, at any time, reimbursement rates for inpatient specialty facilities or inpatient hospital services not otherwise addressed in this Section as provided by A.R.S. § 36-2903.01. For purposes of this subsection, "specialty facility" means a facility where the service provided is limited to a specific population, such as rehabilitative services for children.
  11. Outliers for new hospitals. Outliers for new hospitals will be calculated using the Medicare Urban or Rural Cost-to-Charge Ratio times covered charges. If the resulting cost is equal to or above the cost threshold, the claim will be paid at the Medicare Urban or Rural Cost-to-Charge ratio.
  12. Reductions to tiered per diem payment for inpatient hospital services. Inpatient hospital admissions with begin dates of service on or after October 1, 2011, shall be reimbursed at 95 percent of the tiered per diem rates in effect on September 30, 2011.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 3231, effective October 1, 2005 (Supp. 05-3). Amended by exempt rulemaking at 13 A.A.R. 3190, effective October 1, 2007 (Supp. 07-3). Amended by exempt rulemaking at 17 A.A.R. 1337, effective October 1, 2011 (Supp. 11-3). Amended by exempt rulemaking at 18 A.A.R. 1914, effective July 18, 2012 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 3315, effective November 30, 2013 (Supp. 13-4). Amended by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

#### R9-22-712.02. Reserved

#### R9-22-712.03. Reserved

#### R9-22-712.04. Reserved

#### R9-22-712.05. Graduate Medical Education Fund Allocation

- A. Graduate medical education (GME) reimbursement as of September 30, 1997. Subject to legislative appropriation, the Administration shall make a distribution based on direct graduate medical education costs as described in A.R.S. § 36-2903.01(H)(9)(a).
- B. Subject to available funds and approval by CMS, the Administration shall annually distribute monies appropriated for the expansions of GME programs approved by the Administration to hospitals for direct program costs eligible for funding under A.R.S. § 36-2903.01(H)(9)(b). A GME program is deemed to be established as of the date of its original accreditation. All



determinations that are necessary to make distributions described by this subsection shall be made using information possessed by the Administration as of the date of reporting under subsection (B)(3).

1. Eligible health care facilities. A health care facility is eligible for distributions under subsection (B) if all of the following apply:
  - a. It is a hospital in Arizona that is the sponsoring institution of, or a participating institution in, one or more of the GME programs in Arizona;
  - b. It incurs direct costs for the training of residents in the GME programs, which costs are or will be reported on the hospital's Medicare Cost Report;
  - c. It is not administered by or does not receive its primary funding from an agency of the federal government.
2. Eligible resident positions. For purposes of determining program allocation amounts under subsection (B)(4) the following resident positions are eligible for consideration to the extent that the resident training takes place in Arizona and not at a health care facility made ineligible under subsection (B)(1)(c):
  - a. Filled resident positions in approved programs established as of October 1, 1999 at hospitals that receive funding as described in A.R.S. § 36-2903.01(H)(9)(a) that are additional to the number of resident positions that were filled as of October 1, 1999; and
  - b. All filled resident positions in approved programs other than GME programs described in A.R.S. § 36-2903.01(H)(9)(a) that were established before July 1, 2006.
3. Annual reporting. By April 1st of each year, each GME program and each hospital seeking a distribution under subsection (B) shall provide the applicable information listed in this subsection to the Administration:
  - a. A GME program shall provide all of the following:
    - i. The program name and number assigned by the accrediting organization;
    - ii. The original date of accreditation;
    - iii. The names of the sponsoring institution and all participating institutions current as of the date of reporting;
    - iv. The number of approved resident positions and the number of filled resident positions current as of the date of reporting;
    - v. For programs established as of October 1, 1999, the number of resident positions that were filled as of October 1, 1999, if the program has not already provided this information to the Administration;
  - b. A hospital seeking a distribution under subsection (B) shall provide all of the following that apply:
    - i. If the hospital uses the Intern and Resident Information System (IRIS) for tracking and reporting its resident activity to the fiscal intermediary, copies of the IRIS master and assignment files for the hospital's two most recently completed Medicare cost reporting years as filed with the fiscal intermediary;
    - ii. If the hospital does not use the IRIS or has less than two cost reporting years available in the form of the IRIS master and assignment files, the information normally contained in the IRIS master and assignment files in an alternative format for the hospital's two most recently completed Medicare cost reporting years;
  - iii. At the request of the Administration, a copy of the hospital's Medicare Cost Report or any part of the report for the most recently completed cost reporting year.
4. Allocation of expansion funds. Annually the Administration shall allocate available funds to each approved GME program in the following manner:
  - a. Information provided by hospitals under subsection (B)(3)(b) shall be used to determine the program in which each eligible resident is enrolled and the number of days that each eligible resident worked in any area of the hospital complex or in a non-hospital setting under agreement with the reporting hospital during the period of assignment to that hospital. For this purpose, the Administration shall use data relating to the most recent 12-month period that is common to all information provided under subsections (B)(3)(b)(i) and (ii).
  - b. The number of eligible residents allocated to each participating institution within each approved GME program shall be determined as follows:
    - i. Total the number of days determined for each participating institution under subsection (B)(4)(a) and divide each total by 365.
    - ii. Proportionally adjust the result of subsection (B)(4)(b)(i) for each participating institution within each program according to the number of residents determined to be eligible under subsection (B)(2).
  - c. The number of allocated eligible residents determined under subsection (B)(4)(b)(ii) shall be adjusted for Arizona Medicaid utilization using the most recent Medicare Cost Report information on file with the Administration as of the date of reporting under subsection (B)(3) and the Administration's inpatient hospital claims and encounter data for the time period corresponding to the Medicare Cost Report information for each hospital. The Administration shall use only those inpatient hospital claims paid by the Administration and encounters that were adjudicated by the Administration as of the date of reporting under subsection (B)(3). The Medicaid-adjusted eligible residents shall be determined as follows:
    - i. For each hospital, the total AHCCCS inpatient hospital days of care shall be divided by the total Medicare Cost Report inpatient hospital days, multiplied by 100 and rounded up to the nearest multiple of 5 percent.
    - ii. The number of allocated eligible residents determined for each participating hospital under subsection (B)(4)(b)(ii) shall be multiplied by the percentage derived under subsection (B)(4)(c)(i) for that hospital. The number of allocated eligible residents determined under subsection (B)(4)(b)(ii) for a participating institution that is not a hospital and not a health care facility made ineligible under subsection (B)(1)(c) shall be multiplied by the percentage derived under subsection (B)(4)(c)(i) for the program's sponsoring institution or, if the sponsoring institution is not a hospital, the sponsoring institution's affiliated hospital. The number of allocated eligible residents determined under

- subsection (B)(4)(b)(ii) for a participating institution that is made ineligible under subsection (B)(1)(c) shall be multiplied by zero percent.
- d. The total allocation for each approved program shall be determined by multiplying the Medicaid-adjusted eligible residents determined under subsection (B)(4)(c)(ii) by the per resident conversion factor determined below and totaling the resulting dollar amounts for all participating institutions in the program. The per resident conversion factor shall be determined as follows:
    - i. Calculate the total direct GME costs from the most recent Medicare Cost Reports on file with the Administration for all hospitals that have reported such costs.
    - ii. Calculate the total allocated residents determined under subsection (B)(4)(b)(i) for those hospitals described under subsection (B)(4)(d)(i).
    - iii. Divide the total GME costs calculated under subsection (B)(4)(d)(i) by the total allocated residents calculated under subsection (B)(4)(d)(ii).
5. Distribution of expansion funds. On an annual basis subject to available funds, the Administration shall distribute the allocated amounts determined under subsection (B)(4) in the following manner:
- a. The allocated amounts shall be distributed in the following order of priority:
    - i. To eligible hospitals that do not receive funding in accordance with A.R.S. § 36-2903.01(H)(9)(a) for the direct costs of programs established before July 1, 2006;
    - ii. To eligible hospitals that receive funding in accordance with A.R.S. § 36-2903.01(H)(9)(a) for the direct costs of programs established before July 1, 2006;
  - b. The allocated amounts shall be distributed to the eligible hospitals in each approved program in proportion to the number of Medicaid-adjusted eligible residents allocated to each hospital within that program under subsection (B)(4)(c)(ii).
  - c. If funds are insufficient to cover all distributions within any priority group described under subsection (B)(5)(a), the Administration shall adjust the distributions proportionally within that priority group.
- C. Subject to available funds and approval by CMS, the Administration shall annually distribute monies appropriated for the expansions of GME programs approved by the Administration to hospitals for direct program costs eligible for funding under A.R.S. § 36-2903.01(H)(9)(c)(i). A GME program is deemed to be established as of the date of its original accreditation. All determinations that are necessary to make distributions described by this subsection shall be made using information possessed by the Administration as of the date of reporting under subsection (C)(3).
1. Eligible health care facilities. A health care facility is eligible for distributions under subsection (C) if it meets all the conditions of subsections (B)(1)(a) through (c).
  2. Eligible resident positions. For purposes of determining program allocation amounts under subsection (C)(4), the following resident positions are eligible for consideration to the extent that the resident training takes place in Arizona and not at a health care facility made ineligible under subsection (B)(1)(c):
    - a. All filled resident positions in approved programs established on or after July 1, 2006; and
    - b. For approved programs established on or after July 1, 2006 that have been established for less than one year as of the date of reporting under subsection (C)(3) and have not yet filled their first-year resident positions, all prospective residents reasonably expected by the program to be enrolled as a result of the most recently completed annual resident match.
3. Annual reporting. By April 1st of each year, each GME program and each hospital seeking a distribution under subsection (C) shall provide to the Administration:
- a. A GME program shall provide all of the following:
    - i. The requirements of subsections (B)(3)(a)(i) through (iv);
    - ii. The academic year rotation schedule on file with the program current as of the date of reporting; and
    - iii. For programs described under subsection (C)(2)(b), the number of residents expected to be enrolled as a result of the most recently completed annual resident match.
  - b. A hospital seeking a distribution under subsection (C) shall provide the requirements of subsection (B)(3)(b).
4. Allocation of expansion funds. Annually the Administration shall allocate available funds to approved GME programs in the following manner:
- a. Information provided by hospitals in accordance with subsection (B)(3)(b) shall be used to determine the program in which each eligible resident is enrolled and the number of days that each eligible resident worked in any area of the hospital complex or in a non-hospital setting under agreement with the reporting hospital during the period of assignment to that hospital. For this purpose, the Administration shall use data relating to the most recent 12-month period that is common to all information provided in accordance with subsections (B)(3)(b)(i) and (ii).
  - b. For approved programs whose resident activity is not represented in the information provided in accordance with subsection (B)(3)(b), information provided by GME programs under subsection (C)(3)(a) shall be used to determine the number of days that each eligible resident is expected to work at each participating institution.
  - c. The number of eligible residents allocated to each participating institution for each approved GME program shall be determined by totaling the number of days determined under subsections (C)(4)(a) and (b) and dividing the totals by 365.
  - d. The number of allocated residents determined under subsection (C)(4)(c) shall be adjusted for Arizona Medicaid utilization in accordance with subsection (B)(4)(c).
  - e. The total allocation for each approved program shall be determined in accordance with subsection (B)(4)(d).
5. Distribution of expansion funds. On an annual basis subject to available funds, the Administration shall distribute the allocated amounts determined under subsection (C)(4) to the eligible hospitals in each approved program in proportion to the number of Medicaid-adjusted eligible residents allocated to each within that program under subsection (C)(4)(d).

- D.** Subject to available funds and approval by CMS, the Administration shall annually distribute monies appropriated for GME programs approved by the Administration to hospitals for indirect program costs eligible for funding under A.R.S. § 36-2903.01(H)(9)(c)(ii). A GME program is deemed to be established as of the date of its original accreditation. All determinations that are necessary to make distributions described by this subsection shall be made using information possessed by the Administration as of the date of reporting under subsection (D)(3).
1. Eligible health care facilities. A health care facility is eligible for distributions under subsection (D) if all of the following apply:
    - a. It is a hospital in Arizona that is the sponsoring institution of one or more of the GME programs in Arizona or the base hospital for one or more of the GME programs in Arizona whose sponsoring institutions are not hospitals;
    - b. It incurs indirect program costs for the training of residents in the GME programs;
    - c. It is not administered by or does not receive its primary funding from an agency of the federal government.
  2. Eligible resident positions. For purposes of determining program allocation amounts under subsection (D)(4) the following resident positions are eligible for consideration to the extent that the resident training takes place in Arizona and not at a health care facility made ineligible under subsection (D)(1)(c):
    - a. Any filled resident position in an approved program that includes a rotation of at least one month per year in a county other than Maricopa or Pima whose population was less than 500,000 persons at the time the residency rotation was added to the academic year rotation schedule;
    - b. For approved programs that have been established for less than one year as of the date of reporting under subsection (D)(3) and have not yet filled their first-year resident positions, all prospective residents reasonably expected by the program to be enrolled as a result of the most recently completed annual resident match who will perform rotations of at least one month per year in a county other than Maricopa or Pima whose population was less than 500,000 persons at the time the residency rotation was added to the academic year rotation schedule.
  3. Annual reporting. By April 1st of each year, each GME program and each hospital seeking a distribution under subsection (D) shall provide to the Administration:
    - a. A GME program shall provide all of the following:
      - i. The requirements of subsections (B)(3)(a)(i) through (iv);
      - ii. The academic year rotation schedule on file with the program current as of the date of reporting;
      - iii. For programs described under subsection (D)(2)(c), the number of residents expected to be enrolled as a result of the most recently completed annual resident match.
    - b. A hospital seeking a distribution under subsection (D) shall provide the requirements of subsection (B)(3)(b)(iii).
  4. Allocation of funds for indirect program costs. Annually the Administration shall allocate available funds to approved GME programs in the following manner:
    - a. Using the information provided by programs under subsection (D)(3), the Administration shall determine for each program the number of residents in the program who are eligible under subsection (D)(2) and the number of months per year that each eligible resident will perform rotations in counties described by subsection (D)(2), multiply the number of eligible residents by the number of months and multiply the result by the per resident per month conversion factor determined under subsection (D)(4)(b).
    - b. Using the most recent Medicare Cost Reports on file with the Administration for all hospitals that have calculated a Medicare indirect medical education payment, the Administration shall determine a per resident per month conversion factor as follows:
      - i. Calculate each hospital's Medicaid share by dividing the AHCCCS inpatient hospital days of care by the total inpatient hospital days from the Medicare Cost Report. For this purpose, the Administration shall use the information described by subsection (B)(4)(c) for adjusting allocated residents for Arizona Medicaid utilization.
      - ii. Calculate each hospital's Medicare share by dividing the Medicare inpatient days on the Medicare Cost Report by the total inpatient hospital days on the Medicare Cost Report.
      - iii. Divide the Medicaid share by the Medicare share and multiply the resulting ratio by the indirect medical education payment calculated on the Medicare Cost Report.
      - iv. Total the results for all hospitals, divide the result by the total allocated residents determined under subsection (B)(4)(b)(i) for these hospitals, and divide that result by 12.
  5. Distribution of funds for indirect program costs. On an annual basis subject to available funds, the Administration shall distribute the allocated amounts determined under subsection (D)(4) to the program's sponsoring hospital or the program's base hospital if the sponsoring institution is not a hospital, up to but not exceeding:
    - a. The amount calculated for the hospital at subsection (D)(4)(b)(iii), or
    - b. The median of all amounts calculated at subsection (D)(4)(b)(iii) if no amount was calculated for the hospital.
- E.** Reallocation of funds. If funds appropriated for subsection (B) are not allocated by the Administration and funds appropriated for subsections (C) and (D) are insufficient to cover all distributions under subsections (C)(5) and (D)(5), the funds not allocated under subsection (B) shall be allocated under subsections (C) and (D) to the extent of the calculated distributions. If funds are insufficient to cover all distributions under subsections (C)(5) and (D)(5), the Administration shall adjust the distributions proportionally. If funds appropriated for subsections (C) and (D) are not allocated by the Administration and funds appropriated for subsection (B) are insufficient to cover all distributions under subsection (B)(5), the funds not allocated under subsections (C) and (D) shall be allocated under subsection (B) to the extent of the calculated distributions.
- F.** The Administration may enter into intergovernmental agreements with local, county, and tribal governments wherein local, county and tribal governments may transfer funds or certify public expenditures to the Administration. Such funds or certification, subject to approval by CMS, will be used to

qualify for additional federal funds. Those funds will be used for the purposes of reimbursing hospitals specified by the local, county, or tribal government for indirect program costs other than those reimbursed under subsection (D). Funds transferred and available under this subsection shall be distributed in accordance with subsection (D) except that reimbursement with such funds is not limited to resident positions or rotations in counties with populations of less than 500,000 persons.

#### Historical Note

New Section made by final rulemaking at 13 A.A.R. 1782, effective June 30, 2007 (Supp. 07-2). Amended by exempt rulemaking at 13 A.A.R. 4032, effective November 1, 2007 (Supp. 07-4).

#### R9-22-712.06. Reserved

#### R9-22-712.07. Rural Hospital Inpatient Fund Allocation

A. For purposes of this Section, the following words and phrases have the following meanings unless the context specifically requires another meaning:

1. "Calculated inpatient costs" means the sum of inpatient covered charges multiplied by the Milliman study's implied cost-to-charge ratio of .8959.
2. "Claims paid amount" means the sum of all claims paid by the Administration and contractors, as reported by the contractor to the Administration, to a rural hospital for covered inpatient services rendered during the previous state fiscal year.
3. "Fund" means any state funds appropriated by the Legislature for the purposes set forth in A.R.S. § 36-2905.02 and any federal funds that are available for matching the state funds.
4. "Inpatient covered charges" means the sum of all covered charges billed by a hospital to the Administration or contractors, as reported by the contractors to the Administration, for inpatient services rendered during the previous state fiscal year.
5. "Milliman study" means the report issued by Milliman USA on March 11, 2004, to the Arizona Hospital and Healthcare Association that updated a portion of a cost study entitled "Evaluation of the AHCCCS Inpatient Hospital Reimbursement System" prepared by Milliman USA for AHCCCS on November 15, 2002. A copy of each report is on file with the Administration.
6. "Rural hospital" means a health care institution that is licensed as a hospital by the Arizona Department of Health Services for the previous state fiscal year and is not a hospital operated by IHS or a special hospital that limits the care provided to rehabilitation service and:
  - a. Has 100 or fewer beds and is located in a county with a population of less than 500,000 persons, or
  - b. Is designated as a critical access hospital for the majority of the previous state fiscal year.
7. "Total inpatient payments" means the sum of:

- a. The claims paid amount,
  - b. Any disproportionate share hospital payments for the previous fiscal year, and
  - c. The inpatient component of any Critical Access Hospital payments made to the hospital for the previous state fiscal year.
- B. Each February, the Administration shall allocate the Fund to the following three pools for the fiscal year:
1. Rural hospitals with fewer than 26 PPS beds and all Critical Access Hospitals, regardless of the number of beds in the Critical Access Hospital;
  2. Rural hospitals other than Critical Access Hospitals with 26 to 75 PPS beds; and
  3. Rural hospitals other than Critical Access Hospitals with 76 to 100 PPS beds.
- C. The Administration shall allocate the Fund to each pool according to the ratio of total inpatient payments to all hospitals assigned to the pool to total inpatient payments to all rural hospitals.
- D. The Administration shall determine each hospital's claims paid amount and allocate the funds in each pool to each hospital in the pool based on the ratio of each hospital's claims paid amount to the sum of the claims paid amount for all hospitals assigned to the pool.
- E. The Administration shall not make a Fund payment to a hospital that will result in the hospital's total inpatient payments plus that hospital's Fund payment being greater than that hospital's calculated inpatient costs.
1. If a hospital's total inpatient payments plus the hospital's Fund payment would be greater than the hospital's calculated inpatient costs, the Administration shall make a Fund payment to the hospital equal to the difference between the hospital's calculated inpatient costs and the hospital's total inpatient payments.
  2. The Administration shall reallocate any portion of a hospital's Fund allocation that is not paid to the hospital due to the reason in subsection (E)(1) to the other eligible hospitals in the pool based upon the ratio of the claims paid amount for each hospital remaining in the pool to the sum of the claims paid amount for each hospital remaining in the pool.
- F. If funds remain in a pool after allocations to each hospital in the pool under subsections (D) and (E), the Administration shall reallocate the remaining funds to the other pools based upon the ratio of each pool's original allocation of the Fund as determined under subsection (C) to the sum of the remaining pools' original Fund allocations under subsection (C). The Administration shall allocate remaining funds to the hospitals in the remaining pools under subsection (D) and (E). See Exhibit 1 for an example.
- G. Subject to CMS approval of the method and distribution of the Fund, the administration or its contractors will distribute the Fund as a lump sum allocation to the rural hospitals in either one or two installments by the end of each state fiscal year.

#### Exhibit 1. Pool Example

Pool A receives \$2,000,000. Pool B receives \$7,000,000. Pool C receives \$3,000,000.

If all of the funds in Pool B are paid to eligible hospitals and there is \$1,000,000 remaining, the remaining funds would be allocated to Pool A and Pool C based on the ratio of each pool's original allocation (original allocations of \$2,000,000 and \$3,000,000) to the total of their original allocation (\$2,000,000 + \$3,000,000 = \$5,000,000).

Pool A would receive 2/5 of the remaining funds (\$400,000) and Pool C would receive 3/5 of the remaining funds (\$600,000).

#### Historical Note

New Section made by final rulemaking at 12 A.A.R. 2188, effective June 6, 2006 (Supp. 06-2).

**R9-22-712.08. Reserved****R9-22-712.09. Hierarchy for Tier Assignment through September 30, 2014**

<b>TIER</b>	<b>IDENTIFICATION CRITERIA</b>	<b>ALLOWED SPLITS</b>
MATERNITY	A primary diagnosis defined as maternity 640.xx - 643.xx, 644.2x - 676.xx, v22.xx - v24.xx or v27.xx.	None
NICU	Revenue Code of 174 and the provider has a Level II or Level III NICU.	Nursery
ICU	Revenue Codes of 200-204, 207-212, or 219.	Surgery Psychiatric Routine
SURGERY	Surgery is identified by a revenue code of 36x. To qualify in this tier, there must be a valid surgical procedure code that is not on the excluded procedure list.	ICU
PSYCHIATRIC	Psychiatric Revenue Codes of 114, 124, 134, 144, or 154 AND primary Psychiatric Diagnosis = 290.xx - 316.xx. If a routine revenue code is present and all diagnoses codes on the claim are equal to 290.xx - 316.xx, classify as a psychiatric claim.	ICU
NURSERY	Revenue Code of 17x, not equal to 174.	NICU
ROUTINE	Revenue Codes of 100 - 101, 110-113, 116 - 123, 126 - 133, 136 - 143, 146 - 153, 156 - 159, 16x, 206, 213, or 214.	ICU

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 3231, effective October 1, 2005 (Supp. 05-3). Amended by exempt rulemaking at 17 A.A.R. 1707, effective October 1, 2011 (Supp. 11-3). Amended by final rulemaking at 19 A.A.R. 2747, effective October 8, 2013 (Supp. 13-3). Amended by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

**R9-22-712.10. Outpatient Hospital Reimbursement: General**

- A.** Effective rule. The outpatient hospital reimbursement rules apply to dates of service beginning July 1, 2005, subject to Laws 2004, Ch. 279, § 19.
- B.** Basis For Payment. Except as provided under R9-22-712.30, AHCCCS shall pay for designated outpatient procedures provided to AHCCCS members according to the AHCCCS Outpatient Capped Fee-For-Service Schedule as defined in R9-22-712.20.
- C.** Data. AHCCCS shall use Medicare Cost Report and adjudicated claim and encounter data from non-IHS acute care hospitals located in the state of Arizona to develop fees for the AHCCCS Outpatient Capped Fee-For-Service Schedule.
- D.** Hospital Services Subject To Fees. AHCCCS shall reimburse services, in the following outpatient hospital categories under the AHCCCS Outpatient Capped Fee-For-Service Schedule:
  1. Surgery,
  2. Emergency Department,
  3. Laboratory,
  4. Radiology,

5. Clinic, and
6. Other services.

- E.** Reimbursement. AHCCCS shall reimburse outpatient hospital services by procedure codes, in proper combination with revenue codes, as prescribed by AHCCCS.

**Historical Note**

New Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2).

**R9-22-712.11. Reserved****R9-22-712.12. Reserved****R9-22-712.13. Reserved****R9-22-712.14. Reserved****R9-22-712.15. Outpatient Hospital Reimbursement: Affected Hospitals**

Except as provided in R9-22-712(G), the AHCCCS Outpatient Capped Fee-For-Service Schedule shall apply to AHCCCS payments for outpatient services in all non-IHS acute hospitals.

**Historical Note**

New Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2).

**R9-22-712.16. Reserved****R9-22-712.17. Reserved****R9-22-712.18. Reserved****R9-22-712.19. Reserved****R9-22-712.20. Outpatient Hospital Reimbursement: Methodology for the AHCCCS Outpatient Capped Fee-For-Service Schedule**

- A.** To establish the AHCCCS Outpatient Capped Fee-for-service Schedule for all claims with a begin date of service on or before September 30, 2011, AHCCCS shall:
  1. Define the dataset of claims and encounters that shall be used to establish the AHCCCS Outpatient Capped Fee-for-service Schedule.
  2. Identify all the claims and encounters from non-IHS acute hospitals located in Arizona for services to be paid under the AHCCCS Outpatient Capped Fee-for-service Schedule.
  3. Match the revenue code on each detail of each claim and encounter to the ancillary line item CCR as reported on hospital-specific mapping documents and hospital-specific Medicare Cost Report for those hospitals that have submitted Medicare Cost Reports FYE 2002.
  4. Multiply the line item CCR from subsection (A)(3) by the covered billed charge for that revenue code to establish the cost for the service.
  5. Inflate the cost for the service from subsection (A)(4) using Global Insight Health-care Cost Review inflation factors from date of service month to the midpoint of the rate year in which the fees are initially effective.
  6. Include associated costs under R9-22-712.25 to calculate the rates for emergency room and surgery services.
  7. Combine data from all Arizona hospitals identified in subsection (A)(3) for each procedure code to establish the statewide median cost for each procedure.
  8. Group procedure codes according to the Ambulatory Payment Classification (APC) System groups as listed in 69 FR 65682, November 15, 2004, and establish a statewide median cost for each APC. Multiply each statewide median APC cost by 116 percent to establish the AHC-

- CCS-based fee for each procedure in that specific APC group. AHCCCS shall assign each procedure in the group the same fee.
9. For those procedure codes that are not grouped into any APC, establish a procedure-specific fee using either:
    - a. The AHCCCS Non-hospital Capped Fee-for-service Fee Schedule,
    - b. 116 percent of the procedure-specific median cost AHCCCS-based fee, or
    - c. The Medicare Clinical Laboratory Fee Schedule for laboratory services.
  10. Compare the AHCCCS-based fee established in subsections (A)(8) and (9) against the comparable Medicare fee established for the Medicare APC group as listed in the 69 FR 65682, November 15, 2004. The fee for each procedure shall be the greater of the AHCCCS-based fee or the Medicare fee but no more than 150 percent of the AHCCCS-based fee; however, for those laboratory services for which a limit is established in the Medicare Clinical Laboratory Fee Schedule, the fee shall not exceed that limit.
  11. Assign the 2005 Medicare fee in the AHCCCS Outpatient Capped Fee-for-service Schedule for those procedures for which there are fewer than 20 occurrences of the procedure code in the dataset, either independently, or, if applicable, for all procedure codes within an APC Group.
- B.** For all claims with a begin date of service on or after October 1, 2011, the AHCCCS Outpatient Capped Fee-for-Service Schedule shall be derived from the CMS Medicare Outpatient Prospective Payment System (OPPS) fee schedule modified by an Arizona conversion factor determined annually.
1. When clinic services are billed using 51X revenue codes, the reimbursement to the hospital is the difference between the facility and non-facility rates payable to the practitioner for the procedures listed in the Administration's Capped Fee-for-service Schedule under R9-22-710.
  2. Observation services, when not billed in conjunction with a service for which a single payment is made under R9-22-712.25, are reimbursed at an hourly rate published in the Outpatient Capped Fee-for-service Schedule. This hourly rate includes reimbursement for associated services.
- C.** The AHCCCS Outpatient Capped Fee-for-service Schedule including the effective date of any changes to the listing are on file and posted on AHCCCS' web site.

#### Historical Note

New Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2). Amended by final rulemaking at 17 A.A.R. 1460, effective October 1, 2011 (Supp. 11-3). Amended by exempt rulemaking at 18 A.A.R. 1914, effective July 18, 2012 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 3315, effective November 30, 2013 (Supp. 13-4).

**R9-22-712.21. Reserved**

**R9-22-712.22. Reserved**

**R9-22-712.23. Reserved**

**R9-22-712.24. Reserved**

#### **R9-22-712.25. Outpatient Hospital Fee Schedule Calculations: Associated Service Costs**

- A.** AHCCCS shall include the costs of associated services, as defined by revenue codes and procedure codes, when deter-

mining the specific fees for the outpatient hospital procedures for emergency department and surgery services.

- B.** Payment made under subsection (A) or R9-22-712.20(B)(2) is inclusive of all services on the claim regardless of whether the services are provided on one or more days.
- C.** A complete listing of the revenue codes and procedure codes for associated costs included in the payment for emergency and surgery services including the effective date of any changes to the listing are on file and posted on AHCCCS' web site.

#### Historical Note

New Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2). Amended by final rulemaking at 17 A.A.R. 1460, effective October 1, 2011 (Supp. 11-3).

**R9-22-712.26. Reserved**

**R9-22-712.27. Reserved**

**R9-22-712.28. Reserved**

**R9-22-712.29. Reserved**

#### **R9-22-712.30. Outpatient Hospital Reimbursement: Payment for a Service Not Listed in the AHCCCS Outpatient Capped Fee-For-Service Schedule**

- A.** AHCCCS shall calculate a statewide CCR for a service where a specific fee cannot be determined under R9-22-712.20.
- B.** For claims with a begin date of service on or before September 30, 2011, the statewide CCR shall be calculated based on the costs and covered charges associated with a service under subsection (A) for all Arizona hospitals, using the method specified in R9-22-712.20(A)(3).
- C.** For all claims with a begin date of service on or after October 1, 2011, the statewide CCR calculation shall equal either the CMS Medicare Outpatient Urban Cost-to-charge Ratio or the CMS Medicare Outpatient Rural Cost-to-charge Ratio published by CMS for the state of Arizona. AHCCCS shall use the urban cost-to-charge ratio for hospitals located in a county of 500,000 residents or more and for out-of-state hospitals. AHCCCS shall use the rural cost-to-charge ratio for hospitals located in a county of fewer than 500,000 residents. On October 1st of each year, AHCCCS shall adjust urban and rural CCRs to the CCRs as published by CMS in the *Federal Register* on or before August 1st of that year.
- D.** To determine the payment amount for procedures where a specific fee is not determined under R9-22-712.20, the statewide CCR is multiplied by the covered charges.
- E.** Reductions to payments for outpatient hospital services not listed in the AHCCCS Outpatient Capped Fee-For-Service Schedule. Outpatient hospital services not listed in the AHCCCS Outpatient Capped Fee-For-Service Schedule with dates of service on or after October 1, 2011, shall be reimbursed at 95 percent of the rate published by CMS pursuant to subsection (C) of this Section.

#### Historical Note

New Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2). Amended by final rulemaking at 17 A.A.R. 1460, effective October 1, 2011 (Supp. 11-3). Amended by exempt rulemaking at 18 A.A.R. 1914, effective July 18, 2012 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 3315, effective November 30, 2013 (Supp. 13-4).

**R9-22-712.31. Reserved****R9-22-712.32. Reserved****R9-22-712.33. Reserved****R9-22-712.34. Reserved****R9-22-712.35. Outpatient Hospital Reimbursement: Adjustments to Fees**

- A.** For all claims with a begin date of service on or before September 30, 2011, AHCCCS shall increase the Outpatient Capped Fee-for-service Schedule established under R9-22-712.20 (except for laboratory services and out-of-state hospital services) for the following hospitals submitting any claims:
1. By 48 percent for public hospitals on July 1, 2005, and hospitals that were public anytime during the calendar year 2004;
  2. By 45 percent for hospitals in counties other than Maricopa and Pima with more than 100 Medicare PPS beds during the contract year in which the Outpatient Capped Fee-for-service Schedule rates are effective;
  3. By 50 percent for hospitals in counties other than Maricopa and Pima with 100 or less Medicare PPS beds during the contract year in which the Outpatient Capped Fee-for-service Schedule rates are effective;
  4. By 115 percent for hospitals designated as Critical Access Hospitals or hospitals that have not been designated as Critical Access Hospitals but meet the criteria during the contract year in which the Outpatient Capped Fee-for-service Schedule rates are effective;
  5. By 113 percent for a Freestanding Children's Hospital with at least 110 pediatric beds during the contract year in which the Outpatient Capped Fee-for-service Schedule rates are effective; or
  6. By 14 percent for a University Affiliated Hospital which is a hospital that has a majority of the members of its board of directors appointed by the Board of Regents during the contract year in which the Outpatient Capped Fee-for-service Schedule rates are effective.
- B.** For all claims with a begin date of service on or after October 1, 2011, AHCCCS shall increase the Outpatient Capped Fee-for-service Schedule (except for laboratory services, and out-of-state hospital services) for the following hospitals. A hospital shall receive an increase from only one of the following categories:
1. By 73 percent for public hospitals;
  2. By 31 percent for hospitals in counties other than Maricopa and Pima with more than 100 licensed beds as of October 1 of that contract year;
  3. By 37 percent for hospitals in counties other than Maricopa and Pima with 100 or fewer licensed beds as of October 1 of that contract year;
  4. By 100 percent for hospitals designated as Critical Access Hospitals or hospitals that have not been designated as Critical Access Hospitals but meet the critical access criteria;
  5. By 78 percent for a Freestanding Children's Hospital with at least 110 pediatric beds as of October 1 of that contract year; or
  6. By 41 percent for a University Affiliated Hospital, which is a hospital that has a majority of the members of its board of directors appointed by the Arizona Board of Regents.
- C.** In addition to subsections (A) and (B), an Arizona Level 1 trauma center as defined by R9-22-2101 shall receive a 50 percent increase to the Outpatient Capped Fee-for-service Sched-

ule (except for laboratory services and out-of-state hospital services) for Level 2 and 3 emergency department procedures.

- D.** Hospitals with greater than 100 pediatric beds not receiving an increase under subsection (B) shall receive an 18 percent increase to the Outpatient Capped Fee-for-service Schedule (except for laboratory services, and out-of-state hospital services).
- E.** Fee adjustments made under subsection (A), (B), (C) and (D) are on file with AHCCCS and current adjustments are posted on AHCCCS' web site.

**Historical Note**

New Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2). Amended by final rulemaking at 13 A.A.R. 3584, effective October 1, 2007 (Supp. 07-4). Amended by final rulemaking at 14 A.A.R. 1439, effective May 31, 2008 (Supp. 08-2). Amended by final rulemaking at 17 A.A.R. 1460, effective October 1, 2011 (Supp. 11-3).

**R9-22-712.36. Reserved****R9-22-712.37. Reserved****R9-22-712.38. Reserved****R9-22-712.39. Reserved****R9-22-712.40. Outpatient Hospital Reimbursement: Annual and Periodic Update**

- A.** Procedure codes. When procedure codes are issued by CMS and added to the Current Procedural Terminology published by the American Medical Association, AHCCCS shall add to the Outpatient Capped Fee-for-Service Schedule the new procedure codes for covered outpatient services and shall either assign the default CCR under R9-22-712.40(F)(2), the Medicare rate, or calculate an appropriate fee.
- B.** APC changes. AHCCCS may reassign procedure codes to new or different APC groups when APC groups are revised by CMS. AHCCCS may reassign procedure codes to a different APC group than Medicare. If AHCCCS determines that utilization of a procedure code within the Medicare program is substantially different from utilization of the procedure code in the AHCCCS program, AHCCCS may choose not to assign the procedure code to any APC group. For procedure codes not grouped into an APC by Medicare, AHCCCS may assign the code to an APC group when AHCCCS determines that the cost and resources associated with the non-assigned code are substantially similar to those in the APC group.
- C.** Annual update for Outpatient Hospital Fee Schedule. Beginning October 1, 2006, through September 30, 2011, AHCCCS shall adjust outpatient fee schedule rates:
1. Annually by multiplying the rates effective during the prior year by the Global Insight Prospective Hospital Market Basket Inflation Index; or
  2. In a particular year the director may substitute the increases in subsection (C)(1) by calculating the dollar value associated with the inflation index in subsection (C)(1), and applying the dollar value to adjust rates at varying levels.
- D.** Reductions to the Outpatient Capped Fee-For-Service Schedule. Claims paid using the Outpatient Capped Fee-For-Service Schedule with dates of service on or after October 1, 2011, shall be reimbursed at 95 percent of the rates in effect on September 30, 2011, subject to the annual adjustments to procedure codes and APCs under this Section.
- E.** Rebase. AHCCCS shall rebase the outpatient fees every five years.
- F.** Statewide CCR.:

1. For begin dates of service on or before September 30, 2011, the statewide CCR calculated in R9-22-712.30 shall be recalculated at the time of rebasing. When rebasing, AHCCCS may recalculate the statewide CCR based on the costs and charges for services excluded from the outpatient hospital fee schedule.
  2. For begin dates of service on or after October 1, 2011, the statewide CCR shall be set under R9-22-712.30(C).
- G. Other Updates.** In addition to the other updates provided for in this section, the Administration may adjust the Outpatient Capped Fee-For-Service Fee Schedule and the Statewide CCR to the extent necessary to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available at least to the extent that such care and services are available to the general population in the geographic area.

#### Historical Note

New Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2). Amended by final rulemaking at 13 A.A.R. 3584, effective October 1, 2007 (Supp. 07-4). Amended by final rulemaking at 14 A.A.R. 1439, effective May 31, 2008 (Supp. 08-2). Amended by final rulemaking at 17 A.A.R. 1460, effective October 1, 2011 (Supp. 11-3). Amended by exempt rulemaking at 18 A.A.R. 1914, effective July 18, 2012 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 3315, effective November 30, 2013 (Supp. 13-4). Amended by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

#### R9-22-712.41. Reserved

#### R9-22-712.42. Reserved

#### R9-22-712.43. Reserved

#### R9-22-712.44. Reserved

#### R9-22-712.45. Outpatient Hospital Reimbursement: Outpatient Payment Restrictions

- A.** AHCCCS shall not reimburse hospitals for emergency room treatment, observation hours, or other outpatient hospital services performed on an outpatient basis if the member is admitted as an inpatient to the same hospital directly from the emergency room, observation, or other outpatient department.
- B.** AHCCCS shall include payment for the emergency room, observation, and other outpatient hospital services provided to the member before the hospital admission in the AHCCCS Inpatient Tiered Per Diem Capped Fee-For-Service Schedule under Article 7 of this Chapter.
- C.** Same day admit and discharge.
  1. For discharges before September 30, 2014. Same day admit and discharge claims that qualify for either the maternity or nursery tiers shall be paid based on the lesser of the rate for the maternity or nursery tier, or the outpatient hospital fee schedule.
  2. For discharge dates on and after October 1, 2014. Same day admit and discharge claims are paid for through the outpatient fee schedule.

#### Historical Note

New Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2). Amended by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

#### R9-22-712.46. Reserved

#### R9-22-712.47. Reserved

#### R9-22-712.48. Reserved

#### R9-22-712.49. Reserved

#### R9-22-712.50. Outpatient Hospital Reimbursement: Billing

To receive appropriate reimbursement, hospitals shall:

1. Bill outpatient hospital services on the CMS approved Uniform Billing Form or in electronic format using the appropriate HIPAA transaction.
2. Follow the UB Manual Guidelines, as published by the National Uniform Billing Committee, and use the appropriate revenue code and procedure code combination as prescribed by AHCCCS and on file and online with AHCCCS.

#### Historical Note

New Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2).

#### R9-22-712.51. Reserved

#### R9-22-712.52. Reserved

#### R9-22-712.53. Reserved

#### R9-22-712.54. Reserved

#### R9-22-712.55. Reserved

#### R9-22-712.56. Reserved

#### R9-22-712.57. Reserved

#### R9-22-712.58. Reserved

#### R9-22-712.59. Reserved

#### R9-22-712.60 Diagnosis Related Group Payments

- A.** Inpatient hospital services with discharge dates on or after October 1, 2014, shall be reimbursed using the diagnosis related group (DRG) payment methodology described in this section and sections R9-22-712.61 through R9-22-712.81.
- B.** Payments made using the DRG methodology shall be the sole reimbursement to the hospital for all inpatient hospital services and related supplies provided by the hospital. Services provided in the emergency room, observation area, or other outpatient departments that are directly followed by an inpatient admission to the same hospital are not reimbursed separately. They are reimbursed through the DRG methodology and not reimbursed separately.
- C.** Each claim for an inpatient hospital stay shall be assigned a DRG code and a DRG relative weight based on version 31 of the All Patient Refined Diagnosis Related Group (APR-DRG) classification system established by 3M Health Information Systems. If version 31 of the APR-DRG classification system will no longer support assigning DRG codes and relative weights to claims, and 3M Health Information Systems issues a newer version of the APR-DRG classification system using updated DRG codes and/or updated relative weights, then the more current version established by 3M Health Information Systems will be used; however, if the newer version employs updated relative weights, those weights will be adjusted using a single adjustment factor applied to all relative weights to ensure that the statewide weighted average of the updated relative weights does not increase or decrease from the statewide weighted average of the relative weights used under version 31.
- D.** Payments for inpatient hospital services reimbursed using the DRG payment methodology are subject to quick pay discounts and slow pay penalties under A.R.S. 36-2904.



- E. Payments for inpatient hospital services reimbursed using the DRG payment methodology are subject to the Urban Hospital Reimbursement Program under R9-22-718.
- F. For purposes of this section and sections R9-22-712.61 through R9-22-712.81:
  1. “DRG National Average length of stay” means the national arithmetic mean length of stay published in version 31 of the All Patient Refined Diagnosis Related Group (APR-DRG) classification established by 3M Health Information Systems.
  2. “Length of stay” means the total number of calendar days of an inpatient stay beginning with the date of admission through discharge, but not including the date of discharge (including the date of a discharge to another hospital, i.e., a transfer) unless the member expires.
  3. “Medicare” means Title XVIII of the Social Security Act, 42 U.S.C. 1395 et seq.
  4. “Medicare labor share” means a hospital’s labor costs as a percentage of its total costs as determined by CMS for purposes of the Medicare Inpatient Prospective Payment System.

#### Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

#### R9-22-712.61. DRG Payments: Exceptions

- A. Notwithstanding section R9-22-712.60, claims for inpatient services from the following hospitals shall be paid on a per diem basis, including provisions for outlier payments, where rates and outlier thresholds are included in the capped fee schedule published by the Administration on its website and available for inspection during normal business hours at 701 E. Jefferson St., Phoenix, AZ. If the covered costs per day on a claim exceed the published threshold for a day, the claim is considered an outlier. Outliers will be paid by multiplying the covered charges by the outlier CCR. The outlier CCR will be the sum of the urban or rural default operating CCR appropriate to the location of the hospital and the statewide capital cost-to-charge ratio in the data file established as part of the Medicare Inpatient Prospective Payment System by CMS. The resulting amount will be the total reimbursement for the claim. There is no provision for outlier payments for hospitals described under subsection (A)(3).
  1. Hospitals designated as type: hospital, subtype; rehabilitation in the Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website in March of each year;
  2. Hospitals designated as type: hospital, subtype: long term in the Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website for March of each year;
  3. Hospitals designated as type: hospital, subtype; psychiatric in the Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website for March of each year;
  4. Transplant facilities to the extent the inpatient days associated with the transplant exceed the terms of the contract.
- B. Notwithstanding section R9-22-712.60, claims for inpatient services that are covered by a RBHA or TRBHA, where the primary diagnosis is a behavioral health diagnosis, shall be reimbursed as prescribed by ADHS; however, if the primary diagnosis is a medical diagnosis, the claim shall be processed

under the DRG methodology described in this section, even if behavioral health services are provided during the inpatient stay.

- C. Notwithstanding section R9-22-712.60, claims for services associated with transplant services shall be paid in accordance with the contract between the AHCCCS administration and the transplant facility.
- D. Notwithstanding section R9-22-712.60, claims from an IHS facility or from a hospital operated as a 638 facility shall be paid the all-inclusive rate on a per visit basis in accordance with the rates published annually by IHS in the federal register. A 638 facility is a hospital operated by an Indian tribe or tribal organization, as defined in 25 USC 1603, funded, in whole or part, by the IHS as provided for in a contract or compact with IHS under 25 U.S.C. §§ 450 through 458aaa-18.

#### Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

#### R9-22-712.62. DRG Base Payment

- A. The initial DRG base payment is the product of the DRG base rate, the DRG relative weight for the post-HCAC DRG code assigned to the claim, and any applicable provider and service policy adjusters.
- B. The DRG base rate for each hospital is the statewide standardized amount of which the hospital’s labor-related share of that amount is adjusted by the hospital’s wage index, where the standardized amount is \$5,295.40, and the hospital’s labor share and the hospital’s wage index are those used in the Medicare inpatient prospective payment system for the fiscal year beginning October 1, 2013.
- C. Claims shall be assigned both a DRG code derived from all diagnosis and surgical procedure codes included on the claim (the “pre-HCAC” DRG code) and a DRG code derived excluding diagnosis and surgical procedure codes associated with the health care acquired conditions that were not present on admission or any other provider-preventable conditions (the “post-HCAC” DRG code). The DRG code with the lower relative weight shall be used to process claims using the DRG methodology.

#### Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

#### R9-22-712.63. DRG Base Payments Not Based on the Statewide Standardized Amount

Notwithstanding section R9-22-712.62, the amount of \$3,436.08 shall be used in place of the statewide standardized amount in subsection R9-22-712.62(B) to calculate the DRG base rate for the following hospitals:

1. Hospitals located in a city with a population greater than one million, which on average have at least 15 percent of inpatient days for patients who reside outside of Arizona, and at least 50 percent of discharges as reported on the 2011 Medicare Cost Report are reimbursed by Medicare.
2. Hospitals designated as type: hospital, subtype: short-term that has a license number beginning “SH” in the Provider & Facility Database for Arizona Medical Facilities posted by the ADHS Division of Licensing Services on its website for March of each year.

#### Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

**R9-22-712.64.DRG Base Payments and Outlier CCR for Out-of-State Hospitals****A. DRG Base payment:**

1. For high volume out-of-state hospitals defined in subsection (C), the wage adjusted DRG base payment is determined as described in R9-22-712.62.
2. Notwithstanding subsection R9-22-712.62 the wage adjusted DRG base rate for out-of-state hospitals that are not high volume hospitals shall be \$5,184.75.

**B. Outlier CCR:**

1. Notwithstanding subsection R9-22-712.68, the CCR used for the outlier calculation for out-of-state hospitals that are not high volume hospitals shall be the sum of the statewide urban default operating cost-to-charge ratio and the statewide capital CCR in the data file established as part of the Medicare Inpatient Prospective Payment System by CMS.
2. The CCR used for the outlier calculation for high volume out-of-state hospitals is the same as in-state hospitals as described in R9-22-712.68.

**C.** A high volume out-of-state hospital is a hospital not otherwise excluded under R9-22-712.61, that is located in a county that borders the State of Arizona and had 500 or more AHCCCS covered inpatient days for the fiscal year beginning October 1, 2010.

**D.** Other than as required by this section, DRG reimbursement for out-of-state hospitals is determined under R9-22-712.60 through R9-22-712.81.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R.  
1956, September 6, 2014 (Supp. 14-3).

**R9-22-712.65.DRG Provider Policy Adjustor**

**A.** After calculating the DRG base payment as required in sections R9-22-712.62, R9-22-712.63, or R9-22-712.64, for claims from a high-utilization hospital, the product of the DRG base rate and the DRG relative weight for the post-HCAC DRG code shall be multiplied by a provider policy adjustor of 1.055.

**B.** A hospital is a high-utilization hospital if the hospital had:

1. At least 46,112 AHCCCS-covered inpatient days using adjudicated claim and encounter data during the fiscal year beginning October 1, 2010, which is equal to at least four hundred percent of the statewide average number of AHCCCS-covered inpatient days at all hospitals of 11,528 days; and,
2. A Medicaid inpatient utilization rate greater than 30% calculated as the ratio of AHCCCS-covered inpatient days to total inpatient days as reported in the hospital's Medicare Cost Report for the fiscal year ending 2011.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R.  
1956, September 6, 2014 (Supp. 14-3).

**R9-22-712.66.DRG Service Policy Adjustor**

In addition to subsection R9-22-712.65, for claims with DRG codes in the following categories, the product of the DRG base rate, the DRG relative weight for the post-HCAC DRG code, and the DRG provider policy adjustor shall be multiplied by the following service policy adjustors:

1. Normal newborn DRG codes: 1.55
2. Neonates DRG codes: 1.10
3. Obstetrics DRG codes: 1.55
4. Psychiatric DRG codes: 1.65
5. Rehabilitation DRG codes: 1.65

6. Claims for members under age 19 assigned DRG codes other than listed above: 1.25

**Historical Note**

New Section made by final rulemaking at 20 A.A.R.  
1956, September 6, 2014 (Supp. 14-3).

**R9-22-712.67.DRG Reimbursement: Transfers**

**A.** For purposes of this subsection a “transfer” means the transfer of a member from a hospital to a short-term general hospital for inpatient care, to a designated cancer center or children’s hospital, or a critical access hospital.

**B.** Designated cancer center or children’s hospitals are those hospitals identified as such in the UB-04 billing manual published by the National Uniform Billing Committee.

**C.** The hospital the member is transferred from shall be reimbursed either the initial DRG base payment or the transfer DRG base payment, whichever is less.

**D.** The transfer DRG base payment is an amount equal to the initial DRG base payment, as determined after making any provider or service policy adjustors, divided by the DRG National Average length of stay for the DRG code multiplied by the sum of one plus the length of stay.

**E.** The hospital the member is transferred to shall be reimbursed under the DRG payment methodology without a reduction due to the transfer.

**F.** Unadjusted DRG base payment. The unadjusted DRG base payment is either the initial DRG base payment, as determined after making any provider or service policy adjustors, or the transfer DRG base payment, whichever is less.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R.  
1956, September 6, 2014 (Supp. 14-3).

**R9-22-712.68.DRG Reimbursement: Unadjusted Outlier Add-on Payment**

**A.** Claims for inpatient hospital services qualify for an outlier add-on payment if the claim cost exceeds the outlier cost threshold.

**B.** The claim cost is determined by multiplying covered charges by an outlier CCR as described by the following subsections:

1. For hospitals designated as type: hospital, subtype: children’s in the Provider & Facility Database for Arizona Medical Facilities posted by the ADHS Division of Licensing Services on its website for March of each year. The outlier CCR will be calculated by dividing the hospital total costs by the total charges using the most recent Medicare Cost Report available as of September 1 of that year.
2. For Critical Access Hospitals the outlier CCR will be the sum of the statewide rural default operating cost-to-charge ratio and the statewide capital cost-to-charge ratio in the data file established as part of the Medicare Inpatient Prospective Payment System by CMS.
3. For all other hospitals the outlier CCR will be the sum of the operating cost-to-charge ratio and the capital cost-to-charge ratio established for each hospital in the impact file established as part of the Medicare Inpatient Prospective Payment System by CMS.

**C.** AHCCCS shall update the CCRs described in subsection (B) to conform to the most recent CCRs established by CMS as of September 1 of each year, and the CCRs so updated shall be used for claims with dates of discharge on or after October 1 of that year.

**D.** The outlier threshold is equal to the sum of the unadjusted DRG base payment plus the fixed loss amount. The fixed loss

amount is \$5,000 for critical access hospitals and \$65,000 for all other hospitals.

- E. For those inpatient hospital claims that qualify for an outlier add-on payment, the payment is calculated by subtracting the outlier threshold from the claim cost and multiplying the result by the DRG marginal cost percentage. The DRG marginal cost percentage is 90% for claims assigned DRG codes associated with the treatment of burns and 80% for all other claims.

#### Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

#### **R9-22-712.69.DRG Reimbursement: Covered Day Adjusted DRG Base Payment and Covered Day Adjusted Outlier Add-on Payment**

Adjustments to the payments are made to account for days not covered by AHCCCS as follows:

1. A covered day reduction factor unadjusted is determined if the member is not eligible on the first day of the inpatient stay but is eligible for subsequent days during the inpatient stay. In this case, a covered day reduction factor unadjusted is calculated by dividing the number of AHCCCS covered days by the DRG National Average length of stay. The number of AHCCCS covered days is equal to the number of days the member is eligible during the inpatient stay.
2. A covered day reduction factor unadjusted is also determined if the member is eligible on the first day of the inpatient stay but is determined ineligible for one or more days prior to the date of discharge. In this case, a covered day reduction factor unadjusted is calculated by adding one to the number of AHCCCS covered days and dividing the result by the DRG National Average length of stay. The number of AHCCCS covered days is equal to the number of days the member is eligible during the inpatient stay.
3. If the covered day reduction factor unadjusted is greater than one, then the covered day reduction factor final is one; otherwise, the covered day reduction factor final is equal to the covered day reduction factor unadjusted.
4. The covered day adjusted DRG base payment is an amount equal to the product of the unadjusted DRG base payment and the covered day reduction factor final.
5. The covered day adjusted DRG outlier add-on payment is an amount equal to the product of the unadjusted DRG outlier add-on payment and the covered day reduction factor final.

#### Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

#### **R9-22-712.70.Covered Day Adjusted DRG Base Payment and Covered Day Adjusted Outlier Add-on Payment for FES members**

In addition to the covered day reduction factor in R9-22-712.69, a covered day reduction factor unadjusted is determined for an inpatient stay during which an FES member receives services for the treatment of an emergency medical condition and also receives services once the condition no longer meets the criteria as an emergency medical condition described in R9-22-217.

1. A covered day reduction factor unadjusted is calculated by adding one to the AHCCCS covered days and dividing the result by the DRG National Average length of stay. The number of AHCCCS covered days is equal to the number of inpatient days during which an FES member receives services for an emergency medical condition as

described in R9-22-217. For purposes of this adjustment, any portion of a day during which the FES member receives treatment for an emergency medical condition is counted as an AHCCCS covered day.

2. If the covered day reduction factor unadjusted is greater than one, then the covered day reduction factor final is one; otherwise, the covered day reduction factor final is equal to the covered day reduction factor unadjusted.
3. The covered day adjusted DRG base payment is an amount equal to the product of the unadjusted DRG base payment and the covered day reduction factor final.
4. The covered day adjusted DRG outlier add-on payment is an amount equal to the product of the unadjusted DRG outlier add-on payment and the covered day reduction factor final.

#### Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

#### **R9-22-712.71.Final DRG Payment**

- A. The final DRG payment is the sum of the final DRG base payment and the final DRG outlier add-on payment. The final DRG base payment is an amount equal to the product of the covered day adjusted DRG base payment and a hospital-specific factor established to limit the financial impact to individual hospitals of the transition from the tiered per diem payment methodology and to account for improvements in documentation and coding that are expected as a result of the transition.
- B. The final DRG outlier add-on payment is an amount equal to the product of the covered day adjusted DRG outlier add-on payment and a hospital-specific factor established to limit the financial impact to individual hospitals of the transition from the tiered per diem payment methodology and to account for improvements in documentation and coding that are expected as a result of the transition.
- C. The factor for each hospital and for each federal fiscal year is published as part of the AHCCCS capped fee schedule and is available on the AHCCCS administration's website and is on file for public inspection at the AHCCCS administration located at 701 E. Jefferson St., Phoenix, AZ.

#### Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

#### **R9-22-712.72.DRG Reimbursement: Enrollment Changes During an Inpatient Stay**

- A. If a member's enrollment changes during an inpatient stay, including changing enrollment from fee-for-service to a contractor, or vice versa, or changing from one contractor to another contractor, the contractor with whom the member is enrolled on the date of discharge shall be responsible for reimbursing the hospital for the entire length of stay under the DRG payment rules in sections R9-22-712.60 through R9-22-712.81. If the member is eligible but not enrolled with a contractor on the date of discharge, then the AHCCCS administration shall be responsible for reimbursing the hospital for the entire length of stay under the DRG payment rules in sections R9-22-712.60 through R9-22-712.81.
- B. When a member's enrollment changes during an inpatient stay, the hospital shall use the date of enrollment with the payer responsible on the date of discharge as the "from" date of service on the claim regardless of the date of admission. The claim may include all surgical procedures performed during the entire inpatient stay, but the hospital shall only include revenue codes, service units, and charges for services performed on or after the date of enrollment.

- C. Interim claims submitted to a payer other than the payer responsible on the day of discharge shall be processed in the same manner as other interim claims as described in R9-22-712.76.

#### Historical Note

New Section made by final rulemaking at 20 A.A.R.  
1956, September 6, 2014 (Supp. 14-3).

#### **R9-22-712.73.DRG Reimbursement: Inpatient Stays for Members Eligible for Medicare**

If the hospital receives less than the full Medicare payment for a member eligible for benefits under Part A of Medicare because the member has exceeded the maximum benefit permitted under Part A of Medicare, the hospital shall submit a separate claim for services performed after the date the maximum Medicare Part A benefit is exceeded. The claim may include all diagnosis codes for the entire inpatient stay, but the hospital is only required to include revenue codes, surgical procedure codes, service units, and charges for services performed after the date the Medicare Part A benefit is exceeded. A claim so submitted shall be reimbursed using the DRG payment methodology.

#### Historical Note

New Section made by final rulemaking at 20 A.A.R.  
1956, September 6, 2014 (Supp. 14-3).

#### **R9-22-712.74.DRG Reimbursement: Third Party Liability**

DRG payments are subject to reduction based on cost avoidance under section R9-22-1003 and other rules regarding first-and third-party liability under Article 10 of this Chapter including cost avoidance for claims for ancillary services covered under Part B of Medicare.

#### Historical Note

New Section made by final rulemaking at 20 A.A.R.  
1956, September 6, 2014 (Supp. 14-3).

#### **R9-22-712.75.DRG Reimbursement: Payment for Administrative Days**

- A. Administrative days are days of a hospital stay in which a member does not meet criteria for an acute inpatient stay, but is not discharged because an appropriate placement outside the hospital is not available, the Administration or the contractor fail to provide for the appropriate placement outside the hospital in a timely manner, or the member cannot be safely discharged or transferred.
- B. Administrative days do not include days when the member is awaiting appropriate placement or services that are currently available but the hospital has not transferred or discharged the member because of the hospital's administrative or operational delays.
- C. Prior authorization is required for administrative days.
- D. A hospital shall submit a claim for administrative days separate from any claim for reimbursement for the inpatient stay otherwise reimbursable under the DRG payment methodology.
- E. Administrative days are reimbursed at the rate the claim would have paid had the services not been provided in an inpatient hospital setting but had been provided at the appropriate level of care (e.g., as nursing facility days).

#### Historical Note

New Section made by final rulemaking at 20 A.A.R.  
1956, September 6, 2014 (Supp. 14-3).

#### **R9-22-712.76.DRG Reimbursement: Interim Claims**

- A. For inpatient stays with a length of stay greater than 29 days, a hospital may submit interim claims for each 30 day period during the inpatient stay.

- B. Hospitals shall be reimbursed for interim claims at a per diem rate of \$500 per day.

- C. Following discharge, the hospital shall void all interim claims. In such circumstances, the hospital shall submit a claim to the payer with whom the member is enrolled on the date of discharge, whether the Administration or a contractor, for the entire inpatient stay for which the final claim shall be reimbursed under the DRG payment methodology. Interim claims will be recouped.

#### Historical Note

New Section made by final rulemaking at 20 A.A.R.  
1956, September 6, 2014 (Supp. 14-3).

#### **R9-22-712.77.DRG Reimbursement: Admissions and Discharges on the Same Day**

- A. Except as provided for in subsection (B), for any claim for inpatient services with an admission date and discharge date that are the same calendar date, the contractor or the Administration shall process the claim as an outpatient claim and the hospital shall be reimbursed under R9-22-712.10 through R9-22-712.50.
- B. Claims with an admission date and discharge date that are the same calendar date that also indicate that the member expired on the date of discharge shall be reimbursed under the DRG methodology.

#### Historical Note

New Section made by final rulemaking at 20 A.A.R.  
1956, September 6, 2014 (Supp. 14-3).

#### **R9-22-712.78.DRG Reimbursement: Readmissions**

If a member is readmitted without prior authorization to the same hospital that the member was discharged from within 72 hours and the DRG code assigned to the claim for the prior admission has the same first three digits as the DRG code assigned to the claim for the readmission, then payment for the claim for the readmission will be disallowed only if the readmission could have been prevented by the hospital.

#### Historical Note

New Section made by final rulemaking at 20 A.A.R.  
1956, September 6, 2014 (Supp. 14-3).

#### **R9-22-712.79.DRG Reimbursement: Change of Ownership**

The administration shall not change any of the components of the calculation of reimbursement for inpatient services using the DRG methodology based upon a change in the hospital's ownership except to the extent those components would change under the methodology had the hospital not changed ownership (e.g., updating the hospital's cost-to-charge ratio as of September 1 of each year under R9-22-712.68).

#### Historical Note

New Section made by final rulemaking at 20 A.A.R.  
1956, September 6, 2014 (Supp. 14-3).

#### **R9-22-712.80.DRG Reimbursement: New Hospitals**

- A. DRG base payment for new hospitals. For any hospital that does not have a labor share or wage index published by CMS as described in section R9-22-712.62(B) because the hospital was not in operation, the DRG base rate described in section R9-22-712.62(B) shall be calculated as the statewide standardized amount of \$5,295.40 after adjusting that amount for the labor-related share and the wage index published by CMS as described in section R9-22-712.62(B) that is appropriate to the location of the hospital published by CMS as described in section R9-22-712.62(B).
- B. Outlier calculations for new hospitals. For any hospital that does not have an operating cost-to-charge ratio listed in the

impact file described in section R9-22-712.68(B) because the hospital was not in operation prior to the publication of the impact file, the statewide urban or rural default operating cost-to-charge ratio appropriate to the location of the hospital and the statewide capital cost-to-charge ratio shall be used to determine the unadjusted outlier add-on payment. The statewide urban or rural default operating cost-to-charge ratio and the statewide capital cost-to-charge ratio shall be based on the ratios published by CMS and updated by the Administration as described in section R9-22-712.68(C).

- C. In addition to the requirement of this section, DRG reimbursement for new hospitals is determined under R9-22-712.60 through R9-22-712.79.

#### Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

#### R9-22-712.81. DRG Reimbursement: Updates

In addition to the other updates provided for in sections R9-22-712.60 through R9-22-712.80, the Administration may adjust the statewide standardized amount in section R9-22-712.62, the base payments in sections R9-22-712.63 and R9-22-712.64, the provider policy adjustor in section R9-22-712.65, service policy adjustors section R9-22-712.66, and the fixed loss amounts and marginal cost percentages used to calculate the outlier threshold in section R9-22-712.68 to the extent necessary to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available at least to the extent that such care and services are available to the general population in the geographic area.

#### Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

#### R9-22-713. Overpayment and Recovery of Indebtedness

- A. If a contractor or a subcontracting provider receives an overpayment from the Administration 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 AHCCCS fund.
- B. If the funds described in subsection (A) are not remitted, the Administration may recover the funds paid by the Administration to a contractor or subcontracting provider through:
1. A repayment agreement executed with the Administration;
  2. Withholding or offsetting against current or future payments to be paid to the contractor or subcontracting provider; or
  3. Enforcement of, or collection against, the performance bond, financial reserve, or other financial security under A.R.S. § 36-2903.

#### Historical Note

Adopted as an emergency effective February 23, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Adopted as a permanent rule effective May 16, 1983; text of adopted rule identical to the emergency (Supp. 83-3). Former Section R9-22-713 repealed, new Section R9-22-713 adopted effective October 1, 1983 (Supp. 83-5). Former Section R9-22-713 renumbered and amended as Section R9-22-714, former Section R9-22-709 renumbered and amended as Section R9-22-713 effective October 1, 1985 (Supp. 85-5). Amended by final rulemaking at 8 A.A.R. 3317, effective July 15, 2002

(Supp. 02-3). Amended by final rulemaking at 13 A.A.R. 856, effective May 5, 2007 (Supp. 07-1).

#### 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 include:
    - 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, 4 A.A.C. 43, or 4 A.A.C. 45;
  2. The provider verifies that individuals who have provided services described in subsection (B)(1) have not been placed on the List of Excluded Individuals/Entities (LEIE) maintained by the United States Department of Health and Human Services Office of the Inspector General (OIG), located at OIG's web site;
  3. The service contributes directly to the diagnosis or treatment of the member; and
  4. The service ordinarily requires performance by the type of provider seeking reimbursement.
- C. The Administration or a contractor may make a payment for covered services only:
1. To the provider;
  2. To anyone specified in 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 the 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 collection of the payment;
  4. To the employer of the provider, if the provider is required as a condition of employment to turn over the provider's fees to the employer;
  5. To the inpatient facility in which the service is provided, if the provider 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 foundation, plan or similar organization submits the claim.
- D. The Administration or a contractor shall not make a payment to or through a factor, either directly or by power of attorney, for a covered service furnished to a member by a provider.
- E. 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.

**Historical Note**

Adopted as an emergency effective February 23, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Adopted as a permanent rule effective May 16, 1983; text of adopted rule is similar to the emergency (Supp. 83-3). Repealed effective October 1, 1983 (Supp. 83-5). Former Section R9-22-713 renumbered and amended as Section R9-22-714 effective October 1, 1985 (Supp. 85-5). Section repealed; new Section made by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 9 A.A.R. 3800, effective October 4, 2003 (Supp. 03-3). Amended by final rulemaking at 13 A.A.R. 662, effective April 7, 2007 (Supp. 07-1).

*Editor's Note: The following Section was amended under an exemption from the provisions of the Administrative Procedure Act which means that this rule was not reviewed by the Governor's Regulatory Review Council; the agency did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the agency was not required to hold public hearings on the rules; and the Attorney General did not certify this rule. This Section was subsequently amended through the regular rulemaking process.*

**R9-22-715. Hospital Rate Negotiations**

- A. A contractor that negotiates with hospitals for inpatient or outpatient services shall reimburse hospitals for services rendered on or after March 1, 1993, as described in A.R.S. § 36-2903.01 and this Article, or at the negotiated rate that, in the aggregate, does not exceed reimbursement levels that would have been paid under A.R.S. § 36-2903.01, and this Article. This subsection does not apply to urban hospitals described under R9-22-718. Contractors may engage in rate negotiations with a hospital at any time during the contract period.
- B. The Administration may negotiate or contract with a hospital on behalf of a contractor for discounted hospital rates and may require that the negotiated discounted rates be included in a subcontract between the contractor and hospital.

**Historical Note**

Adopted as an emergency effective February 23, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Adopted as a permanent rule effective May 16, 1983; text of adopted rule identical to the emergency (Supp. 83-3). Repealed effective October 1, 1983 (Supp. 83-5). New Section R9-22-715 adopted effective October 1, 1985 (Supp. 85-5). Amended under an exemption from the provisions of the Administrative Procedure Act,

effective March 1, 1993 (Supp. 93-1). Amended effective January 14, 1997 (Supp. 97-1). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 11 A.A.R. 3222, effective October 1, 2005 (Supp. 05-3). Amended by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

*Editor's Note: The following Section was amended under an exemption from the provisions of the Administrative Procedure Act which means that this rule was not reviewed by the Governor's Regulatory Review Council; the agency did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the agency was not required to hold public hearings on the rules; and the Attorney General did not certify this rule. This Section was subsequently amended through the regular rulemaking process.*

**R9-22-716. Repealed****Historical Note**

Adopted effective October 1, 1985 (Supp. 85-5). Amended under an exemption from the provisions of the Administrative Procedure Act, effective March 1, 1993 (Supp. 93-1). Amended effective January 14, 1997 (Supp. 97-1). Amended by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). Section repealed by final rulemaking at 13 A.A.R. 662, effective April 7, 2007 (Supp. 07-1).

**R9-22-717. Repealed****Historical Note**

Adopted effective July 30, 1993 (Supp. 93-3). Amended effective September 22, 1997 (Supp. 97-3). Section repealed by final rulemaking at 11 A.A.R. 3222, effective October 1, 2005 (Supp. 05-3).

*Editor's Note: The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act which means that this rule was not reviewed by the Governor's Regulatory Review Council. The agency was required to submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; and was required to hold a public hearing.*

**R9-22-718. Urban Hospital Inpatient Reimbursement Program**

- A. Definitions. The following definitions apply to this Section:
  - 1. "Noncontracted Hospital" means an urban hospital which does not have a contract under this Section with an urban contractor in the same county.
  - 2. "Rural Contractor" means a contractor or program contractor as defined in A.R.S. Title 36, Chapter 29 that does not provide services to members residing in either Maricopa or Pima County.
  - 3. "Urban Contractor" means a contractor or program contractor as defined in A.R.S. Title 36, Chapter 29, that provides services to members residing in Maricopa or Pima County and may also provide services to members who reside in other counties. An urban contractor does not include ADHS/BHS, or a TRBHA.
  - 4. "Rural Hospital" means a hospital, as defined in R9-22-712.07, that is physically located in Arizona but in a county other than Maricopa and Pima County.
  - 5. "Urban Hospital" means a hospital that is not a rural hospital and is physically located in Maricopa or Pima County.
- B. General Provisions.

1. This Section applies to an urban hospital who receives payment for inpatient hospital services under A.R.S. §§ 36-2903.01 and 36-2904.
  2. AHCCCS shall operate an inpatient hospital reimbursement program under A.R.S. § 36-2905.01 and this Section.
  3. Residency of the member receiving inpatient AHCCCS covered services is not a factor in determining which hospitals are required to contract with which contractors.
  4. An urban contractor shall enter into a contract for reimbursement for inpatient AHCCCS covered services with one or more urban hospitals located in the same county as the urban contractor.
  5. A noncontracted urban hospital shall be reimbursed for inpatient services by an urban contractor at 95% of the amount calculated as defined in A.R.S. § 36-2903.01 and this Article, unless otherwise negotiated by both parties.
- C. Contract Begin Date.** A contract under this Article shall cover inpatient acute care hospital services for members with hospital admissions on and after October 1, 2003.
- D. Outpatient urban hospital services.** Outpatient urban hospital services, including observation days and emergency room treatments that do not result in an admission, shall be reimbursed either through an urban hospital contract negotiated between a contractor and an urban hospital, or the reimbursement rates set forth in A.R.S. § 36-2903.01. Outpatient services in an urban hospital that result in an admission shall be paid as inpatient services in accordance with this Section.
- E. Urban Hospital Contract.**
1. Provisions of an urban hospital contracts. The urban hospital contract shall contain but is not limited to the following provisions:
    - a. Required provisions as described in the Request for Proposals (RFP);
    - b. Dispute settlement procedures. If the AHCCCS Grievance System prescribed in A.R.S. § 36-2903.01(B) and rule is not used, then arbitration shall be used;
    - c. Arbitration procedure. If arbitration is used, the urban hospital contract shall identify:
      - i. The parties' agreement on arbitrating claims arising from the contract,
      - ii. Whether arbitration is nonbinding or binding,
      - iii. Timeliness of arbitration,
      - iv. What contract provisions may be appealed,
      - v. What rules will govern arbitrations,
      - vi. The number of arbitrators that shall be used,
      - vii. How arbitrators shall be selected, and
      - viii. How arbitrators shall be compensated.
    - d. Timeliness of claims submission and payment;
    - e. Prior authorization;
    - f. Concurrent review;
    - g. Electronic submission of claims;
    - h. Claims review criteria;
    - i. Payment of discounts or penalties such as quick-pay and slow-pay provisions;
    - j. Payment of outliers;
    - k. Claim documentation specifications under A.R.S. § 36-2904.
    - l. Treatment and payment of emergency room services; and
    - m. Provisions for rate changes and adjustments.
  2. AHCCCS review and approval of urban hospital contracts:
    - a. AHCCCS may review, approve, or disapprove the hospital contract rates, terms, conditions, and amendments to the contract;
    - b. The AHCCCS evaluation of each urban hospital contract shall include but not be limited to the following areas:
      - i. Availability and accessibility of services to members,
      - ii. Related party interests,
      - iii. Inclusion of required terms pursuant to this Section, and
      - iv. Reasonableness of the rates.
- F. Quick-Pay/Slow-Pay.** A payment made by urban contractor to a noncontracted hospital shall be subject to quick-pay discounts and slow-pay penalties under A.R.S. § 36-2904.

**Historical Note**

Adopted under an exemption from the provisions of the Administrative Procedure Act, effective January 29, 1997; pursuant to Laws 1996, Ch. 288, § 24 (Supp. 97-1). Amended by exempt rulemaking at 10 A.A.R. 500, effective February 1, 2004 (Supp. 04-1). Amended by exempt rulemaking at 13 A.A.R. 3190, effective October 1, 2007 (Supp. 07-3). Amended by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

**R9-22-719. Contractor Performance Measure Outcomes**

The Administration may retain a specified percentage of capitation reimbursement to distribute to contractors based on their performance measure outcomes under A.R.S. § 36-2904. The Administration shall notify contractors 60 days prior to a new contract year if this methodology is implemented. The Administration shall specify the details of the reimbursement methodology in contract.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1).

**R9-22-720. Reinsurance**

- A.** Reinsurance is a stop-loss program provided by the Administration to a contractor for partial reimbursement of the cost of covered services for a member with an acute medical condition when the cost of covered services exceeds a pre-determined deductible level amount within a contract year. The Administration self-insures the reinsurance program through a reduction to capitation rates. The reinsurance program also includes a catastrophic reinsurance program for members diagnosed with specific medical conditions.
- B.** The Administration shall specify in contract guidelines for claims submission, processing, payment, and the types of care and services that are provided to a member whose care is covered by reinsurance.
- C.** When the Administration determines that a contractor does not follow the specified guidelines for care or services and the care or services could have been provided at a lower cost according to the guidelines, the Administration shall reimburse the contractor as if the care or services had been provided as specified in the guidelines.

**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 3317, effective July 15, 2002 (Supp. 02-3). Amended by final rulemaking at 13 A.A.R. 856, effective May 5, 2007 (Supp. 07-1).

**R9-22-721. Reserved****R9-22-722. Reserved****R9-22-723. Reserved****R9-22-724. Reserved****R9-22-725. Reserved****R9-22-726. Reserved****R9-22-727. Reserved****R9-22-728. Reserved****R9-22-729. Reserved****R9-22-730. Hospital Assessment**

**A.** For purposes of this Section, the following terms are defined as provided below unless the context specifically requires another meaning:

1. “2011 Medicare Cost Report” means:
  - a. The Medicare Cost Report for the hospital fiscal year ending in calendar year 2011 as reported in the CMS Healthcare Provider Cost Reporting Information System (HCRIS) release dated December 31, 2012; or
  - b. For hospitals not included in that CMS HCRIS report, the “as filed” Medicare Cost Report for the hospital fiscal year ending in calendar year 2011 submitted by the hospital to the Administration.
2. “2011 Uniform Accounting Report” means the Uniform Accounting Report submitted to the Arizona Department of Health Services as of December 19, 2012.
3. “2012 Uniform Accounting Report” means the Uniform Accounting Report submitted to the Arizona Department of Health Services as of August 2, 2013.
4. “Quarter” means the three month period beginning January 1, April 1, July 1, and October 1 of each year.

**B.** Beginning January 1, 2014, for each Arizona licensed hospital not excluded under subsection (I) shall be subject to an assessment payable on a quarterly basis. The assessment shall be levied against the legal owner of each hospital as of the first day of the quarter, and except as otherwise required by subsections (D), (E) and (F). For the period of July 1, 2014 through June 30, 2015, the assessment shall be calculated by multiplying the number of discharges reported on the hospital’s 2011 Medicare Cost Report, excluding discharges reported on the Medicare Cost Report as “Other Long Term Care Discharges” by the following rates based on the hospital’s peer group:

1. \$387.00 per discharge for hospitals located in a county with a population less than 500,000 that are designated as type: hospital, subtype: short-term.
2. \$387.00 per discharge for hospitals designated as type: hospital, subtype: critical access hospital.
3. \$96.75 per discharge for hospitals designated as type: hospital, subtype: long term.
4. \$96.75 per discharge for hospitals designated as type: hospital, subtype: psychiatric, that reported 2,500 or more discharges on the 2011 Medicare Cost Report.
5. \$309.50 per discharge for hospitals designated as type: hospital, subtype: short-term with 20% or more of total licensed beds licensed as pediatric, pediatric intensive care and neonatal intensive care as reported in the hospital’s 2012 Uniform Accounting Report.
6. \$348.25 per discharge for hospitals designated as type: hospital, subtype: short-term with at least 10% but less than 20% of total licensed beds licensed as pediatric, pediatric intensive care and neonatal intensive care as

reported in the hospital’s 2012 Uniform Accounting Report.

7. \$387.00 per discharge for hospitals designated as type: hospital, subtype: short-term not included in another peer group.
- C.** Peer groups for the four quarters beginning July 1 of each year are established based on hospital license type and subtype designated in the Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website March 1, 2013.
- D.** Notwithstanding subsection (B), psychiatric discharges from a hospital that reported having a psychiatric sub-provider in the hospital’s 2011 Medicare Cost Report, are assessed a rate of \$96.75 for each discharge from the psychiatric sub-provider as reported in the 2011 Medicare Cost Report. All discharges other than those reported as discharges from the psychiatric sub-provider are assessed at the rate required by subsection (B).
- E.** Notwithstanding subsection (B), rehabilitative discharges from a hospital that reported having a rehabilitative sub-provider in the hospital’s 2011 Medicare Cost Report, are assessed a rate of \$0 for each discharge from the rehabilitative sub-provider as reported in the 2011 Medicare Cost Report. All discharges other than those reported as discharges from the rehabilitative sub-provider are assessed at the rate required by subsection (B).
- F.** Notwithstanding subsection (B), for any hospital that reported more than 29,000 discharges on the hospital’s 2011 Medicare Cost Report, discharges in excess of 29,000 are assessed a rate of \$38.75 for each discharge in excess of 29,000. The initial 29,000 discharges are assessed at the rate required by subsection (B).
- G.** Assessment notice. On or before the 15th day of the quarter, the Administration shall send to each hospital a notification that the assessment invoice is available to be viewed on a secure website. The invoice shall include the hospital’s peer group assignment and the assessment due for the quarter.
- H.** Assessment due date. Assessment must be received by the Administration by the 15th day of the second month of the quarter.
- I.** Excluded hospitals. The following hospitals are excluded from the assessment based on the hospital’s 2011 Medicare Cost Report and Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website for March 1, 2013:
  1. Hospitals owned and operated by the state, the United States, or an Indian tribe.
  2. Hospitals designated as type: hospital, subtype: short-term that have a license number beginning “SH”.
  3. Hospitals designated as type: hospital, subtype: psychiatric that reported fewer than 2,500 discharges on the 2011 Medicare Cost Report.
  4. Hospitals designated as type: hospital, subtype; rehabilitation.
  5. Hospitals designated as type: hospital, subtype: children’s.
  6. Hospitals designated as type: med-hospital, subtype: special hospitals.
  7. Hospitals designated as type: hospital, subtype: short-term located in a city with a population greater than one million, which on average have at least 15 percent of inpatient days for patients who reside outside of Arizona, and at least 50 percent of discharges as reported on the 2011 Medicare Cost Report are reimbursed by Medicare.



- J.** New hospitals. For hospitals that did not file a 2011 Medicare Cost Report because of the date the hospital began operations, the hospital assessment will begin with the hospital's second quarter of operation but no sooner than January 1, 2014. The assessment will be based on the number of discharges reported by the hospital to AHCCCS for prior quarters until the hospital files its initial Medicare Cost Report. Thereafter, the assessment will be based on the discharges reported in the hospital's initial Medicare Cost Report.
- K.** Changes of ownership. The parties to a change of ownership shall promptly provide written notice to the Administration of a change of ownership and any agreement regarding the payment of the assessment. Assessments are the responsibility of the owner of record as of the first day of the quarter; however, this rule is not intended to prohibit the parties to a change of ownership from entering into an agreement for a new owner to assume the assessment responsibility of the owner of record as of the first day of the prior quarter.
- L.** Hospital closures. Hospitals that close shall pay a proportion of the quarterly assessment equal to that portion of the quarter during which the hospital operated.
- M.** Required information. For any hospital that has not filed a 2011 Medicare Cost report, or if the 2011 Medicare Cost report does not include the reliable information sufficient for the Administration to calculate the assessment, the Administration shall use data reported on the 2011 Uniform Accounting Report filed by the hospital in place of the 2011 Medicare Cost report to calculate the assessment. If the 2011 Uniform Accounting Report filed by the hospital does not include reliable information sufficient for the Administration to calculate the assessment amounts, the hospital shall provide the Administration with data specified by the Administration necessary in place of the 2011 Medicare Cost report to calculate the assessment.
- N.** The Administration will review and update as necessary rates and peer groups periodically to ensure the assessment is sufficient to fund the state match obligation to cover the cost of the populations as specified in 36-2901.08.
- O.** Enforcement. If a hospital does not comply with this section, the director may suspend or revoke the hospital's provider agreement. If the hospital does not comply within 180 days after the hospital's provider agreement is suspended or revoked, the director shall notify the director of the Department of Health Services who shall suspend or revoke the hospital's license.

#### Historical Note

New Section R9-22-730 made by exempt rulemaking at 20 A.A.R. 281, effective January 15, 2014 (Supp. 14-1).

Amended by exempt rulemaking at 20 A.A.R. 1833, effective July 1, 2014 (Supp. 14-2).

#### ARTICLE 8. REPEALED

*Article 8, consisting of Sections R9-22-801 through R9-22-804 and Exhibit A, repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004. The subject matter of Article 8 is now in 9 A.A.C. 34 (Supp. 04-1).*

#### R9-22-801. Repealed

##### Historical Note

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-801 adopted as an emergency adoption now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-801 repealed, new Section R9-22-801 adopted

effective October 29, 1985 (Supp. 85-5). Amended subsections (C), (F), (H), (I), and (K) effective October 1, 1986 (Supp. 86-5). Change of heading only effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsection (H) effective May 30, 1989 (Supp. 89-2). Amended effective September 29, 1992 (Supp. 92-3). Section heading amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective October 26, 1993 (Supp. 93-4). Amended effective December 13, 1993 (Supp. 93-4). Former Section R9-22-801 repealed, new Section R9-22-801 adopted January 14, 1997 (Supp. 97-1). Amended by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1).

#### R9-22-802. Repealed

##### Historical Note

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-802 adopted as an emergency adoption now adopted as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective October 29, 1985 (Supp. 85-5). Amended subsections (A), (B), (C) and (D) effective October 14, 1988 (Supp. 88-4). Amended effective September 29, 1992 (Supp. 92-3). Amended effective December 13, 1993 (Supp. 93-4). Former Section R9-22-802 repealed, new Section R9-22-802 adopted effective January 14, 1997 (Supp. 97-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1).

#### R9-22-803. Repealed

##### Historical Note

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-803 adopted as an emergency now adopted as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-803 repealed, new Section R9-22-803 adopted effective October 1, 1983 (Supp. 83-5). Former Section R9-22-803 renumbered and amended as Section R9-22-804. Adopted effective January 31, 1986 (Supp. 86-1). Amended effective September 29, 1992 (Supp. 92-3). Former Section R9-22-803 repealed, new Section R9-22-803 adopted January 14, 1997 (Supp. 97-1). Amended by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1).

#### R9-22-804. Repealed

##### Historical Note

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-804 adopted as an emergency adoption now adopted as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective October 1, 1983 (Supp. 83-5). Former Section R9-22-804 repealed, former Section R9-22-803 renumbered and amended as Section R9-22-804 effective October 29, 1985 (Supp. 85-5). Amended effective October 14, 1988 (Supp. 88-4). Amended subsections (B) and (C) effective

May 30, 1989 (Supp. 89-2). Amended effective September 29, 1992 (Supp. 92-3). Amended effective December 13, 1993 (Supp. 93-4). Former Section R9-22-804 repealed, new Section R9-22-804 adopted effective January 14, 1997 (Supp. 97-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1).

#### **Exhibit A. Repealed**

##### **Historical Note**

New Exhibit adopted by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Exhibit repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1).

#### **R9-22-805. Repealed**

##### **Historical Note**

Former Section R9-22-805 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Repealed effective January 31, 1986 (Supp. 86-1).

### **ARTICLE 9. REPEALED**

#### **R9-22-901. Repealed**

##### **Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-901 adopted as an emergency adoption now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Repealed effective October 1, 1983 (Supp. 83-5). Adopted effective August 29, 1985 (Supp. 85-4). Amended effective October 1, 1986 (Supp. 86-5). Amended effective May 30, 1989 (Supp. 89-2). Amended effective September 29, 1992 (Supp. 92-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective October 26, 1993 (Supp. 93-4). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 4061, effective October 8, 1999 (Supp. 99-4). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed by final rulemaking at 12 A.A.R. 4484, effective January 6, 2007 (Supp. 06-4).

#### **R9-22-902. Repealed**

##### **Historical Note**

Adopted effective August 29, 1985 (Supp. 85-4). Former Section R9-22-902 renumbered and amended as Section R9-22-904, former Section R9-22-903 renumbered and amended as Section R9-22-902 effective October 1, 1986 (Supp. 86-5). Former Section R9-22-902 repealed, new Section R9-22-902 adopted effective May 30, 1989 (Supp. 89-2). Amended effective April 13, 1990 (Supp. 90-2). Amended effective September 29, 1992 (Supp. 92-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective October 26, 1993 (Supp. 93-4). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 4061, effective October 8, 1999 (Supp. 99-4). Section repealed; new Section made by exempt rulemaking at 7 A.A.R.

4593, effective October 1, 2001 (Supp. 01-3). Section repealed by final rulemaking at 12 A.A.R. 4484, effective January 6, 2007 (Supp. 06-4).

#### **R9-22-903. Repealed**

##### **Historical Note**

Adopted effective August 29, 1985 (Supp. 85-4). Former Section R9-22-903 renumbered and amended as Section R9-22-902, former Section R9-22-904 renumbered and amended as Section R9-22-903 effective October 1, 1986 (Supp. 86-5). Former Section R9-22-903 repealed, new Section R9-22-903 adopted effective May 30, 1989 (Supp. 89-2). Section repealed by final rulemaking at 5 A.A.R. 4061, effective October 8, 1999 (Supp. 99-4). New Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed by final rulemaking at 12 A.A.R. 4484, effective January 6, 2007 (Supp. 06-4).

#### **R9-22-904. Repealed**

##### **Historical Note**

Adopted effective August 29, 1985 (Supp. 85-4). Former Section R9-22-904 renumbered and amended as Section R9-22-903, former Section R9-22-902 renumbered and amended as Section R9-22-904 effective October 1, 1986 (Supp. 86-5). Amended effective May 30, 1989 (Supp. 89-2). Section repealed by final rulemaking at 5 A.A.R. 4061, effective October 8, 1999 (Supp. 99-4). New Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed by final rulemaking at 12 A.A.R. 4484, effective January 6, 2007 (Supp. 06-4).

#### **R9-22-905. Repealed**

##### **Historical Note**

Adopted effective August 29, 1985 (Supp. 85-4). Former Section R9-22-905 renumbered without change as Section R9-22-908, former Section R9-22-907 renumbered and amended as Section R9-22-905 effective October 1, 1986 (Supp. 86-5). Amended effective May 30, 1989 (Supp. 89-2). Section repealed by final rulemaking at 5 A.A.R. 4061, effective October 8, 1999 (Supp. 99-4). New Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed by final rulemaking at 12 A.A.R. 4484, effective January 6, 2007 (Supp. 06-4).

#### **R9-22-906. Repealed**

##### **Historical Note**

Adopted effective August 29, 1985 (Supp. 85-4). Amended effective October 1, 1986 (Supp. 86-5). Amended effective October 1, 1987 (Supp. 87-4). Amended effective May 30, 1989 (Supp. 89-2). Amended effective September 22, 1997 (Supp. 97-3). Section repealed by final rulemaking at 5 A.A.R. 4061, effective October 8, 1999 (Supp. 99-4). New Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed by final rulemaking at 12 A.A.R. 4484, effective January 6, 2007 (Supp. 06-4).

#### **R9-22-907. Repealed**

##### **Historical Note**

Adopted effective August 29, 1985 (Supp. 85-4). Former Section R9-22-907 renumbered and amended as Section R9-22-905, former Section R9-22-908 renumbered and

amended as Section R9-22-907 effective October 1, 1986 (Supp. 86-5). Amended effective May 30, 1989 (Supp. 89-2). Section repealed by final rulemaking at 5 A.A.R. 4061, effective October 8, 1999 (Supp. 99-4). New Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed by final rulemaking at 12 A.A.R. 4484, effective January 6, 2007 (Supp. 06-4).

#### **R9-22-908. Repealed**

##### **Historical Note**

Adopted effective August 29, 1985 (Supp. 85-4). Former Section R9-22-908 renumbered and amended as Section R9-22-907, former Section R9-22-905 renumbered without change as Section R9-22-908 effective October 1, 1986 (Supp. 86-5). Former R9-22-908 repealed effective May 30, 1989 (Supp. 89-2). New Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed by final rulemaking at 12 A.A.R. 4484, effective January 6, 2007 (Supp. 06-4).

#### **R9-22-909. Repealed**

##### **Historical Note**

New Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed by final rulemaking at 12 A.A.R. 4484, effective January 6, 2007 (Supp. 06-4).

### **ARTICLE 10. FIRST- AND THIRD-PARTY LIABILITY AND RECOVERIES**

#### **R9-22-1001. Definitions**

In addition to the definitions in A.R.S. §§ 36-2901, 36-2923 and 9 A.A.C. 22, Article 1, the following definitions apply to this Article: “Cost avoid” means to deny a claim and return the claim to the provider for a determination of the amount of first- or third-party liability.

“First-party liability” means the obligation of any insurance plan or other coverage obtained directly or indirectly by a member that provides benefits directly to the member to pay all or part of the expenses for medical services incurred by AHCCCS or a member.

“Third-party” means a person, entity, or program that is, or may be, liable to pay all or part of the medical cost of injury, disease, or disability of an applicant or member.

“Third-party liability” means any individual, entity, or program that is or may be liable to pay all or part of the expenditures for medical assistance furnished to a member under a state plan.

##### **Historical Note**

Former Section R9-22-712 renumbered and amended as Section R9-22-1001 effective October 1, 1985 (Supp. 85-5). Amended subsections (E) through (H) effective October 1, 1986 (Supp. 86-5). Amended subsections (B), (C), (E), and (F) effective December 22, 1987 (Supp. 87-4). Section repealed; new Section adopted effective November 7, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 10 A.A.R. 1146, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 15 A.A.R. 179, effective March 7, 2009 (Supp. 09-1).

#### **R9-22-1002. General Provisions**

AHCCCS is the payor of last resort unless specifically prohibited by applicable state or federal law. Entities that pay before AHCCCS include but are not limited to:

1. Indian Health Services (IHS/638),
2. Title IV-E,
3. Arizona Early Intervention Program (AZEIP), and
4. Contract health.

##### **Historical Note**

Section R9-22-529 adopted effective October 1, 1985, then renumbered as Section R9-22-1002 effective October 1, 1985 (Supp. 85-5). Amended subsections (C) and (D) effective October 1, 1986 (Supp. 86-5). Amended effective December 22, 1987 (Supp. 87-4). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Section repealed; new Section adopted effective November 7, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 10 A.A.R. 1146, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 15 A.A.R. 179, effective March 7, 2009 (Supp. 09-1).

#### **R9-22-1003. Cost Avoidance**

- A. The Administration’s reimbursement responsibility.
  1. The Administration shall pay no more than the difference between the Capped Fee-For-Service schedule and the amount of the third-party liability, unless Medicare is the third-party.
  2. If Medicare is the third-party that is liable, the Administration shall pay the Medicare copayment and deductible regardless of the Capped Fee-For-Service Schedule.
- B. The Contractor’s reimbursement responsibility.
  1. If the contract between the contractor and the provider does not state otherwise, a contractor shall pay no more than the difference between the contracted rate and the amount of the third-party liability.
  2. If the provider does not have a contract with the contractor, a contractor shall pay no more than the difference between the Capped Fee-For-Service rate and the amount of the third-party liability.
- C. The requirement to cost avoid applies to all AHCCCS-covered services under Article 2 of this Chapter, unless otherwise specified in this Section. The following parties shall take reasonable measures to identify potentially legally liable first- or third-party sources:
  1. AHCCCS, the Administration, or a contractor;
  2. A provider;
  3. A noncontracting provider; and
  4. A member.
- D. When the Administration or a contractor determines that a third party may be liable for services provided, the Administration or contractor shall pay the full amount of the claim according to the Capped-Fee-For-Service Schedule and then seek reimbursement, when:
  1. The claim is for labor and delivery and postpartum care; or
  2. The liability is from an absent parent, and the claim is for prenatal care or EPSDT services.

##### **Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1146, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 10 A.A.R. 3012, effective September 11, 2004 (Supp. 04-3). Amended by final rulemaking at 15 A.A.R. 179, effective March 7, 2009 (Supp. 09-1).

#### **R9-22-1004. Member Participation**

A member shall cooperate in identifying potentially legally liable first- or third-parties and timely assist the Administration and a con-

tractor, provider, or noncontracting provider in pursuing any first- or third-party who may be liable to pay for covered services.

#### Historical Note

New Section made by final rulemaking at 10 A.A.R. 1146, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 15 A.A.R. 179, effective March 7, 2009 (Supp. 09-1).

#### R9-22-1005. Collections

- A. Parties that notify AHCCCS. A provider or noncontracting provider shall cooperate with AHCCCS by identifying all potential sources of first- or third-party liability and notify AHCCCS of these sources.
- B. Parties that pursue collection or reimbursement. AHCCCS, a provider, or noncontracting provider shall pursue collection or reimbursement from all potential sources of first- or third-party liability.

#### Historical Note

New Section made by final rulemaking at 10 A.A.R. 1146, effective May 1, 2004 (Supp. 04-1).

#### R9-22-1006. AHCCCS Monitoring Responsibilities

AHCCCS shall monitor first- or third-party liability payments to a provider or noncontracting provider, which include but are not limited to payments by or for:

1. Private health insurance;
2. Employment-related disability and health insurance;
3. Long-term care insurance;
4. Other federal programs not excluded by statute from recovery;
5. Court ordered or non-court ordered medical support from an absent parent;
6. State worker's compensation;
7. Automobile insurance, including underinsured and uninsured motorists insurance;
8. Court judgment or settlement from a liability insurer including settlement proceeds placed in a trust;
9. First-party probate estate recovery;
10. Adoption-related payment; or
11. A tortfeasor.

#### Historical Note

New Section made by final rulemaking at 10 A.A.R. 1146, effective May 1, 2004 (Supp. 04-1).

#### R9-22-1007. Notification for Perfection, Recording, and Assignment of AHCCCS Liens

- A. Hospital requirements. A hospital providing medical services to a member for an injury or condition resulting from circumstances reflecting the probable liability of a first- or third-party shall within 30 days after a member's discharge:
  1. Notify AHCCCS via facsimile or mail under R9-22-1008, or
  2. Mail AHCCCS a copy of the lien the hospital proposes to record or has recorded under A.R.S. § 33-932.
- B. Provider and noncontracting provider requirements. A provider or noncontracting provider, other than a hospital, rendering medical services to a member for an injury or condition resulting from circumstances reflecting the probable liability of a first- or third-party shall notify AHCCCS via facsimile or mail under R9-22-1008 within 30 days after providing the service.

#### Historical Note

New Section made by final rulemaking at 10 A.A.R. 1146, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 15 A.A.R. 179, effective March 7, 2009 (Supp. 09-1).

#### R9-22-1008. Notification Information for Liens

- A. Except as provided in subsection (B), a hospital, provider, and noncontracting provider identified in R9-22-1007 shall provide the following information to AHCCCS in writing:
  1. Name of the hospital, provider or noncontracting provider;
  2. Address of the hospital, provider or noncontracting provider;
  3. Name of member;
  4. Member's Social Security Number or AHCCCS identification number;
  5. Address of member;
  6. Date of member's admission or date service is provided;
  7. Amount estimated to be due for care of member;
  8. Date of discharge, if member has been discharged;
  9. Name of county in which injuries were sustained; and
  10. Name and address of all persons, firms, and corporations and their insurance carriers identified by the member or legal representative as being liable for damages.
- B. If the date of discharge is not known at the time the information in subsection (A) is provided, a party identified in subsection (A) shall notify AHCCCS of the date of discharge within 30 days after the member has been discharged.

#### Historical Note

New Section made by final rulemaking at 10 A.A.R. 1146, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 15 A.A.R. 179, effective March 7, 2009 (Supp. 09-1).

#### R9-22-1009. Notification of Health Insurance Information

A provider or noncontracting provider shall notify AHCCCS, in writing, of the following health insurance information within 10 days of receipt of the health insurance information:

1. Name of member,
2. Member's Social Security Number or AHCCCS identification number,
3. Insurance carrier name,
4. Insurance carrier address,
5. Policy number or insurance holder's Social Security Number,
6. Policy begin and end dates, and
7. Insurance holder's name.

#### Historical Note

New Section made by final rulemaking at 10 A.A.R. 1146, effective May 1, 2004 (Supp. 04-1).

### ARTICLE 11. CIVIL MONETARY PENALTIES AND ASSESSMENTS

#### R9-22-1101. Basis for Civil Monetary Penalties and Assessments for Fraudulent Claims; Definitions

- A. Scope. This Article applies to prohibited acts as described under A.R.S. § 36-2918(A), and submissions of encounters to the Administration. The Administration considers a person who aids and abets a prohibited act affecting any of the AHCCCS programs or Health Care Group to be engaging in a prohibited act under A.R.S. § 36-2918(A).
- B. Purpose. This Article describes the circumstances AHCCCS considers and the process that AHCCCS uses to determine the amount of a penalty, assessment, or penalty and assessment as required under A.R.S. § 36-2918. This Article includes the process and time-frames used by a person to request a State Fair Hearing.
- C. Definitions. The following definitions apply to this Article:
  1. "Assessment" means a monetary amount that does not exceed twice the dollar amount claimed by the person for each service.

2. “Claim” means a request for payment submitted by a person for payment for a service or line item of service, including a submission of an encounter.
  3. “Day” means calendar day unless otherwise specified.
  4. “File” means the date that AHCCCS receives a written acceptance, request for compromise, request for a counter proposal, or a request for a State Fair Hearing as established by a date stamp on the written document or other record of receipt.
  5. “Penalty” means a monetary amount, based on the number of items of service claimed or reported, that does not exceed \$2,000 times the number of line items of service.
  6. “Person” means an individual or entity as described under A.R.S. § 1-215.
  7. “Reason to know” or “had reason to know” means that a person, acts in deliberate ignorance of the truth or falsity of, or with reckless disregard of the truth or falsity of information. No proof of specific intent to defraud is required.
- b. All the dates of services occurred within six months or less,
  - c. The number of claims submitted is less than 25,
  - d. The nature and circumstances do not indicate a pattern of inappropriate claims for the services, and
  - e. The total amount claimed for the services is less than \$1,000.
2. Degree of culpability. The degree of culpability of a person who presents or causes to present a claim is a mitigating circumstance if:
    - a. Each service is the result of an unintentional and unrecognized error in the process that the person followed in presenting or in causing to present the service,
    - b. Corrective steps were taken promptly by the person after the error was discovered, and
    - c. The person had a fraud and abuse control plan that was operating effectively at the time each claim was presented or caused to be presented.

#### Historical Note

Adopted effective October 1, 1986 (Supp. 86-5).  
 Amended subsection A. effective May 30, 1989 (Supp. 89-2). Amended effective September 29, 1992 (Supp. 92-3). Amended effective June 9, 1998 (Supp. 98-2).  
 Amended by final rulemaking at 10 A.A.R. 3056, effective September 11, 2004 (Supp. 04-3). Amended by final rulemaking at 17 A.A.R. 2615, effective February 4, 2012 (Supp. 11-4).

#### R9-22-1102. Determining the Amount of a Penalty and an Assessment

- A. AHCCCS shall determine the amount of a penalty and assessment according to A.R.S. § 36-2918(B) and (C), R9-22-1104, and R9-22-1105.
- B. AHCCCS shall include in the amount of the penalty and assessment the cost incurred by AHCCCS for conducting the following:
  1. An investigation,
  2. Audit, or
  3. Inquiry.

#### Historical Note

Adopted effective October 1, 1986 (Supp. 86-5).  
 Amended effective December 13, 1993 (Supp. 93-4).  
 Amended effective June 9, 1998 (Supp. 98-2). Section repealed; new Section made by final rulemaking at 10 A.A.R. 3056, effective September 11, 2004 (Supp. 04-3).  
 Amended by final rulemaking at 17 A.A.R. 2615, effective February 4, 2012 (Supp. 11-4).

#### R9-22-1103. Repealed

#### Historical Note

Adopted effective October 1, 1986 (Supp. 86-5).  
 Amended effective December 13, 1993 (Supp. 93-4).  
 Amended effective June 9, 1998 (Supp. 98-2). Section repealed; new Section made by final rulemaking at 10 A.A.R. 3056, effective September 11, 2004 (Supp. 04-3).  
 Section repealed by final rulemaking at 17 A.A.R. 2615, effective February 4, 2012 (Supp. 11-4).

#### R9-22-1104. Mitigating Circumstances

AHCCCS shall consider any of the following to be mitigating circumstances when determining the amount of a penalty, assessment, or penalty and assessment.

1. Nature and circumstances of a claim. The following are mitigating circumstances:
  - a. All the services are of the same type,

- b. All the dates of services occurred within six months or less,
  - c. The number of claims submitted is less than 25,
  - d. The nature and circumstances do not indicate a pattern of inappropriate claims for the services, and
  - e. The total amount claimed for the services is less than \$1,000.
2. Degree of culpability. The degree of culpability of a person who presents or causes to present a claim is a mitigating circumstance if:
    - a. Each service is the result of an unintentional and unrecognized error in the process that the person followed in presenting or in causing to present the service,
    - b. Corrective steps were taken promptly by the person after the error was discovered, and
    - c. The person had a fraud and abuse control plan that was operating effectively at the time each claim was presented or caused to be presented.
  3. Financial condition. The financial condition of a person who presents or causes to present a claim is a mitigating circumstance if the imposition of a penalty, assessment, or penalty and assessment without reduction will render the provider incapable to continue providing services. AHCCCS shall consider the resources available to the person when determining the amount of the penalty, assessment, or penalty and assessment.
  4. Other matters as justice may require. AHCCCS shall take into account other circumstances of a mitigating nature, if in the interest of justice, the circumstances require a reduction of the penalty, assessment, or penalty and assessment.

#### Historical Note

Adopted effective October 1, 1986 (Supp. 86-5).  
 Amended effective June 9, 1998 (Supp. 98-2). Section repealed; new Section made by final rulemaking at 10 A.A.R. 3056, effective September 11, 2004 (Supp. 04-3).  
 Amended by final rulemaking at 17 A.A.R. 2615, effective February 4, 2012 (Supp. 11-4).

#### R9-22-1105. Aggravating Circumstances

AHCCCS shall consider any of the following to be aggravating circumstances when determining the amount of a penalty, assessment, or penalty and assessment.

1. Nature and circumstances of each claim. The nature and circumstances of each claim and the circumstances under which the claim is presented or caused to be presented are aggravating circumstances if:
  - a. A person has forged, altered, recreated, or destroyed records;
  - b. The person refuses to provide pertinent documentation to AHCCCS for a claim or refuses to cooperate with investigators;
  - c. The services are of several types;
  - d. All the dates of services did not occur within six months or less;
  - e. The number of claims submitted is greater than 25;
  - f. The nature and circumstances indicate a pattern of inappropriate claims for the services; and
  - g. The total amount claimed for the services is \$5,000 or greater.
2. Degree of culpability. The degree of culpability of a person who presents or causes to present each claim is an aggravating circumstance if:
  - a. The person knows or had reason to know that each service was not provided as claimed,

- b. The person knows or had reason to know that no payment could be made because the person had been excluded from reimbursement by AHCCCS, or
  - c. The person knows or had reason to know that the payment would violate the terms of an agreement between the person and AHCCCS system.
3. Prior offenses. The prior offenses of a person who presents or causes to present each claim are an aggravating circumstance if:
- a. At any time before the submittal of the claim the person was held criminally or civilly liable for any act, or
  - b. The person had received an administrative sanction in connection with:
    - i. A Medicaid program,
    - ii. A Medicare program, or
    - iii. Any other public or private program of reimbursement for medical services.
4. Effect on patient care. The adverse effect on patient care that resulted, or could have resulted, from the failure to provide medically necessary care by a person in connection with a claim.
5. Other matters as justice may require. AHCCCS shall take into account other circumstances of an aggravating nature, if in the interest of justice, the circumstances require an increase of the penalty, assessment, or penalty and assessment.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 3056, effective September 11, 2004 (Supp. 04-3).  
Amended by final rulemaking at 17 A.A.R. 2615, effective February 4, 2012 (Supp. 11-4).

**R9-22-1106. Notice of Intent**

If AHCCCS imposes a penalty, assessment, or a penalty and assessment, AHCCCS shall hand deliver or send by certified mail return receipt requested or Federal Express to the person, a written Notice of Intent to impose a penalty, assessment, or a penalty and assessment. The Notice of Intent shall include:

- 1. The statutory basis for the penalty, assessment, or the penalty and assessment;
- 2. Identification of the state or federal regulation and state or federal law that AHCCCS alleges has been violated;
- 3. The factual basis for AHCCCS' determination that the penalty, assessment, or the penalty and assessment should be imposed;
- 4. The amount of the penalty, assessment, or penalty and assessment;
- 5. The process for the person to accept or request a compromise of the penalty, assessment, or penalty and assessment; and
- 6. The process for requesting a State Fair Hearing.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 3056, effective September 11, 2004 (Supp. 04-3).  
Amended by final rulemaking at 17 A.A.R. 2615, effective February 4, 2012 (Supp. 11-4).

**R9-22-1107. Reserved****R9-22-1108. Request for a Compromise**

- A. To request a compromise, the person shall file a written request with AHCCCS within 30 days from the date of receipt of the Notice of Intent. The written request for compromise shall contain the person's reasons for the reduction or modification of the penalty, assessment, or penalty and assessment.

- B. Within 30 days from the date of receipt of the request for compromise from the person, AHCCCS shall send a Notice of Compromise Decision that accepts, denies, or offers a counter proposal to the person's request for compromise. If AHCCCS offers a counter proposal the amount of the counter proposal shall represent the penalty, assessment, or penalty and assessment.

- 1. If AHCCCS does not withdraw the Notice of Intent under R9-22-1112 or denies the request for compromise the original penalty, assessment, or penalty and assessment is upheld.
- 2. To dispute the Compromise Decision, the person shall file a request for a State Fair Hearing under R9-22-1110 within 30 days from the date of receipt of the Notice of Compromise Decision.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 3056, effective September 11, 2004 (Supp. 04-3).  
Amended by final rulemaking at 17 A.A.R. 2615, effective February 4, 2012 (Supp. 11-4).

**R9-22-1109. Failure to Respond to the Notice of Intent**

If a person fails to respond timely to the Notice of Intent, AHCCCS shall uphold the original penalty, assessment, or penalty and assessment.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 3056, effective September 11, 2004 (Supp. 04-3).  
Amended by final rulemaking at 17 A.A.R. 2615, effective February 4, 2012 (Supp. 11-4).

**R9-22-1110. Request for State Fair Hearing**

- A. To request a State Fair Hearing regarding a dispute concerning a penalty, assessment, or penalty and assessment, the person shall file a written request for a State Fair Hearing with AHCCCS within 60 days from the date of the receipt of the Notice of Intent under R9-22-1106 or within 30 days from the date of receipt of the Notice of Compromise Decision under R9-22-1108, if applicable.
- B. AHCCCS shall mail a Notice of Hearing under A.R.S. § 41-1092.05 if AHCCCS receives a timely request for a State Fair Hearing from the person.
- C. AHCCCS shall mail a Director's Decision to the person no later than 30 days after the date the Administrative Law Judge sends the decision of the Office of Administrative Hearings (OAH) to AHCCCS.
- D. AHCCCS shall accept a written request for withdrawal of a hearing request if the written request for withdrawal is received from the person before AHCCCS mails a Notice of Hearing under A.R.S. § 41-1092 et seq. If AHCCCS mailed a Notice of Hearing under A.R.S. § 41-1092 et seq., a person may withdraw the hearing request only by sending a written request for withdrawal to OAH.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 3056, effective September 11, 2004 (Supp. 04-3).  
Amended by final rulemaking at 17 A.A.R. 2615, effective February 4, 2012 (Supp. 11-4).

**R9-22-1111. Issues and Burden of Proof**

- A. Preponderance of evidence. In any State Fair Hearing conducted under R9-22-1110, AHCCCS shall prove by a preponderance of the evidence that a person presented or caused to be presented each claim in violation of this Article and any aggravating circumstances under R9-22-1105. A person shall bear the burden of producing and proving by a preponderance of

the evidence any circumstance that would justify reducing the amount of the penalty, assessment, or penalty and assessment.

**B. Statistical sampling.**

1. In meeting the burden of proof described in subsection (A), AHCCCS may introduce the results of a statistical sampling study as evidence of the number and amount of claims that were presented or caused to be presented by the person. A statistical sampling study constitutes prima facie evidence of the number and amount of claims if computed by valid statistical methods.
2. The burden of proof shall shift to the person to produce evidence reasonably calculated to rebut the findings of the statistical sampling study once AHCCCS has made a prima facie case as described in subsection (B)(1). AHCCCS shall be given the opportunity to rebut this evidence.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R.

3056, effective September 11, 2004 (Supp. 04-3).

Amended by final rulemaking at 17 A.A.R. 2615, effective February 4, 2012 (Supp. 11-4).

**R9-22-1112. Withdrawal and Continuances**

AHCCCS may withdraw the Notice of Intent at any time. Prior to referring a matter to the Office of Administrative Hearings the parties may mutually agree to a continuance.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R.

3056, effective September 11, 2004 (Supp. 04-3).

**ARTICLE 12. BEHAVIORAL HEALTH SERVICES**

**R9-22-1201. General Requirements**

General requirements. The following general requirements apply to behavioral health services provided under this Article, subject to all exclusions and limitations specified in this Article.

1. Administration. The program shall be administered as specified in A.R.S. § 36-2903.
2. Provision of services. Behavioral health services shall be provided as specified in A.R.S. § 36-2907 and this Chapter.
3. Definitions. The following definitions apply to this Article:
  - a. “Agency” for the purposes of this Article means the same as in A.A.C. R9-20-101.
  - b. “Behavior management services” means services that assist the member in carrying out daily living tasks and other activities essential for living in the community, including personal care services.
  - c. “Behavioral health adult therapeutic home” means a licensed behavioral health service agency that is the licensee’s residence where behavioral health adult therapeutic home care services are provided to at least one, but no more than three individuals, who reside at the residence, have been diagnosed with behavioral health issues, and are provided with food and are integrated into the licensee’s family.
  - d. “Behavioral health therapeutic home care services” means interactions that teach the client living, social, and communication skills to maximize the client’s ability to live and participate in the community and to function independently, including assistance in the self-administration of medication and any ancillary services indicated by the client’s treatment plan, as appropriate.

- e. “Behavioral health evaluation” means the assessment of a member’s medical, psychological, psychiatric, or social condition to determine if a behavioral health disorder exists and, if so, to establish a treatment plan for all medically necessary services.
- f. “Behavioral health medical practitioner” means a health care practitioner with at least one year of full-time behavioral health work experience.
- g. “Behavioral health professional” means the same as in A.A.C. R9-20-101.
- h. “Behavioral health service” means a service provided for the evaluation and diagnosis of a mental health or substance abuse condition and the planned care, treatment, and rehabilitation of the member.
- i. “Behavioral health technician” means the same as in A.A.C. R9-20-101.
- j. “Case management” for the purposes of this Article, means services and activities that enhance treatment, compliance, and effectiveness of treatment.
- k. “Certified psychiatric nurse practitioner” means a registered nurse practitioner who meets the psychiatric specialty area requirements under A.A.C. R4-19-505(C).
- l. “Client” for the purposes of this rule means the same as in A.A.C. R9-22-101.
- m. “Cost avoid” means to avoid payment of a third-party liability claim when the probable existence of third-party liability has been established under 42 CFR 433.139(b).
- n. “Health care practitioner” means a:
  - Physician;
  - Physician assistant;
  - Nurse practitioner; or
  - Other individual licensed and authorized by law to use and prescribe medication and devices, as defined in A.R.S. § 32-1901.
- o. “Licensee” means the same as in A.A.C. R9-20-101.
- p. “OBHL” means the same as in A.A.C. R9-20-101.
- q. “Partial care” means a day program of services provided to individual members or groups that is designed to improve the ability of a person to function in a community, and includes basic, therapeutic, and medical day programs.
- r. “Physician assistant” means the same as in A.R.S. § 32-2501 except that when providing a behavioral health service, the physician assistant shall be supervised by an AHCCCS-registered psychiatrist.
- s. “Psychiatrist” means a physician who meets the licensing requirements under A.R.S. § 32-1401 or a doctor of osteopathy who meets the licensing requirements under A.R.S. § 32-1800, and meets the additional requirements of a psychiatrist under A.R.S. § 36-501.
- t. “Psychologist” means a person who meets the licensing requirements under A.R.S. §§ 32-2061 and 36-501.
- u. “Qualified behavioral health service provider” means a behavioral health service provider that meets the requirements of R9-22-1206.
- v. “Respite” means a period of care and supervision of a member to provide rest or relief to a family member or other person caring for the member. Respite provides activities and services to meet the social, emotional, and physical needs of the member during respite.

- w. “TRBHA” or “Tribal Regional Behavioral Health Authority” means a Native American tribe under contract with ADHS/DBHS to coordinate the delivery of behavioral health services to eligible and enrolled members of the federally-recognized tribal nation.

#### Historical Note

Adopted under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1992, Ch. 301, § 61, effective November 1, 1992; received in the Office of the Secretary of State November 25, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1995, Ch. 204, § 11, effective October 1, 1995; filed with the Secretary of State September 29, 1995 (Supp. 95-4). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 179, effective December 13, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 836, effective May 5, 2007 (Supp. 07-1).

#### R9-22-1202. ADHS and Contractor Responsibilities

- A. ADHS responsibilities. Except as provided in subsection (B), behavioral health services shall be provided by a RBHA through a contract with ADHS/DBHS. ADHS/DBHS shall:
1. Be responsible for providing all inpatient emergency behavioral health services for a non-FES member with a psychiatric or substance abuse diagnosis who is enrolled with a contractor in accordance with R9-22-210.01(A)(3);
  2. Be responsible for providing all inpatient emergency behavioral health services for a FFS member with a psychiatric or substance abuse diagnosis who is not enrolled with a contractor in accordance with R9-22-210.01(A)(3);
  3. Be responsible for providing all non-inpatient emergency behavioral health services for a non-FES member in accordance with R9-22-210.01;
  4. Be responsible for providing all non-emergency behavioral health services for a non-FES member;
  5. Contract with a RBHA for the provision of behavioral health services in R9-22-1205 for all Title XIX members under A.R.S. § 36-2907. ADHS/DBHS shall ensure that a RBHA provides behavioral health services to members directly, or through subcontracts, with qualified service providers who meet the qualifications specified in R9-22-1206. If behavioral health services are unavailable within a RBHA’s GSA, ADHS/DBHS shall ensure that a RBHA provides behavioral health services to a Title XIX member outside the RBHA’s GSA;
  6. Ensure that a member’s behavioral health service is provided in collaboration with a member’s primary care provider; and
  7. Coordinate the transition of care and medical records, under A.R.S. §§ 36-2903, 36-509, R9-22-512, and in contract, when a member transitions from:
    - a. A behavioral health provider to another behavioral health provider,
    - b. A RBHA to another RBHA,
    - c. A RBHA to a contractor,
    - d. A contractor to a RBHA, or
    - e. A contractor to another contractor.

- B. ADHS/DBHS may contract with a TRBHA for the provision of behavioral health services for Native American members. Native American members may receive covered behavioral health services:
1. From an IHS facility,
  2. From a TRBHA, or
  3. From a RBHA.
- C. Contractor responsibilities. A contractor shall:
1. Refer a member to an RBHA under the contract terms;
  2. Provide EPSDT developmental and behavioral health screening as specified in R9-22-213;
  3. Provide inpatient emergency behavioral health services as specified in R9-22-1205 and R9-22-210.01 for a member not yet enrolled with a RBHA or TRBHA and all behavioral health services as specified in contract;
  4. Provide psychotropic medication services for a member, in consultation with the member’s RBHA as needed, for behavioral health conditions specified in contract and within the primary care provider’s scope of practice; and
  5. Coordinate a member’s transition of care and medical records under subsection (A)(7).

#### Historical Note

Adopted under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1992, Ch. 301, § 61, effective November 1, 1992; received in the Office of the Secretary of State November 25, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1995, Ch. 204, § 11, effective October 1, 1995; filed with the Secretary of State September 29, 1995 (Supp. 95-4). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 179, effective December 13, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended to correct typographical errors, filed in the Office of the Secretary of State October 30, 2001 (Supp. 01-4). Amended by final rulemaking at 13 A.A.R. 836, effective May 5, 2007 (Supp. 07-1).

#### R9-22-1203. Eligibility for Covered Services

- A. Title XIX members. A member determined eligible under A.R.S. § 36-2901(6)(a), shall receive medically necessary covered services under R9-22-1205 and R9-22-201.
- B. FES members. A person who would be eligible under A.R.S. § 36-2901(6)(a)(i), A.R.S. § 36-2901(6)(a)(ii), or A.R.S. § 36-2901(6)(a)(iii) except for the failure to meet the U.S. citizenship or qualified alien status requirements under A.R.S. § 36-2903.03(A) and A.R.S. § 36-2903.03(B) is eligible for emergency services only.

#### Historical Note

Adopted under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1992, Ch. 301, § 61, effective November 1, 1992; received in the Office of the Secretary of State November 25, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1995, Ch. 204, § 11, effective October 1, 1995; filed with the Secretary of State September 29, 1995 (Supp. 95-4). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 179, effective December 13, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final



rulemaking at 13 A.A.R. 836, effective May 5, 2007 (Supp. 07-1).

#### **R9-22-1204. General Service Requirements**

- A.** Services. Behavioral health services include both mental health and substance abuse services.
- B.** Medical necessity. A service shall be medically necessary as provide under R9-22-201.
- C.** Prior authorization. A service shall be provided to a member under Title 36, Chapter 29, Article 1, by a contractor, subcontractor, or provider consistent with the prior authorization requirements in contract and the following:
  - 1. Emergency behavioral health services. A provider is not required to obtain prior authorization for emergency behavioral health services.
  - 2. Non-emergency behavioral health services. When a member's behavioral health condition is determined by the provider not to require emergency behavioral health services, the provider shall follow the prior authorization requirements of ADHS/DBHS or the RBHA/TRBHA.
- D.** EPSDT. For Title XIX members under age 21, EPSDT services include all medically necessary covered behavioral health services.
- E.** Experimental services. Experimental services and services that are provided primarily for the purpose of research are not covered.
- F.** Gratuities. A service or an item, if furnished gratuitously to a member, is not covered and payment to a provider shall be denied.
- G.** GSA. Behavioral health services rendered to a member shall be provided within the RBHA's GSA except when:
  - 1. A contractor's primary care provider refers a member to another area for medical specialty care,
  - 2. A member's medically necessary covered service is not available within the GSA, or
  - 3. A net savings in behavioral health service delivery costs is documented by the RBHA for a member. Undue travel time or hardship for a member or a member's family is considered for a member or a member's family in determining whether there is a net savings.
- H.** Travel. If a member travels or temporarily resides outside of a behavioral health service area, covered services are restricted to emergency behavioral health care, unless otherwise authorized by the member's RBHA or TRBHA.
- I.** Non-covered services. If a member requests a behavioral health service that is not covered or is not authorized by a RBHA or TRBHA, an AHCCCS-registered behavioral health service provider may provide the service according to R9-22-702.
- J.** Referral. If a member is referred outside of a RBHA's or TRBHA's service area to receive authorized, medically necessary behavioral health services, the TRBHA or RBHA is responsible for reimbursement if the claim is otherwise payable under this Chapter.
- K.** Restrictions and limitations.
  - 1. The restrictions, limitations, and exclusions in this Article do not apply to a contractor, ADHS/DBHS, or a RBHA when electing to provide a noncovered service.
  - 2. Room and board is not a covered service unless provided in an inpatient, Level 1 sub-acute, or residential facility under R9-22-1205.

#### **Historical Note**

Adopted under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1992, Ch. 301, § 61, effective November 1, 1992; received in the Office of the Secretary of State November 25, 1992 (Supp. 92-4). Amended under

an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1995, Ch. 204, § 11, effective October 1, 1995; filed with the Secretary of State September 29, 1995 (Supp. 95-4). Amended under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1995, Ch. 204, § 11, effective January 1, 1996; filed with the Secretary of State December 22, 1995 (Supp. 95-4). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 179, effective December 13, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 836, effective May 5, 2007 (Supp. 07-1).

#### **R9-22-1205. Scope and Coverage of Behavioral Health Services**

- A.** Inpatient behavioral health services. The following inpatient services are covered subject to the limitations and exclusions in this Article.
  - 1. Covered inpatient behavioral health services include all behavioral health services, medical detoxification, accommodations and staffing, supplies, and equipment, if the service is provided under the direction of a physician in a Medicare-certified:
    - a. General acute care hospital, or
    - b. Inpatient psychiatric hospital.
  - 2. Inpatient service limitations:
    - a. Inpatient services, other than emergency services specified in this Section, are not covered unless prior authorized.
    - b. Inpatient services and room and board are reimbursed on a per diem basis. The per diem rate includes all services, except the following licensed or certified providers may bill independently for services:
      - i. A licensed psychiatrist,
      - ii. A certified psychiatric nurse practitioner,
      - iii. A licensed physician assistant,
      - iv. A licensed psychologist,
      - v. A licensed clinical social worker,
      - vi. A licensed marriage and family therapist,
      - vii. A licensed professional counselor,
      - viii. A licensed independent substance abuse counselor, and
      - ix. A behavioral health medical practitioner.
    - c. A member age 21 through 64 is eligible for behavioral health services provided in a hospital listed in subsection (A)(1)(b) that meets the criteria for an IMD up to 30 days per admission and no more than 60 days per benefit year as allowed under the Administration's Section 1115 Waiver with CMS.
- B.** Level 1 residential treatment center services. Services provided in a Level 1 residential treatment center as defined in A.A.C. R9-20-101 are covered subject to the limitations and exclusions under this Article.
  - 1. Level 1 residential treatment center services are not covered unless provided under the direction of a licensed physician in a licensed Level 1 residential treatment center accredited by an AHCCCS-approved accrediting body as specified in contract.
  - 2. Covered residential treatment center services include room and board and treatment services for behavioral health and substance abuse conditions.
  - 3. Residential treatment center service limitations.

- a. Services are not covered unless prior authorized, except for emergency services as specified in this Section.
    - b. Services are reimbursed on a per diem basis. The per diem rate includes all services, except the following licensed or certified providers may bill independently for services:
      - i. A licensed psychiatrist,
      - ii. A certified psychiatric nurse practitioner,
      - iii. A licensed physician assistant,
      - iv. A licensed psychologist,
      - v. A licensed clinical social worker,
      - vi. A licensed marriage and family therapist,
      - vii. A licensed professional counselor,
      - viii. A licensed independent substance abuse counselor, and
      - ix. A behavioral health medical practitioner.
  - 4. The following may be billed independently if prescribed by a provider as specified in this Section who is operating within the scope of practice:
    - a. Laboratory services,
    - b. Radiology services, and
    - c. Psychotropic medication.
- C. Covered Level 1 sub-acute agency services.** Services provided in a Level 1 sub-acute agency as defined in A.A.C. R9-20-101 are covered subject to the limitations and exclusions under this Article.
- 1. Level 1 sub-acute agency services are not covered unless provided under the direction of a licensed physician in a licensed Level 1 sub-acute agency that is accredited by an AHCCCS-approved accrediting body as specified in contract.
  - 2. Covered Level 1 sub-acute agency services include room and board and treatment services for behavioral health and substance abuse conditions.
  - 3. Services are reimbursed on a per diem basis. The per diem rate includes all services, except the following licensed or certified providers may bill independently for services:
    - a. A licensed psychiatrist,
    - b. A certified psychiatric nurse practitioner,
    - c. A licensed physician assistant,
    - d. A licensed psychologist,
    - e. A licensed clinical social worker,
    - f. A licensed marriage and family therapist,
    - g. A licensed professional counselor,
    - h. A licensed independent substance abuse counselor, and
    - i. A behavioral health medical practitioner.
  - 4. The following may be billed independently if prescribed by a provider specified in this Section who is operating within the scope of practice:
    - a. Laboratory services,
    - b. Radiology services, and
    - c. Psychotropic medication.
  - 5. A member age 21 through 64 is eligible for behavioral health services provided in a Level 1 sub-acute agency that meets the criteria for an IMD for up to 30 days per admission and no more than 60 days per benefit year as allowed under the Administration's Section 1115 Waiver with CMS. These limitations do not apply to a member under age 21 or age 65 or over.
- D. Level 2 behavioral health residential agency services.** Services provided in a Level 2 behavioral health residential agency are covered subject to the limitations and exclusions in this Article.
- 1. Level 2 behavioral health residential agency services are not covered unless provided by a licensed Level 2 behavioral health residential agency as defined in A.A.C. R9-20-101.
  - 2. Covered services include all services except room and board.
  - 3. The following licensed or certified providers may bill independently for services:
    - a. A licensed psychiatrist,
    - b. A certified psychiatric nurse practitioner,
    - c. A licensed physician assistant,
    - d. A licensed psychologist,
    - e. A licensed clinical social worker,
    - f. A licensed marriage and family therapist,
    - g. A licensed professional counselor,
    - h. A licensed independent substance abuse counselor, and
    - i. A behavioral health medical practitioner.
- E. Level 3 behavioral health residential agency services.** Services provided in a licensed Level 3 behavioral health residential agency as defined in A.A.C. R9-20-101 are covered subject to the limitations and exclusions under this Article.
- 1. Level 3 behavioral health residential agency services are not covered unless provided by a licensed Level 3 behavioral health residential agency.
  - 2. Covered services include all non-prescription drugs as defined in A.R.S. § 32-1901, non-customized medical supplies, and clinical supervision of the Level 3 behavioral health residential agency staff. Room and board are not covered services.
  - 3. The following licensed and certified providers may bill independently for services:
    - a. A licensed psychiatrist,
    - b. A certified psychiatric nurse practitioner,
    - c. A licensed physician assistant,
    - d. A licensed psychologist,
    - e. A licensed clinical social worker,
    - f. A licensed marriage and family therapist,
    - g. A licensed professional counselor,
    - h. A licensed independent substance abuse counselor, and
    - i. A behavioral health medical practitioner.
- F. Partial care.** Partial care services are covered subject to the limitations and exclusions in this Article.
- 1. Partial care services are not covered unless provided by a licensed and AHCCCS-registered behavioral health agency that provides a regularly scheduled day program of individual member, group, or family activities that are designed to improve the ability of the member to function in the community. Partial care services include basic, therapeutic, and medical day programs.
  - 2. Partial care services. Educational services that are therapeutic and are included in the member's behavioral health treatment plan are included in per diem reimbursement for partial care services.
- G. Outpatient services.** Outpatient services are covered subject to the limitations and exclusions in this Article.
- 1. Outpatient services include the following:
    - a. Screening provided by a behavioral health professional or a behavioral health technician as defined in R9-22-1201;
    - b. A behavioral health evaluation provided by a behavioral health professional or a behavioral health technician;

- c. Counseling including individual therapy, group, and family therapy provided by a behavioral health professional or a behavioral health technician;
  - d. Behavior management services as defined in R9-22-1201; and
  - e. Psychosocial rehabilitation services as defined in R9-22-102.
2. Outpatient service limitations.
- a. The following licensed or certified providers may bill independently for outpatient services:
    - i. A licensed psychiatrist;
    - ii. A certified psychiatric nurse practitioner;
    - iii. A licensed physician assistant as defined in R9-22-1201;
    - iv. A licensed psychologist;
    - v. A licensed clinical social worker;
    - vi. A licensed professional counselor;
    - vii. A licensed marriage and family therapist;
    - viii. A licensed independent substance abuse counselor;
    - ix. A behavioral health medical practitioner; and
    - x. An outpatient clinic or a Level IV transitional agency licensed under 9 A.A.C. 20, Article 1, that is an AHCCCS-registered provider.
  - b. A behavioral health practitioner not specified in subsections (G)(2)(a)(i) through (x), who is contracted with or employed by an AHCCCS-registered behavioral health agency shall not bill independently.
- H.** Emergency behavioral health services are covered subject to the limitations and exclusions under this Article. In order to be covered, behavioral health services shall be provided by qualified service providers under R9-22-1206. ADHS/DBHS shall ensure that emergency behavioral health services are available 24 hours per day, seven days per week in each GSA for an emergency behavioral health condition for a non-FES member as defined in R9-22-102.
- I.** Other covered behavioral health services. Other covered behavioral health services include:
- 1. Case management as defined in R9-22-1201;
  - 2. Laboratory and radiology services for behavioral health diagnosis and medication management;
  - 3. Psychotropic medication and related medication;
  - 4. Monitoring, administration, and adjustment for psychotropic medication and related medications;
  - 5. Respite care as described within subsection (K);
  - 6. Behavioral health therapeutic home care services provided by a RBHA in a professional foster home defined in 6 A.A.C. 5, Article 58 or in a behavioral health adult therapeutic home as defined in 9 A.A.C. 20, Article 1;
  - 7. Personal care services, including assistance with daily living skills and tasks, homemaking, bathing, dressing, food preparation, oral hygiene, self-administration of medications, and monitoring of the behavioral health recipient's condition and functioning level provided by a licensed and AHCCCS-registered behavioral health agency or a behavioral health professional, behavioral health technician, or behavioral health paraprofessional as defined in 9 A.A.C. 20, Article 1; and
  - 8. Other support services to maintain or increase the member's self-sufficiency and ability to live outside an institution.
- J.** Transportation services. Transportation services are covered under R9-22-211.
- K.** Limited Behavioral Health services. Respite services are limited to no more than 600 hours per benefit year.

### Historical Note

Adopted under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1992, Ch. 301, § 61, effective November 1, 1992; received in the Office of the Secretary of State November 25, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1995, Ch. 204, § 11, effective October 1, 1995; filed with the Secretary of State September 29, 1995 (Supp. 95-4). Section repealed, new Section adopted by final rulemaking at 6 A.A.R. 179, effective December 13, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 11 A.A.R. 5480, effective December 6, 2005 (Supp. 05-4). Amended by final rulemaking at 13 A.A.R. 836, effective May 5, 2007 (Supp. 07-1). Amended by exempt rulemaking at 17 A.A.R. 1870, effective October 1, 2011 (Supp. 11-3). Amended by final rulemaking at 19 A.A.R. 2747, effective October 8, 2013 (Supp. 13-3).

### R9-22-1206. General Provisions and Standards for Service Providers

- A.** Qualified service provider. A qualified behavioral health service provider shall:
- 1. Have all applicable state licenses or certifications, or comply with alternative requirements established by the Administration;
  - 2. Register with the Administration as a service provider;
  - 3. Comply with all requirements under Article 5 and this Article.
  - 4. Register with ADHS/DBHS as a behavioral health service provider, and
  - 5. Contract with the appropriate RBHA/TRBHA.
- B.** Quality and utilization management.
- 1. Service providers shall cooperate with the quality and utilization management programs of a RBHA, a TRBHA, a contractor, ADHS/DBHS, and the Administration as specified in this Chapter and in contract.
  - 2. Service providers shall comply with applicable procedures under 42 CFR 456, as of October 1, 2006, incorporated by reference, on file with the Administration and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol St., NW, Washington, DC 20401. This incorporation contains no future editions or amendments.

### Historical Note

Adopted under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1992, Ch. 301, § 61, effective November 1, 1992; received in the Office of the Secretary of State November 25, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1995, Ch. 204, § 11, effective October 1, 1995; filed with the Secretary of State September 29, 1995 (Supp. 95-4). Section repealed, new Section adopted by final rulemaking at 6 A.A.R. 179, effective December 13, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 836, effective May 5, 2007 (Supp. 07-1).

**R9-22-1207. General Provisions for Payment**

- A.** Payment to ADHS/DBHS. The Administration shall make a monthly capitation payment to ADHS/DBHS based on the number of acute members at the beginning of each month. The Administration shall incorporate ADHS/DBHS' administrative costs into the capitation payment.
- B.** Claims submissions.
1. ADHS/DBHS shall require all service providers to submit clean claims no later than the time-frame specified in ADHS/DBHS' contract with the Administration.
  2. A provider of behavioral health services shall submit a claim for non-emergency behavioral health services provided to a member enrolled in a RBHA to the appropriate RBHA, and if not enrolled in a RBHA, to ADHS/DBHS.
  3. A provider of behavioral health services shall submit a claim for non-inpatient emergency behavioral health services provided to a member enrolled in a RBHA to the appropriate RBHA, and if not enrolled in a RBHA, to ADHS/DBHS.
  4. A provider of behavioral health services shall submit a claim for non-inpatient emergency behavioral health services provided to a member enrolled in a RBHA to the Administration.
  5. A provider of behavioral health services shall submit a claim for non-emergency behavioral health services provided to a member enrolled in a RBHA to the Administration.
  6. A provider of emergency behavioral health services, that are the responsibility of ADHS/DBHS or a contractor, shall submit a claim to the entity responsible for emergency behavioral health services under R9-22-210.01(A).
  7. A provider shall comply with the time-frames and other payment procedures in Article 7 of this Chapter, if applicable, and A.R.S. § 36-2904.
  8. ADHS/DBHS or a contractor, whichever entity is responsible for covering behavioral health services, shall cost avoid any behavioral health service claims if it establishes the existence or probable existence of first-party liability or third-party liability.
- C.** Prior authorization. Payment to a provider for behavioral health services or items requiring prior authorization may be denied if a provider does not obtain prior authorization from a RBHA, ADHS/DBHS, a TRBHA, or a contractor.

**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1992, Ch. 301, § 61, effective November 1, 1992; received in the Office of the Secretary of State November 25, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1995, Ch. 204, § 11, effective October 1, 1995; filed with the Secretary of State September 29, 1995 (Supp. 95-4). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 179, effective December 13, 1999 (Supp. 99-4). Amended by final rulemaking at 13 A.A.R. 836, effective May 5, 2007 (Supp. 07-1).

**R9-22-1208. Repealed****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 179, effective December 13, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 11 A.A.R. 5480, effective December 6, 2005 (Supp. 05-4).

**ARTICLE 13. CHILDREN'S REHABILITATIVE SERVICES (CRS)**

*Article 13, consisting of Sections R9-22-1301 through R9-22-1306, made by final rulemaking at 19 A.A.R. 2954, effective November 10, 2013 (Supp. 13-3).*

*Article 13, consisting of Sections R9-22-1301 through R9-22-1306, made by exempt rulemaking at 18 A.A.R. 2074, effective August 1, 2012 (Supp. 12-3). Exemption to promulgate rules repealed under Laws 2012, Chapter 299, Section 7 (Supp. 13-3).*

*Article 13, consisting of Sections R9-22-1301 through R9-22-1309, repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004. The subject matter of Article 13 is now in 9 A.A.C. 34 (Supp. 04-1).*

**R9-22-1301. Children's Rehabilitative Services (CRS) 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:

"Active treatment" means there is a current need for treatment or evaluation for continuing treatment of the CRS qualifying condition(s) or it is anticipated that treatment or evaluation for continuing treatment of the CRS qualifying condition(s) will be needed within the next 18 months from the last date of service for treatment of any CRS qualifying condition.

"CRS application" means a submitted form with any additional documentation required by the Administration to determine whether an individual is medically eligible for CRS.

"Chronic" means expected to persist over an extended period of time.

"CRS condition" means any of the covered medical condition(s) in R9-22-1303.

"CRS provider" means a person who is authorized by employment or written agreement with the Administration to provide covered CRS medical services to a member or covered support services to a member or a member's family.

"Functionally limiting" means a restriction having a significant effect on an individual's ability to perform an activity of daily living as determined by a CRS provider.

"Medically eligible" means meeting the medical eligibility requirements of R9-22-1303.

"Redetermination" means a decision made by the Administration regarding whether a member continues to meet the requirements in R9-22-1302.

**Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3). Amended by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1). Section made by exempt rulemaking at 18 A.A.R. 2074, effective August 1, 2012 (Supp. 12-3). Rulemaking exemption repealed by Laws, 2012, Ch. 299, Section 7; therefore a new Section was made by final rulemaking at 19 A.A.R. 2954, effective November 10, 2013 (Supp. 13-3).

**R9-22-1302. Children's Rehabilitative Services (CRS) Eligibility Requirements**

Beginning October 1, 2013, an AHCCCS member who needs active treatment for one or more of the qualifying medical condition(s) in R9-22-1303 shall be enrolled with the CRS contractor. An American Indian member shall obtain CRS services through the CRS contractor. A member enrolled in CMDP shall also obtain CRS

services through the CRS contractor. Initial enrollment with the CRS contractor is limited to individuals under the age of 21. The CRS contractor shall provide covered services necessary to treat the CRS condition(s) and other services described within the CRS contract. The effective date of enrollment in CRS shall be as specified in contract.

#### Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).  
Amended by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1). Section made by exempt rulemaking at 18 A.A.R. 2074, effective August 1, 2012 (Supp. 12-3). Rulemaking exemption repealed by Laws, 2012, Ch. 299, Section 7; therefore a new Section was made by final rulemaking at 19 A.A.R. 2954, effective November 10, 2013 (Supp. 13-3).

#### R9-22-1303. Medical Eligibility

The following lists identify those medical condition(s) that do qualify for the CRS program as well as those that do not qualify for the CRS program. The covered condition(s) list is all inclusive. The list of condition(s) not covered by CRS is not an all-inclusive list:

1. Cardiovascular System
  - a. CRS condition(s):
    - i. Congenital heart defect,
    - ii. Cardiomyopathy,
    - iii. Valvular disorder,
    - iv. Arrhythmia,
    - v. Conduction defect,
    - vi. Rheumatic heart disease,
    - vii. Renal vascular hypertension,
    - viii. Arteriovenous fistula, and
    - ix. Kawasaki disease with coronary artery aneurysm;
  - b. Condition(s) not medically eligible for CRS:
    - i. Essential hypertension;
    - ii. Premature atrial, nodal or ventricular contractions that are of no hemodynamic significance;
    - iii. Arteriovenous fistula that is not expected to cause cardiac failure or threaten loss of function; and
    - iv. Benign heart murmur;
2. Endocrine system:
  - a. CRS condition(s):
    - i. Hypothyroidism,
    - ii. Hyperthyroidism,
    - iii. Adrenogenital syndrome,
    - iv. Addison's disease,
    - v. Hypoparathyroidism,
    - vi. Hyperparathyroidism,
    - vii. Diabetes insipidus,
    - viii. Cystic fibrosis, and
    - ix. Panhypopituitarism;
  - b. Condition(s) not medically eligible for CRS:
    - i. Diabetes mellitus,
    - ii. Isolated growth hormone deficiency,
    - iii. Hypopituitarism encountered in the acute treatment of a malignancy, and
    - iv. Precocious puberty;
3. Genitourinary system medical condition(s):
  - a. CRS condition(s):
    - i. Vesicoureteral reflux, with at least mild or moderate dilatation and tortuosity of the ureter and mild or moderate dilatation of renal pelvis;
    - ii. Ectopic ureter;
    - iii. Ambiguous genitalia;
    - iv. Ureteral stricture;
    - v. Complex hypospadias;
    - vi. Hydronephrosis;
    - vii. Deformity and dysfunction of the genitourinary system secondary to trauma after the acute phase of the trauma has passed;
    - viii. Pyelonephritis when treatment with drugs or biologicals has failed to cure or ameliorate and surgical intervention is required;
    - ix. Multicystic dysplastic kidneys;
    - x. Nephritis associated with lupus erythematosus; and
    - xi. Hydrocele associated with a ventriculo-peritoneal shunt;
  - b. Condition(s) not medically eligible for CRS:
    - i. Nephritis, infectious or noninfectious;
    - ii. Nephrosis;
    - iii. Undescended testicle;
    - iv. Phimosis;
    - v. Hydrocele not associated with a ventriculo-peritoneal shunt;
    - vi. Enuresis;
    - vii. Meatal stenosis; and
    - viii. Hypospadias involving isolated glandular or coronal aberrant location of the urethralmeatus without curvature of the penis;
4. Ear, nose, or throat medical condition(s):
  - a. CRS condition(s):
    - i. Cholesteatoma;
    - ii. Chronic mastoiditis;
    - iii. Deformity and dysfunction of the ear, nose, or throat secondary to trauma, after the acute phase of the trauma has passed;
    - iv. Neurosensory hearing loss;
    - v. Congenital malformation;
    - vi. Significant conductive hearing loss due to an anomaly in one ear or both ears equal to or greater than a pure tone average of 30 decibels, that despite medical treatment, requires a hearing aid;
    - vii. Craniofacial anomaly that requires treatment by more than one CRS provider; and
    - viii. Microtia that requires multiple surgical interventions;
  - b. Condition(s) not medically eligible for CRS
    - i. Tonsillitis,
    - ii. Adenoiditis,
    - iii. Hypertrophic lingual frenum,
    - iv. Nasal polyp,
    - v. Cranial or temporal mandibular joint syndrome,
    - vi. Simple deviated nasal septum,
    - vii. Recurrent otitis media,
    - viii. Obstructive apnea,
    - ix. Acute perforation of the tympanic membrane,
    - x. Sinusitis,
    - xi. Isolated preauricular tag or pit, and
    - xii. Uncontrolled salivation;
5. Musculoskeletal system medical condition(s):
  - a. CRS condition(s):
    - i. Achondroplasia;
    - ii. Hypochondroplasia;
    - iii. Diastrophic dysplasia;
    - iv. Chondrodysplasia;
    - v. Chondroectodermal dysplasia;

- vi. Spondyloepiphyseal dysplasia;
- vii. Metaphyseal and epiphyseal dysplasia;
- viii. Larsen syndrome;
- ix. Fibrous dysplasia;
- x. Osteogenesis imperfecta;
- xi. Rickets;
- xii. Enchondromatosis;
- xiii. Juvenile rheumatoid arthritis;
- xiv. Seronegative spondyloarthropathy;
- xv. Orthopedic complications of hemophilia;
- xvi. Myopathy;
- xvii. Muscular dystrophy;
- xviii. Myoneural disorder;
- xix. Arthrogryposis;
- xx. Spinal muscle atrophy;
- xxi. Polyneuropathy;
- xxii. Chronic stage bone infection;
- xxiii. Chronic stage joint infection;
- xxiv. Upper limb amputation;
- xxv. Syndactyly;
- xxvi. Kyphosis;
- xxvii. Scoliosis;
- xxviii. Congenital spinal deformity;
- xxix. Congenital or developmental cervical spine abnormality;
- xxx. Hip dysplasia;
- xxxi. Slipped capital femoral epiphysis;
- xxxii. Femoral anteversion and tibial torsion;
- xxxiii. Legg-Calve-Perthes disease;
- xxxiv. Lower limb amputation, including prosthetic sequelae of cancer;
- xxxv. Metatarsus adductus;
- xxxvi. Leg length discrepancy of five centimeters or more;
- xxxvii. Metatarsus primus varus;
- xxxviii. Dorsal bunions;
- xxxix. Collagen vascular disease;
- xxxx. Benign bone tumor;
- xxxxi. Deformity and dysfunction secondary to musculoskeletal trauma;
- xxxxii. Osgood Schlatter's disease that requires surgical intervention;
- xxxxiii. Complicated flat foot, such as rigid foot, unstable subtalar joint, or significant calcaneus deformity; and
- xxxxiv. Club foot
- b. Condition(s) not medically eligible for CRS
  - i. Ingrown toenail;
  - ii. Back pain with no structural abnormality;
  - iii. Ganglion cyst;
  - iv. Flat foot other than complicated flat foot;
  - v. Fracture;
  - vi. Popliteal cyst;
  - vii. Simple bunion; and
  - viii. Carpal tunnel syndrome;
  - ix. Deformity and dysfunction secondary to trauma or injury if:
    - (1) Three months have not passed since the trauma or injury; and
    - (2) Leg length discrepancy of less than five centimeters at skeletal maturity.
- 6. Gastrointestinal system medical condition(s):
  - a. CRS condition(s):
    - i. Tracheoesophageal fistula;
    - ii. Anorectal atresia;
    - iii. Hirschsprung's disease;
    - iv. Diaphragmatic hernia;
    - v. Gastroesophageal reflux that has failed treatment with drugs or biologicals and requires surgery;
    - vi. Deformity and dysfunction of the gastrointestinal system secondary to trauma, after the acute phase of the trauma has passed;
    - vii. Biliary atresia;
    - viii. Congenital atresia, stenosis, fistula, or rotational abnormalities of the gastrointestinal tract;
    - ix. Cleft lip;
    - x. Cleft palate;
    - xi. Omphalocele; and
    - xii. Gastroschisis;
  - b. Condition(s) not medically eligible for CRS
    - i. Malabsorption syndrome, also known as short bowel syndrome,
    - ii. Crohn's disease,
    - iii. Hernia other than a diaphragmatic hernia,
    - iv. Ulcer disease,
    - v. Ulcerative colitis,
    - vi. Intestinal polyp,
    - vii. Pyloric stenosis, and
    - viii. Celiac disease;
- 7. Nervous system medical condition(s):
  - a. CRS condition(s):
    - i. Uncontrolled seizure disorder, in which there have been more than two seizures with documented adequate blood levels of one or more medications;
    - ii. Cerebral palsy;
    - iii. Muscular dystrophy or other myopathy;
    - iv. Myoneural disorder;
    - v. Neuropathy, hereditary or idiopathic;
    - vi. Central nervous system degenerative disease;
    - vii. Central nervous system malformation or structural abnormality;
    - viii. Hydrocephalus;
    - ix. Craniosynostosis of a sagittal suture, a unilateral coronal suture, or multiple sutures in a child less than 18 months of age;
    - x. Myasthenia gravis, congenital or acquired;
    - xi. Benign intracranial tumor;
    - xii. Benign intraspinal tumor;
    - xiii. Tourette's syndrome;
    - xiv. Residual dysfunction after resolution of an acute phase of vascular accident, inflammatory condition, or infection of the central nervous system;
    - xv. Myelomeningocele, also known as spina bifida;
    - xvi. Neurofibromatosis;
    - xvii. Deformity and dysfunction secondary to trauma in an individual;
    - xviii. Residual dysfunction after acute phase of near drowning; and
    - xix. Residual dysfunction after acute phase of spinal cord injury;
  - b. Condition(s) not medically eligible for CRS
    - i. Headaches;
    - ii. Central apnea secondary to prematurity;
    - iii. Near sudden infant death syndrome;
    - iv. Febrile seizures;

- v. Occipital plagiocephaly, either positional or secondary to lambdoidal synostosis;
  - vi. Trigonoccephaly secondary to isolated metopic synostosis;
  - vii. Spina bifida occulta;
  - viii. Near drowning in the acute phase; and
  - ix. Spinal cord injury in the acute phase;
  - x. Chronic vegetative state;
8. Ophthalmology:
- a. CRS condition(s):
    - i. Cataracts;
    - ii. Glaucoma;
    - iii. Disorder of the optic nerve;
    - iv. Non-malignant enucleation and post-enucleation reconstruction;
    - v. Retinopathy of prematurity; and
    - vi. Disorder of the iris, ciliary bodies, retina, lens, or cornea;
  - b. Condition(s) not medically eligible for CRS
    - i. Simple refraction error,
    - ii. Astigmatism,
    - iii. Strabismus, and
    - iv. Ptosis;
9. Respiratory system medical condition(s):
- a. CRS condition(s):
    - i. Anomaly of the larynx, trachea, or bronchi that requires surgery; and
    - ii. Nonmalignant obstructive lesion of the larynx, trachea, or bronchi;
  - b. Condition(s) not medically eligible for CRS:
    - i. Respiratory distress syndrome,
    - ii. Asthma,
    - iii. Allergies,
    - iv. Bronchopulmonary dysplasia,
    - v. Emphysema,
    - vi. Chronic obstructive pulmonary disease, and
    - vii. Acute or chronic respiratory condition requiring venting for the neuromuscularly impaired;
10. Integumentary system medical condition(s):
- a. CRS condition(s):
    - i. A craniofacial anomaly that is functionally limiting,
    - ii. A burn scar that is functionally limiting,
    - iii. A hemangioma that is functionally limiting,
    - iv. Cystic hygroma, and
    - v. Complicated nevi requiring multiple procedures;
  - b. Condition(s) not medically eligible for CRS:
    - i. A deformity that is not functionally limiting,
    - ii. A burn other than a burn scar that is functionally limiting;
    - iii. Simple nevi,
    - iv. Skin tag,
    - v. Port wine stain,
    - vi. Sebaceous cyst,
    - vii. Isolated malocclusion that is not functionally limiting,
    - viii. Pilonidal cyst,
    - ix. Ectodermal dysplasia, and
    - x. A craniofacial anomaly that is not functionally limiting;
11. Metabolic CRS condition(s):
- i. Amino acid or organic acidopathy,
  - ii. Inborn error of metabolism,
  - iii. Storage disease,
  - iv. Phenylketonuria,
  - v. Homocystinuria,
  - vi. Maple syrup urine disease,
  - vii. Biotinidase deficiency,
12. Hemoglobinopathies CRS condition(s):
- a. Sickle cell anemia,
  - b. Thalassemia.
13. Medical/behavioral condition(s) which are not medically eligible for CRS:
- a. Allergies;
  - b. Anorexia nervosa or obesity;
  - c. Autism;
  - d. Cancer;
  - e. Depression or other mental illness;
  - f. Developmental delay;
  - g. Dyslexia or other learning disabilities;
  - h. Failure to thrive;
  - i. Hyperactivity;
  - j. Attention deficit disorder; and
  - k. Immunodeficiency, such as AIDS and HIV.

**Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3).  
 Amended by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1). Section made by exempt rulemaking at 18 A.A.R. 2074, effective August 1, 2012 (Supp. 12-3).  
 Rulemaking exemption repealed by Laws, 2012, Ch. 299, Section 7; therefore a new Section was made by final rulemaking at 19 A.A.R. 2954, effective November 10, 2013 (Supp. 13-3).

**R9-22-1304. Referral and Disposition of CRS Medical Eligibility Determination**

- A.** To refer an individual for a CRS medical eligibility determination a person shall submit to the Administration the following information:
- 1. CRS application;
  - 2. Documentation from a provider who evaluated the individual, stating the individual's diagnosis;
  - 3. Diagnostic test results that support the individual's diagnosis; and
  - 4. Documentation of the individual's need for specialized treatment of the CRS condition through medical, surgical, or therapy modalities.
- B.** The Administration shall notify the CRS applicant, member or authorized representative of the outcome of the determination within 60 days of receipt of information required under subsection (A). The member may appeal the determination under Chapter 34.

**Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3).  
 Amended by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1). Section made by exempt rulemaking at 18 A.A.R. 2074, effective August 1, 2012 (Supp. 12-3).  
 Rulemaking exemption repealed by Laws, 2012, Ch. 299, Section 7; therefore a new Section was made by final rulemaking at 19 A.A.R. 2954, effective November 10, 2013 (Supp. 13-3).

**R9-22-1305. CRS Redetermination**

- A.** Continued eligibility for the CRS program shall be redetermined by verifying active treatment status of the CRS qualifying medical condition(s) as follows:

1. The CRS Contractor is responsible for notifying the AHCCCS Administration of the date when a CRS member is no longer in active treatment for the CRS qualifying condition(s).
  2. The Administration may request, at any time, that the CRS contractor submit the medical documentation requested in the CRS medical redetermination form within the specified time-frames in contract.
  3. The Administration shall notify the CRS member or authorized representative of the redetermination process.
- B.** If the Administration determines that a CRS member is no longer medically eligible for CRS, the Administration shall provide the CRS member or authorized representative a written notice that informs the CRS member that the Administration is transitioning the CRS member's enrollment according to R9-22-1306. The member may appeal the redetermination under Chapter 34.
- C.** Upon reaching his or her 21st birthday, the CRS member will be enrolled with a non-CRS contractor unless the member requests to continue enrollment with the CRS contractor.

**Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3). Amended by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1). Section made by exempt rulemaking at 18 A.A.R. 2074, effective August 1, 2012 (Supp. 12-3). Rulemaking exemption repealed by Laws, 2012, Ch. 299, Section 7; therefore a new Section was made by final rulemaking at 19 A.A.R. 2954, effective November 10, 2013 (Supp. 13-3).

**R9-22-1306. Transition or Termination**

- A.** The Administration shall transition a CRS member from the CRS contractor when the Administration determines the CRS member does not meet the medical eligibility requirements under this Article.
- B.** The Administration shall terminate a CRS member from the CRS contractor and the AHCCCS program when the Administration determines the CRS member does not meet the AHCCCS eligibility requirements. The member may appeal the termination under Chapter 34.
- C.** If the Administration transitions a CRS member from the CRS contractor, the Administration shall provide the CRS member, or authorized representative a written notice of transition. The member may appeal the transition under Chapter 34.

**Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1). Section made by exempt rulemaking at 18 A.A.R. 2074, effective August 1, 2012 (Supp. 12-3). Rulemaking exemption repealed by Laws, 2012, Ch. 299, Section 7; therefore a new Section was made by final rulemaking at 19 A.A.R. 2954, effective November 10, 2013 (Supp. 13-3).

**R9-22-1307. Covered Services**

The Administration will cover medically necessary services as described within Article 2 unless otherwise specified in contract.

**Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3). Amended by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1). Section made by exempt rulemaking at 18 A.A.R. 2074, effective August 1, 2012 (Supp. 12-3).

Rulemaking exemption repealed by Laws, 2012, Ch. 299, Section 7; therefore a new Section was made by final rulemaking at 19 A.A.R. 2954, effective November 10, 2013 (Supp. 13-3).

**R9-22-1308. Repealed****Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3). Amended by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1).

**R9-22-1309. Repealed****Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3). Amended by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1).

**ARTICLE 14. AHCCCS MEDICAL COVERAGE FOR HOUSEHOLDS****R9-22-1401. General Information**

- A.** Scope. This Article contains eligibility criteria to determine whether a household or individual is eligible for AHCCCS medical coverage. Eligibility criteria described under Article 3 applies to this Article.
- B.** Definitions. In addition to definitions contained in R9-22-101 and A.R.S. § 36-2901, the words and phrases in this Article, Article 3 and Article 15 have the following meanings unless the context explicitly requires another meaning:

“Burial plot” means a space reserved in a cemetery, crypt, vault, or mausoleum for the remains of a deceased person.

Caretaker relative” means:

A parent of a dependent child with whom the child is living;

When the dependent child does not live with a parent or the parent in the home is incapacitated, another relative of the child by blood, adoption, or marriage in the home who assumes primary responsibility for the child's care; or

A woman in her third trimester of pregnancy with no other dependent children.

“Cash assistance” means a program administered by the Department that provides assistance to needy families with dependent children under 42 U.S.C. 601 et seq.

“Dependent child” means a child under the age of 18, or if age 18 is a full-time student in secondary school or equivalent vocational or technical training, if reasonably expected to complete such school or training before turning age 19.

“MAGI – based income” means Modified Adjusted Gross Income as defined under 42 CFR 435.603(e).

“Medical expense deduction” or “MED” means the cost of the following expenses if incurred in the United States:

A medical service or supply that would be covered if provided to an AHCCCS member of any age under Articles 2 and 12 of this Chapter;

A medical service or supply that would be covered if provided to an Arizona Long-term Care System member under 9 A.A.C. 28, Articles 2 and 11;



Other necessary medical services provided by a licensed practitioner or physician;

Assistance with daily living if the assistance is documented in an individual plan of care by a nurse, social service worker, registered therapist, or dietitian under the supervision of a physician except when provided by the spouse of an applicant or the parent of a minor child;

Medical services provided in a licensed nursing home or in an alternative HCBS setting under R9-28-101;

Purchasing and maintaining an animal guide or service animal for the assistance of a member of the MED family unit under R9-22-1436; and

Health insurance premiums, deductibles, and coinsurance, if the insured is a member of the MED family unit.

“Monthly income” means the gross countable income received or projected to be received during the month or the monthly equivalent.

“Monthly equivalent” means a monthly countable income amount established by averaging, prorating, or converting a person's income.

“Spendthrift restriction” means a legal restriction on the use of a resource that prevents a payee or beneficiary from alienating the resource.

“Tax dependent” is described under 42 CFR 435.4.

“Taxpayer” means a person who expects to file a tax return, and does not expect to be claimed as a tax dependent by another person.

“Title IV-D” means Title IV-D of the Social Security Act, 42 U.S.C. 651-669, the statutes establishing the child support enforcement and paternity program.

“Title IV-E” means Title IV-E of the Social Security Act 42 U.S.C. 670-679, the statutes establishing the foster care and adoption assistance programs.

#### Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

#### R9-22-1402. Repealed

#### Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Repealed by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

#### R9-22-1403. Agency Responsible for Determining Eligibility

The Administration or its designee shall determine eligibility under the provisions of this Article. The Administration or its designee shall not discriminate against an applicant or member because of race, color, creed, religion, ancestry, national origin, age, sex, or physical or mental disability.

#### Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

#### R9-22-1404. Repealed

#### Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Repealed by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

#### R9-22-1405. Repealed

#### Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 9 A.A.R. 5123, effective January 3, 2004 (Supp. 03-4). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Repealed by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

#### R9-22-1406. Repealed

#### Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 1598, effective May 31, 2008 (Supp. 08-2). Repealed by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

#### R9-22-1407. Deceased Applicants

- A. If an applicant dies while an application is pending, the Administration or Administration's designee shall complete an eligibility determination for all applicants listed on the application, including the deceased applicant.
- B. The Administration or Administration's designee shall complete an eligibility determination on an application filed on behalf of a deceased applicant.

#### Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Repealed by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1). Amended by final rulemaking at 19 A.A.R. 3309, November 30, 2013 (Supp. 13-4).

**R9-22-1408. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 1598, effective May 31, 2008 (Supp. 08-2). Repealed by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-1409. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Repealed by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-1410. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Section repealed; new Section made by final rulemaking at 14 A.A.R. 1598, effective May 31, 2008 (Supp. 08-2). Repealed by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-1411. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Repealed by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-1412. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by exempt rulemaking at 10 A.A.R. 23, effective December 9, 2003 (Supp. 03-4). Amended by exempt rulemaking at 10 A.A.R. 4588, effective October 12, 2004 (Supp. 04-4). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Repealed by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-1413. Time-frames, Reinstatement of an Application**

- A.** The Administration or its designee shall complete an eligibility determination under R9-22-306(A)(1) unless:

1. The applicant is pregnant. The Administration or its designee shall complete an eligibility determination for a pregnant woman within 20 days after the application date unless additional information is required to determine eligibility; or
2. The applicant is in a hospital as an inpatient at the time of application. Within seven days of the Administration or its designee's receipt of a signed application the Administration or its designee shall complete an eligibility determination if the Administration or its designee does not need additional information or verification to determine eligibility.

- B.** The Administration or its designee shall reopen or reinstate eligibility of an individual who is discontinued for failure to submit the renewal form or necessary information, without requiring a new application, if the individual submits the renewal form or necessary information within 90 days after the date of discontinuance.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 1598, effective May 31, 2008 (Supp. 08-2). Amended by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-1414. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Repealed by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-1415. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Repealed by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-1416. Effective Date of Eligibility**

- A.** Except as provided in R9-22-303 and subsections (B), (C) and (D), the effective date of eligibility is the first day of the month that the applicant files an application if the applicant is eligible that month, or the first day of the first eligible month following the application month except for:
1. The MED program under R9-22-1439, and
  2. Eligibility for a newborn under R9-22-1429.
- B.** The effective date of eligibility for an applicant who moves into Arizona is no sooner than the date Arizona residency is established.
- C.** The effective date of eligibility for an inmate applying for medical coverage is the date the applicant no longer meets the definition of an inmate of a public institution.

- D.** The effective date of eligibility for a newborn is no sooner than the date of birth.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-1417. Repealed**

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Repealed by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-1418. Repealed**

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Repealed by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-1419. Repealed**

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 9 A.A.R. 5123, effective January 3, 2004 (Supp. 03-4). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Repealed by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-1419.01. Repealed**

**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 5123, effective January 3, 2004 (Supp. 03-4). Section repealed by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4).

**R9-22-1419.02. Repealed**

**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 5123, effective January 3, 2004 (Supp. 03-4). Section repealed by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4).

**R9-22-1419.03. Repealed**

**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 5123, effective January 3, 2004 (Supp. 03-4). Section repealed

by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4).

**R9-22-1419.04. Repealed**

**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 5123, effective January 3, 2004 (Supp. 03-4). Section repealed by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4).

**R9-22-1420. Income Eligibility Criteria**

- A.** Evaluation of income. In determining eligibility, the Administration or its designee shall evaluate the following types of income received by a person identified in subsection (B):
1. Earned income, including in-kind income, before any deductions. For purposes of this Section, in-kind income means room, board, or provision for other needs in exchange for work performed. The person identified in subsection (B) shall ensure that the provider of the in-kind income establishes and verifies the monetary value of the item provided. The provider may be, but is not limited to:
    - a. A landlord who provides all or a portion of rent or utilities in exchange for services;
    - b. A store owner who gives goods such as groceries, clothes, or furniture in exchange for services; or
    - c. An individual who trades goods such as a car, tools, trailer, building material, or gasoline in exchange for services;
  2. Self-employment income under R9-22-1424, including gross business receipts minus business expenses; and
  3. Unearned income, including deemed income under R9-22-317 from the sponsor of a non-citizen applicant.
- B.** MAGI income group. The Administration or its designee shall include the following persons in the MAGI income group:
1. When the applicant is a taxpayer include:
    - a. The applicant,
    - b. Everyone the applicant expects to claim as a tax dependent for the current year, and
    - c. The applicant's spouse, when living with the applicant.
  2. Except as provided in subsection (B)(3), when the applicant expects to be claimed as a tax dependent for the current year include:
    - a. The taxpayer claiming the applicant,
    - b. Everyone else the taxpayer expects to claim as a tax dependent,
    - c. The taxpayer's spouse when living with the taxpayer, and
    - d. The applicant's spouse, when living with the applicant.
  3. When any of the following apply, determine the persons whose income is included as described in subsection (4)(a) or (4)(b) based on the applicant's age:
    - a. The applicant expects to be claimed as a tax dependent by someone other than a spouse or natural, adopted or step-parent;
    - b. The applicant is under age 19, expects to be claimed as a tax dependent by a natural, adopted or step-parent, lives with more than one such parent and the parents do not expect to file a joint tax return; or
    - c. The applicant is under age 19 and expects to be claimed as a tax dependent by a non-custodial parent.

4. When the applicant is not a taxpayer, does not expect to be claimed as a tax dependent and is:
    - a. Under age 19. Include the income of the applicant and when living with the applicant, the applicant's:
      - i. Spouse;
      - ii. Natural, adopted and step-children;
      - iii. Natural, adopted and step-parents;
      - iv. Natural, adopted and step-siblings; and
    - b. Age 19 or older. Include the income of the applicant and when living with the applicant, the applicant's:
      - i. Spouse;
      - ii. Natural, adopted and step-children under age 19.
  5. When the applicant is a pregnant woman, the Administration or its designee shall also include the number of expected babies only for the pregnant woman's income group.
  6. When the taxpayer cannot reasonably establish that a person is the taxpayer's tax dependent, inclusion of the person in the taxpayer's MAGI income group is determined as provided in subsection (B)(4).
- C.** A person whose income is counted. The Administration or its designee shall count the MAGI-based income of all members of an applicant's MAGI income group with the following exceptions:
1. The income of an individual who is included in the MAGI income group of his or her natural, adoptive or step parent and is not expected to be required to file a tax return for the year in which eligibility for Medicaid is being determined, is not counted whether or not the individual files a tax return.
  2. The income of a tax dependent other than the taxpayer's spouse or biological, adopted or stepchild who is not expected to be required to file a tax return for the year in which eligibility for Medicaid is being determined is not counted when the tax dependent is included in the taxpayer's MAGI income group, whether or not the tax dependent files a tax return.

#### Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

#### R9-22-1421. MAGI based Income Eligibility

- A.** In determining eligibility, if an individual would otherwise be ineligible under this Article due to excess income, the Administration or its designee shall subtract an amount equivalent to five percentage points of the Federal Poverty Level (FPL) from the household income.
- B.** A person is eligible under this Article when:
1. Subject to subsection (A), the monthly household income does not exceed the appropriate FPL;
  2. If ineligible under (B)(1), the household income determined in accordance with 26 CFR 1.36B-1(e) is below 100 percent FPL; or
  3. For eligibility under R9-22-1437, the person's income during the period defined in R9-22-1437(C) does not exceed the FPL under R9-22-1437(B).
- C.** The Administration or its designee shall consider the following factors when determining the income period to use to determine monthly income:

1. Type of income,
2. Frequency of income,
3. If source of income is new or terminated, or
4. Income fluctuation.

#### Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

#### R9-22-1422. Methods for Calculating Monthly Income

- A.** Projecting income.
1. Description. Projecting income is a method of determining the amount of income that a person will receive.
  2. Calculation. The Administration or its designee shall project income by:
    - a. Converting income to a monthly equivalent,
    - b. Using unconverted income, or
    - c. Prorating income to determine a monthly equivalent.
  3. Exclusion. When calculating projected monthly income, the Administration or its designee shall exclude an unusual variation in income under R9-22-1424(E), except for a month in which the variation is anticipated to occur.
- B.** Averaged income.
1. Description. Averaging income proportionally distributes the person's income received on a regular basis.
  2. Calculation. To average income, the Administration or its designee shall add the amount of the income and divide by the total number of pay periods. If the amount of income received per pay period fluctuates, and the fluctuation is expected to continue, the Administration or its designee shall:
    - a. Use the averaged weekly or bi-weekly amounts to convert weekly or bi-weekly income to a monthly equivalent;
    - b. Use the averaged monthly or semi-monthly amounts to project monthly income; and
    - c. Use the averaged hours worked and multiply the average by the current rate of pay. If there is a change in the rate of pay, use the new rate of pay when calculating projected income under subsection (A).
- C.** Prorated income.
1. Description. Prorated income evenly distributes a person's income over the period the income is intended to cover to calculate a monthly equivalent.
  2. Calculation. To prorate income, the Administration or its designee shall divide the total amount of the person's income received during the period by the number of months that the income is intended to cover.
- D.** Converted income.
1. Description. Converted income is income received weekly or biweekly that is changed to a monthly equivalent.
  2. Calculation.
    - a. The Administration or its designee shall average the weekly or bi-weekly income amounts before converting to the monthly equivalent if the person's past income fluctuates and the fluctuation is expected to recur.

- b. To convert income paid weekly to a monthly equivalent, the Administration or its designee shall multiply the weekly average by 4.3 weeks.
- c. To convert income paid bi-weekly to a monthly equivalent, the Administration or its designee shall multiply the bi-weekly average by 2.15 weeks.

**E. Unconverted income.**

- 1. Description. Unconverted income is the actual amount of income received or projected to be received during a month.
- 2. Calculation. The Administration or its designee shall sum the actual amount of income received or projected to be received during a month.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-1423. Calculations and Use of Methods Listed in R9-22-1422 Based on Frequency of Income**

- A. Monthly income.** If otherwise countable income is received monthly or in a lump sum, the Administration or its designee shall use the unconverted method for calculating monthly income.
  - 1. Lump sum means a nonrecurring payment that serves as a complete payment.
  - 2. Lump sum payments include but are not limited to: rebates or credits; inheritances; insurance settlements; and payments for prior months from such sources as Social Security, Railroad Retirement, or other benefits.
  - 3. A lump sum payment may include a portion intended for the current month.
- B. Weekly income.** If income is received weekly, the Administration or its designee shall convert the income to a monthly equivalent under R9-22-1422(D).
- C. Bi-weekly income.** If income is received bi-weekly, the Administration or its designee shall convert the income to a monthly equivalent under R9-22-1422(D).
- D. Semi-monthly or daily income.** If income is received semi-monthly or daily, the Administration or its designee shall use the unconverted method for calculating monthly income under R9-22-1422(E).
- E. Bimonthly, quarterly, semi-annual, or annual income.** If income is received bimonthly, quarterly, semi-annually, or annually, the Administration or its designee shall prorate the income received or projected to be received under R9-22-1422(C).

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-1424. Use of Methods Listed in R9-22-1423 Based on Type of Income**

- A. New income.**

- 1. Description. New income is income received from a new source during the first calendar month that the income is received from the source.
- 2. Calculating monthly income.
  - a. If a full month's income is received, the Administration or its designee shall use the appropriate method described in R9-22-1423 to calculate the monthly income.
  - b. If less than a full month's income is received, the Administration or its designee shall use the unconverted method to calculate the monthly income.

**B. Terminated income.**

- 1. Terminated income is income received during the last calendar month when no more income is expected to be received from that source.
- 2. Calculating monthly income.
  - a. If a full month's income is received, the Administration or its designee shall use the appropriate method described in R9-22-1423 to calculate the monthly income.
  - b. If less than a full month's income is received, the Administration or its designee shall use the unconverted method to calculate the monthly income.

**C. Break in income.**

- 1. Description. A break in income is a break in established frequency of income of one calendar month or more.
- 2. Calculating monthly income.
  - a. If a full month's income is received, the Administration or its designee shall use the appropriate method described in R9-22-1423 to calculate the monthly income.
  - b. If less than a full month's income is received, the Administration or its designee shall use the unconverted method to calculate the monthly income.

**D. Contract or regular seasonal income.**

- 1. Descriptions.
  - a. Contract income is income a person earns under a contract that specifies a length of time the contract covers, the amount of income to be paid, and the frequency of payment.
  - b. Regular seasonal income is income that fluctuates based on season or is only received during a certain season, and can reasonably be anticipated based on history or other verification.
- 2. Calculating monthly income.
  - a. When the contract or regular seasonal income will not fluctuate over the 12-month period beginning with the month the application or renewal is submitted, the Administration or its designee shall use the appropriate income calculation method in R9-22-1423 for the frequency of receipt.
  - b. When the contract or regular seasonal income is anticipated to fluctuate over the 12-month period beginning with the month the application or renewal is submitted, the Administration or its designee shall calculate the monthly income as follows:
    - i. For a one-time contract that ends between the month the application or renewal is submitted and the end of the calendar year, divide the income that will be received from the application or renewal month through the end of the calendar year by the number of months in that period to get a monthly equivalent;
    - ii. For contracts that extend into the next calendar year, contracts that are anticipated to be renewed and regular seasonal income, the

Administration or its designee shall divide the income that will be received in the 12-month period beginning with the application or renewal month by 12 to get the monthly equivalent.

**E. Unusual variation in the amount of income.**

1. Description. Unusual variation is an amount of income that is different from the established amount received and is not projected to continue or recur.
2. Calculating monthly income.
  - a. When calculating income for the month in which an unusual variation in income occurs, the Administration or its designee shall include the unusual variation in the income calculation.
  - b. When an unusual variation in income occurs during the month, the Administration or its designee shall use the converted method for calculating monthly income if income is received weekly or bi-weekly.
  - c. When projecting income for the months following the month in which the unusual variation occurs, the Administration or its designee shall exclude the unusual variation in income from the income calculation.

**F. Self-employment income.**

1. Description. Self-employment income is income a person earns from the person's own trade or business less allowable expenses.
2. Calculating monthly income. The Administration or its designee shall prorate the income under R9-22-1422.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-1425. Repealed**

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Repealed by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-1426. Repealed**

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Repealed by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-1427. Eligibility Under MAGI**

- A. Caretaker Relatives.** An individual is eligible for AHCCCS medical coverage as a Caretaker Relative when the individual meets the following requirements:
1. Is a caretaker relative as defined in R9-22-1401.

2. The total countable income under R9-22-1420(B) does not exceed 106 percent of the FPL for the number of people in the MAGI income group.

**B. Continued medical coverage.**

1. A caretaker relative eligible under subsection (A) and all dependent children eligible under subsection (D) in the caretaker relative's MAGI income group are entitled to continued AHCCCS coverage for up to 12 months if eligible under subsection (B)(1)(c)(i) and up to four months if eligible under subsection (B)(1)(c)(ii) if the MAGI income group's income exceeds the limit for the income group's size and the following conditions are met:
  - a. The caretaker relative still lives with a dependent child;
  - b. A caretaker relative in the income group received AHCCCS medical coverage under this Section for three calendar months out of the most recent six months; and
  - c. The loss of AHCCCS coverage under this Section is due to:
    - i. Increased earned income of a caretaker relative, or
    - ii. Increased spousal support.
2. An applicant may be added to the continued medical coverage under subsection (B)(1), if the applicant did not reside in the household at the time continued medical coverage under this Section was determined and the applicant is:
  - a. The spouse or dependent child of a caretaker relative receiving continued medical coverage, or
  - b. The parent of a dependent child who is receiving continued medical coverage.

- C. Pregnant Women.** A pregnant woman is eligible for AHCCCS medical coverage when the total countable income under R9-22-1420(B) does not exceed 156 percent of the FPL for the number of people in the MAGI income group. A pregnant woman who applies for AHCCCS medical coverage during the pregnancy or postpartum period and is determined eligible, remains eligible throughout the postpartum period. The postpartum period begins the day the pregnancy terminates and ends the last day of the month in which the 60th day following pregnancy termination occurs.

- D. Children.** A child less than 19 years of age is eligible for AHCCCS medical coverage when the total countable income under R9-22-1420(B) does not exceed the following percentage of the FPL for the number of people in the MAGI income group:

1. 147 percent for a child under one year of age,
2. 141 percent for a child age one through five years of age, or
3. 133 percent for all other persons.

- E. Adults.** An individual is eligible for AHCCCS medical coverage when the individual meets the following eligibility requirements:

1. Is 19 years of age or older but less than 65 years of age;
2. Is not pregnant;
3. Is not eligible for AHCCCS Medical Coverage under any other coverage group listed in 42 U.S.C. 1396a(a)(10)(A)(i);
4. Is not entitled to or enrolled for Medicare benefits under Part A or Part B;
5. The total countable income under R9-22-1420(B) does not exceed 133 percent of the FPL for the number of people in the MAGI income group; and
6. When the individual is a caretaker relative, but has income exceeding the limit in subsection (A)(2), each child under age 19 living with the individual is receiving

AHCCCS medical coverage or KidsCare, or is enrolled in minimum essential coverage as defined in 42 CFR 435.4.

#### Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Section R9-22-1427 repealed; new Section R9-22-1427 made by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

#### R9-22-1428. Repealed

#### Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 1598, effective May 31, 2008 (Supp. 08-2). Repealed by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

#### R9-22-1429. Eligibility for a Newborn

A child born to a mother eligible for and receiving medical coverage under this Article, Article 15 of the Chapter, or 9 A.A.C. 28, is automatically eligible for AHCCCS medical coverage for a period not to exceed 12 months. Automatic eligibility begins on the child's date of birth and ends with the last day of the month in which the child turns age one.

#### Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1). Amended by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

#### R9-22-1430. Repealed

#### Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Repealed by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

#### R9-22-1431. Family Planning Services Extension Program (FPEP)

- A. A member who loses eligibility for AHCCCS medical coverage due to the postpartum period ending and who has no other creditable coverage, as specified in 42 U.S.C. 300gg-3(c)(1), may receive up to 24 months of family planning services as provided in this Section and A.R.S. § 36-2907.04.
- B. Review of eligibility.

1. The Administration or its designee shall complete a review of each member's continued eligibility for FPEP at least once every 12 months.
2. If a member continues to meet all eligibility requirements, the Administration or its designee shall authorize continued eligibility for the FPEP and notify the member of continued eligibility.
3. The Administration or its designee shall discontinue eligibility and notify the member of the discontinuance if the member:
  - a. Has income that exceeds 156 percent of the FPL at the time of the 12-month review,
  - b. Fails to comply with a review of eligibility under this subsection, or
  - c. Meets any of the criteria under subsection (D).
- C. Changes in the member's income after the initial or review eligibility determination shall not impact the member's eligibility during the following 12-month period.
- D. The Administration or its designee shall deny or terminate a member from FPEP under this Section if the member:
  1. Voluntarily withdraws from the program;
  2. Cannot be located;
  3. Fails to provide information to the Administration or its designee;
  4. Moves out-of-state;
  5. Has creditable coverage under 42 U.S.C. 300gg-3(c)(1);
  6. Fails to meet the documentation requirements for U.S. citizenship or legal alien status under A.R.S. § 36-2903.03;
  7. Becomes eligible under 9 A.A.C. 22, 9 A.A.C. 28, or 9 A.A.C. 31 for full services under Article 2 of this Chapter;
  8. Becomes sterile; or
  9. Dies.
- E. The Administration or its designee shall not reinstate eligibility under this Section after the effective date of a discontinuance of eligibility unless the discontinuance is overturned on appeal or resulted from an administrative error.

#### Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 13 A.A.R. 2633, effective July 10, 2007 (Supp. 07-3). Amended by final rulemaking at 14 A.A.R. 1598, effective May 31, 2008 (Supp. 08-2). Amended by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

#### R9-22-1432. Young Adult Transitional Insurance

An individual is eligible for AHCCCS medical coverage when the individual meets all of the following eligibility requirements:

1. Is 18 through 25 years of age;
2. Was in the custody of the Department of Economic Security under A.R.S. Title 8, Chapter 5 or Chapter 10 on the individual's 18th birthday;
3. Was eligible for and receiving AHCCCS Medical Coverage on the individual's 18th birthday; and
4. Is not eligible for AHCCCS Medical Coverage under 42 U.S.C. 1396a(a)(10)(A)(i)(I) - (VII).

#### Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section

repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-1433. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Repealed by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-1434. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). New Section made by exempt rulemaking at 7 A.A.R. 5701, effective December 1, 2001 (Supp. 01-4). Section repealed by exempt rulemaking at 10 A.A.R. 4588, effective October 12, 2004 (Supp. 04-4).

**R9-22-1435. Eligibility for a Person With Medical Expenses Whose Income is Over 100 Percent FPL**

An applicant who is not eligible for AHCCCS medical coverage due to excess income may become AHCCCS eligible by deducting medical expenses from the applicant's income. This coverage is called Medical Expense Deduction (MED).

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). New Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4).

**R9-22-1436. MED Family Unit**

- A.** For the purpose of this Section, a child is an unmarried person under age 18.
- B.** The Department shall consider each of the following to be a family when living together:
  - 1. A parent and the parent's children;
  - 2. A married couple without children;
  - 3. A married couple and the children of either or both spouses;
  - 4. Unmarried parents who live with at least one child in common, and the parents' other children, whether in common or not; and
  - 5. A person without children.
- C.** If an applicant is pregnant, the family unit includes the number of unborn children.
- D.** A child of the children included in subsections (B)(1), (B)(3), or (B)(4) is considered part of the family unit when living together.
- E.** The Department shall not include a SSI-cash recipient in the MED family unit even if the SSI-cash recipient is a parent, spouse, or child.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). New Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4).

**R9-22-1437. MED Income Eligibility Requirements**

- A.** Income exclusions. The exclusions in R9-22-1420(C) apply to the MED family unit.
- B.** Income standard.
  - 1. The Department shall divide the annual FPL for the MED family unit that is in effect during each month of the income period by 12 to determine the monthly FPL.
  - 2. The Department shall add the monthly FPLs for the income period and multiply the resulting amount by 40 percent.
  - 3. Changes to the annual FPL are implemented in April of each year.
- C.** Income period. The income period is the month of application and the next two months. The Department shall add together the three months' income to establish the MED family unit's income amount.
- D.** Medical expense deduction period. The medical expense deduction period is a three-month period consisting of:
  - 1. For a new application, the month before the application month, the month of application, and month following the application month; or
  - 2. For a MED eligibility review, the last month of the prior MED eligibility period and the following two months.
- E.** The Department shall calculate the amount of countable monthly income as follows:
  - 1. Subtract a \$90 cost of employment allowance from the gross amount of earned income for each person whose earned income is counted;
  - 2. Disregard from the remaining earned income an amount billed by the provider for the care of each dependent child under age 18 or incapacitated adult member of the MED family unit if the care is for the purpose of allowing the person to work. If more than one person in the household is responsible for and billed for the care of a dependent child, the disregard may be split between the wage earners if splitting the disregard is to the benefit of the family, but shall not exceed the maximum disregards as follows:
    - a. A maximum of \$200 for a child under age two and \$175 for other dependents for a wage-earner employed full-time (86 or more hours per month); and
    - b. A maximum of \$100 for a child under age two, and \$88 for other dependents for a wage earner employed part-time (less than 86 hours a month);
  - 3. Add the remaining earned income for each MED family member to the unearned income of all MED family members;
  - 4. Compare the MED family's unit countable income amount to the income standard in subsection (B). The difference is the amount of medical expenses the family shall incur during the medical expense deduction period to become eligible;
  - 5. Subtract allowable medical expense deductions that were incurred by:
    - a. A member of the MED family unit;
    - b. A deceased spouse or minor child of a MED family unit if this person would have been a member of the MED unit during the MED expense deduction period;



- c. A person who was a minor child of a MED family unit member when the expense was incurred but who is no longer a minor child; or
- d. A minor child, including a child who is a runaway, who left home before the date of application to live with someone other than a parent; and
- 6. Compare the net MED family income to the income standard listed in subsection (B).
- F. The family is eligible if the net income in subsection (E)(6) does not exceed the income standard in subsection (B).

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4).

**R9-22-1438. MED Resource Eligibility Requirements**

- A. Including countable resources. The Department shall include the resources not excluded that belong to and are available to members of the family of a qualified alien under A.R.S. § 36-2903.03 and the sponsor and sponsor's spouse of a person who is a qualified alien.
- B. Ownership and availability. The Department shall evaluate the ownership of resources to determine the availability of resources to a person listed in subsection (A).
  - 1. Jointly owned resources with ownership records containing the words "and" or "and/or" between the owners' names are available to each owner except if one of the owners refuses to sell. A consent to sale is not required if all owners are members of the MED family unit.
  - 2. Jointly owned resources with ownership records containing the word "or" between the owners' names are presumed to be available in full to each owner. The applicant or member may rebut the presumption by providing clear and convincing evidence of intent to establish a different type of ownership. If the presumption is rebutted, the resource is available to the owners:
    - a. Consistent with the intent of the owners, or
    - b. Based on each owner's proportionate net contribution if there is not clear and convincing evidence of a different allocation.
  - 3. The Department shall establish availability of a trust under 42 U.S.C. 1396p(d)(4)(A) or (C).
- C. Unavailability. The Department shall consider the following resources unavailable:
  - 1. Property subject to spendthrift restriction, such as:
    - a. Accounts established by the SSA, Veteran's Administration, or similar sources that mandate that the funds in the account be used for the benefit of a person not residing with the MED family unit; or
    - b. Trusts established by a will or funded solely by the income and resources of someone other than a member of the MED family unit.
  - 2. A resource being disputed in a divorce proceeding or probate matter;
  - 3. Real property located on a Native American reservation;
  - 4. A resource held by a conservator to the extent court-imposed restrictions make the resource unavailable to the applicant, member, or member of the family unit for:
    - a. Medical care,
    - b. Food,
    - c. Clothing, or
    - d. Shelter.
- D. Resource exclusion. The Department shall exclude the following resources from the calculation of resources under subsection (E):
  - 1. One burial plot for each person listed in R9-22-1436;

- 2. Household furnishings and personal items that are necessary for day-to-day living;
- 3. Up to \$1500 of the value of one prepaid funeral plan for each person listed in R9-22-1436 that specifically covers only funeral-related expenses as evidenced by a written contract;
- 4. The value of one motor vehicle regularly used for transportation. If the MED family unit owns more than one vehicle, the exclusion is applied to the vehicle with the highest equity value;
- 5. The value of a vehicle used to earn income and not used simply for transportation to and from employment;
- 6. The value of a vehicle in which a SSI-cash recipient has an ownership interest; and
- 7. The value of any vehicle used for medical treatment, employment, or transportation of a SSI-cash disabled child, and that is excluded by SSI for that reason.
- 8. Funds set aside in an Individual Development Account under 6 A.A.C. 12, Article 4; and
- 9. Any other resource specifically excluded by federal law.
- E. Calculation of resources. The Department shall determine the value of all household resources as follows:
  - 1. Calculate the total amount of countable liquid resources;
  - 2. Calculate the equity value of each countable non-liquid resource. The Department shall determine the equity value of a countable non-liquid resource by subtracting the amount of valid encumbrances on that resource from:
    - a. The market value of real property if there is no assessor's evaluation of the property,
    - b. The market value of real property if the assessor's value of the real property does not include the value of permanent structures on that property,
    - c. The assessor's full cash value if subsections (E)(2)(a) and (E)(2)(b) do not apply, and
    - d. The market value of a non-liquid resource that is not real property;
  - 3. Not assign an equity value to a resource that is less than zero; and
  - 4. Determine the MED family unit's resources by adding the totals determined in subsections (1) and (2).
- F. Resource standard to be eligible for MED. A person is not eligible for MED if the resources determined in subsection (E) exceed \$100,000 or if more than \$5,000 are liquid resources.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4).

**R9-22-1439. MED Effective Date of Eligibility**

- A. A MED family unit is eligible on the day the income and resource eligibility requirements are met but no earlier than the first day of the month of application. If the family unit meets the income requirements in the application month but does not meet the resource limit until the following month, the family unit's effective date of eligibility is the first day of the month following the month of application.
- B. The Department shall adjust the effective date of eligibility under subsection (A) to an earlier date if:
  - 1. A member presents verification of additional allowable medical expenses incurred on an earlier date during the medical expense deduction period that allow the member to meet the income requirements, and
  - 2. The member presents the verification within 60 days of approval of eligibility under this Section.
- C. The Department shall not adjust an effective date of eligibility more than one time per application.

- D. The Department shall adjust the effective date no later than 30 days after the end of the 60-day period under subsection (B)(2).
- E. The Department shall deny an application and provide the applicant a denial notice when the applicant does not meet the MED requirements under this Article during the month of application or the month following the month of application.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4).

**R9-22-1440. MED Eligibility Period**

The Department shall approve eligibility for six months. Changes in circumstances do not affect eligibility for the first three months.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4).

**R9-22-1441. Eligibility Appeals**

- A. Adverse actions. An applicant or member may appeal by requesting a hearing from the Department concerning any of the following adverse actions:
  1. Complete or partial denial of eligibility under R9-22-1413;
  2. Suspension, termination, or reduction of AHCCCS medical coverage under R9-22-1415;
  3. Delay in the eligibility determination beyond the timeframes under this Article;
  4. The imposition of or increase in a premium or copayment; or
  5. The effective date of eligibility.
- B. Notice of Adverse Action. The Department shall personally deliver or send, by regular mail, a Notice of Adverse Action to the person affected by the action. For the purpose of this Section, the date of the Notice of Adverse Action shall be the date of personal delivery to the applicant or the postmark date, if mailed.
- C. Automatic change and hearing rights.
  1. An applicant or a member is not entitled to a hearing if the sole issue is a federal or state law requiring an automatic change adversely affecting some or all recipients.
  2. An applicant or a member is entitled to a hearing if a federal or state law requires an automatic change and the applicant or member timely files an appeal that alleges a misapplication of the facts to the law.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4).

**R9-22-1442. Cessation of MED Coverage**

The Department shall not approve any individual or family who has applied on or after May 1, 2011 as eligible for MED coverage. With respect to any applications that are pending as of May 1, 2011, the Department shall not approve any individual or family as eligible for MED coverage who has not met all eligibility requirements prior to May 1, 2011.

**Historical Note**

New Section made by exempt rulemaking at 17 A.A.R. 1028, effective May 1, 2011 (Supp. 11-2).

**R9-22-1443. Closing New Eligibility for Persons Not Covered under the State Plan**

- A. Definition. For purposes of this Section, "AHCCCS Care" refers to the eligibility category that includes individuals encompassed within the expanded definition of "eligible person" under A.R.S. § 36-2901.01 and R9-22-1428(4), but who

do not meet eligibility criteria for an optional or mandatory Title XIX coverage group described in the Arizona State Plan for Medicaid.

- B. General Rule. Except as provided by this Section, neither the Department nor the Administration shall approve an individual for AHCCCS Care with an effective date of eligibility on or after July 8, 2011.
- C. Exception for pending applications. With respect to any applications that are pending as of July 8, 2011, the Department and the Administration shall approve any individual as eligible for AHCCCS Care who has met all eligibility requirements for AHCCCS Care during or after the month of application but prior to July 8, 2011, and has continuously met all eligibility requirements for AHCCCS Care since that date.
- D. Exception for children. The Department and the Administration shall approve an individual as eligible for AHCCCS Care on or after July 8, 2011 who:
  1. Was determined eligible under the Arizona State Plan for Medicaid based on being under the age of 19;
  2. Would otherwise be discontinued due to reaching the age of 19 on or after July 8, 2011, under subsection (B) of this Section; and
  3. Meets all eligibility requirements for AHCCCS Care on and after reaching age 19.
- E. Exception for KidsCare. The Department and the Administration shall approve an individual as eligible for AHCCCS Care on or after July 8, 2011 who:
  1. Was determined eligible under 9 A.A.C. 31 based on being under the age of 19;
  2. Would otherwise be discontinued due to reaching the age of 19 on or after July 8, 2011, under subsection (B) of this Section; and
  3. Meets all eligibility requirements for AHCCCS Care on and after reaching age 19.
- F. Exception for Young Adult Transitional Insurance (YATI). The Department and the Administration shall approve an individual as eligible for AHCCCS Care on or after July 8, 2011 who:
  1. Was determined eligible for YATI under R9-22-1432;
  2. Would otherwise be discontinued due to reaching the age of 21 on or after July 8, 2011 under subsection (A) of this Section; and
  3. Meets all eligibility requirements for AHCCCS Care on and after reaching age 21.
- G. Exception for certain SSI-MAO. The Department and the Administration shall approve as eligible for AHCCCS Care, on or after July 8, 2011, an individual who:
  1. Was determined eligible for AHCCCS Care; and
  2. Whose eligibility category is changed on or after June 28, 2011, from AHCCCS Care to eligibility based on R9-22-1501(A)(1) (SSI Medical Assistance Only) because the individual, at the time of the change in eligibility category, is age 65 or over, under the age of 65 with Medicare coverage, or who has been determined by ADHS to have a Serious Mental Illness; but who
  3. Subsequent to the change in eligibility category, is determined not to meet eligibility requirements under Article 15; but only if
  4. The individual meets all eligibility requirements for AHCCCS Care on and after the date the individual is determined not to meet eligibility requirements under Article 15.
- H. Exception for redeterminations. This Section does not prohibit the redetermination of an individual as eligible for AHCCCS Care on or after July 8, 2011, if the individual was determined eligible for AHCCCS Care prior to July 8, 2011 and has remained continuously eligible for AHCCCS Care since July

8, 2011 or the date on which the individual was determined eligible for AHCCCS Care under subsections (C), (D), and (E) of this Section.

- I. Discontinuance for other reasons. Nothing in this Section prohibits or restricts the Department or the Administration from discontinuing AHCCCS Care for an individual who does not meet any other eligibility criteria set forth elsewhere in this Chapter including but not limited to discontinuance based on the individual's failure to verify eligibility information upon an application or redetermination.
- J. Review of anticipated expenditures. At least monthly, the Director shall review the most recent estimate of the anticipated expenditures for the remainder of the state fiscal year as compared to funds remaining in the appropriations made to the agency for the state fiscal year as well as any other known or reasonably anticipated sources of other funding. Based on that review the Director may, subject to approval by the Center for Medicare and Medicaid Services, re-open the AHCCCS Care program to new enrollment otherwise prohibited by this Section.
- K. At least 30 days prior to the effective date of any changes to eligibility for the AHCCCS Care program as described in this Section, public notice shall be provided via publication on the AHCCCS web site unless shorter notice is necessary to maintain a program that is reasonably anticipated to remain within available funding.

#### Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 1345, effective July 8, 2011 (Supp. 11-3). Amended by exempt rulemaking at 17 A.A.R. 2624, effective July 8, 2011 (Supp. 11-4).

### ARTICLE 15. AHCCCS MEDICAL COVERAGE FOR PEOPLE WHO ARE AGED, BLIND, OR DISABLED

#### R9-22-1501. General Information

- A. General. The Administration shall determine eligibility for AHCCCS medical coverage for the following applicants or members using the eligibility criteria and requirements in this Article:
  - 1. A person who is aged, blind, or disabled and does not receive SSI cash; and
  - 2. A person terminated from the SSI cash program under R9-22-1505.
- B. Definitions. In addition to definitions contained in A.R.S. § 36-2901, the words and phrases in this Chapter have the following meanings unless the context explicitly requires another meaning:
  - “Aged” means a person who is 65 years of age or older as specified in 42 U.S.C. 1382c(a)(1)(A).
  - “Blind” means a person who has been determined blind by the Department of Economic Security, Disability Determination Services Administration, under 42 U.S.C. 1382c(a)(2).
  - “Disabled” means a person who has been determined disabled by the Department of Economic Security, Disability Determination Services Administration, under 42 U.S.C. 1382c(a)(3)(A) through (E).
- C. Confidentiality. The Administration shall maintain the confidentiality of an applicant's or member's records and limit the release of safeguarded information under R9-22-512.
- D. Application process.
  - 1. A person may apply for AHCCCS medical coverage by submitting a signed application to any Administration office or outstation location under R9-22-1406.

- 2. The provisions in R9-22-1406(B), (C), and (E) apply to this Section.
- 3. The application date is the date a signed application is received at any Administration office or outstation location approved by the Director.
- 4. An applicant who files an application may withdraw the application, either orally or in writing. If an applicant withdraws an application, the Administration shall send the applicant a denial notice under subsection (G).
- 5. Except as provided in 42 CFR 435.911, the Administration shall determine eligibility within 90 days for an applicant applying on the basis of disability and 45 days for all other applicants.
- 6. If an applicant dies while an application is pending, the Administration shall complete an eligibility determination for the deceased applicant.
- 7. The Administration shall complete an eligibility determination on an application filed on behalf of a deceased applicant, if the application is filed in the month of the applicant's death.
- E. Redetermination of eligibility for a person terminated from the SSI cash program.
  - 1. Continuation of AHCCCS medical coverage. The Administration shall continue AHCCCS medical coverage for a person terminated from the SSI cash program until a redetermination of eligibility under subsection (E)(2) is completed.
  - 2. Coverage group screening. The Administration shall screen a person for eligibility under any coverage group under A.R.S. §§ 36-2901(6)(a)(i), (ii), (iii), (iv), and (v) and 36-2934.
    - a. If a person files an application for Arizona Long-Term Care System (ALTCs) coverage, the Administration shall determine eligibility under 9 A.A.C. 28, Article 4.
    - b. If an applicant or member is aged, blind, or disabled, but not in need of long-term care services, the Administration shall determine eligibility under this Article.
    - c. For all other persons, the Administration shall refer the applicant's case to the Department for an eligibility decision under Article 14.
  - 3. Eligibility decision.
    - a. If a person is eligible under this Article or 9 A.A.C. 28, Article 4, the Administration shall send a notice as under subsection (G) informing the applicant that AHCCCS medical coverage is approved.
    - b. If a person is ineligible, the Administration shall send a notice as under subsection (G) to deny AHCCCS medical coverage.
- F. Eligibility effective date. Eligibility is effective on the first day of the month that all eligibility requirements are met, including the period described under R9-22-303.
- G. Notice for approval or denial. The Administration shall send an applicant a written notice of the decision regarding the application. This notice shall include a statement of the intended action, and:
  - 1. If approved, the notice shall contain the effective date of eligibility.
  - 2. If approved under FESP, the notice shall also contain:
    - a. The emergency services certification end date,
    - b. A statement detailing the reason for the denial of full services,
    - c. The legal authority supporting the decision,
    - d. Where the legal authority supporting the decision can be found,

- e. An explanation of the right to request a hearing, and
  - f. The date by which a request for hearing shall be received by the Administration.
3. If denied, the notice shall contain:
- a. The effective date of the denial;
  - b. The reason for the denial, including specific financial calculations and the financial eligibility standard, if applicable;
  - c. Legal authority supporting the decision;
  - d. Where the legal authority supporting the decision can be found;
  - e. An explanation of the right to request a hearing; and
  - f. The date by which a request for hearing shall be received by the Administration.
- H. Reporting and verifying changes.**
1. An applicant or a member shall report to the Administration the following changes for the applicant or member, the applicant's or member's spouse, and the applicant or member's dependent children:
    - a. Change of address;
    - b. Change in the household's members;
    - c. Change in income;
    - d. Death;
    - e. Change in marital status;
    - f. Change in school attendance;
    - g. Change in Arizona state residency; and
    - h. Any other change that may affect the member's or applicant's eligibility.
  2. A member shall report to the Administration the following changes:
    - a. Admission to a penal institution,
    - b. Change in U.S. citizenship or immigrant status,
    - c. Receipt of a Social Security number, and
    - d. Change in first- or third-party liability that may contribute to the payment of all or a portion of the person's medical costs.
  3. A person other than a member or an applicant who reports a change to the Administration either orally or in writing shall include the:
    - a. Name of the affected applicant or member;
    - b. Description of the change;
    - c. Date the change occurred;
    - d. Name of the person reporting the change; and
    - e. Social Security or case number of the applicant or member, if known.
  4. An applicant or a member shall provide verification of changes if requested by the Administration.
  5. An applicant or a member shall report anticipated changes in eligibility to the Administration as soon as the person knows that the change will occur.
  6. An applicant or a member shall report an unanticipated change to the Administration within 10 days following the date the change occurred.
- I. Processing of changes and redeterminations.** If a member receives AHCCCS medical coverage under subsection (A), the Administration shall redetermine the member's eligibility at least once every 12 months or more frequently when changes occur that may affect eligibility.
- J. Actions that may result from a redetermination or change.** In processing a redetermination or change, the Administration shall determine whether there should be:
1. No change in eligibility,
  2. Discontinuance of eligibility if a condition of eligibility is no longer met, or
  3. A change in the program under which a person receives AHCCCS medical coverage.
- K. Notice of discontinuance.**
1. Contents of notice. The Administration shall issue a notice when it takes action to discontinue a member's eligibility. The notice shall contain the following information:
    - a. A statement of the action that is being taken;
    - b. The effective date of the action;
    - c. The reason for the discontinuance, including specific financial calculations and the financial eligibility standard if applicable;
    - d. The legal authority that supports the action proposed by the Administration;
    - e. Where the legal authority supporting the decision can be found;
    - f. An explanation of the right to request a hearing; and
    - g. The date by which a hearing request shall be received by the Administration and the right to continue medical coverage pending appeal.
  2. Advance notice of changes in eligibility. Advance notice means a notice of proposed action that is issued to the member at least 10 days before the effective date of the proposed action. Except under subsection (K)(3), the Administration shall issue an advance notice when an adverse action is taken to suspend, reduce or discontinue eligibility.
  3. Exceptions from advance notice. The Administration shall issue a notice to a member to discontinue eligibility no later than the effective date of the action if:
    - a. The member provides to the Administration a clearly written statement, signed by that member, that:
      - i. Services are no longer wanted; or
      - ii. Gives information that requires a discontinuance or reduction of services and indicates that the member understands that this is the result of supplying the information;
    - b. The member provides information to the Administration that requires a discontinuance of eligibility and a member signs a written statement waiving advance notice;
    - c. The member cannot be located and mail sent to the member's last known address has been returned as undeliverable under 42 CFR 431.213(d) subject to reinstatement of discontinued eligibility;
    - d. The member has been admitted to a public institution where a member is ineligible for coverage;
    - e. The member has been approved for Medicaid in another state; or
    - f. The Administration receives information confirming the death of the member.
- L. Request for hearing.** An applicant or member may request a hearing under Chapter 34 for any of the following adverse actions:
1. Complete or partial denial of eligibility,
  2. Discontinuance or reduction of AHCCCS medical coverage, or
  3. Delay in the eligibility determination beyond the timeframes listed in R9-22-1501(D).
- M. Assignment of rights.** A person determined eligible assigns rights to all types of medical benefits to which the person is entitled under operation of law under A.R.S. § 36-2903.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7

A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 9 A.A.R. 5123, effective January 3, 2004 (Supp. 03-4). Amended by exempt rulemaking at 10 A.A.R. 23, effective December 9, 2003 (Supp. 03-4). Amended by exempt rulemaking at 10 A.A.R. 4588, effective October 12, 2004 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1). Amended by final rulemaking at 19 A.A.R. 3309, effective November 30, 2013 (Supp. 13-4).

#### **R9-22-1502. Repealed**

##### **Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Repealed by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

#### **R9-22-1503. Financial Eligibility Criteria**

- A.** General income eligibility. Except as provided under subsection (B) of this rule, the Administration or its designee shall count the identified income under 42 U.S.C. 1382a and 20 CFR 416 Subpart K.
- B.** Exceptions.
  1. In-kind support and maintenance under 42 U.S.C. 1382a(a)(2)(A) is excluded.
  2. For a person living with a spouse, the Administration or its designee calculates net income for an eligible couple under 20 CFR 416.1160 as of April 1, 2013, 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, even if the spouse is not eligible for or applying for SSI or coverage under this Article.
  3. In determining the net income of a married couple living with a child or the net income of a person who is not living with a spouse but living with a child, a child allocation is allowed as a deduction from the combined net income of the couple for each child regardless of whether the child is ineligible or eligible. For the purposes of this Section, a child means a person who is unmarried, natural or adopted, and under age 18 or under age 22 if a full-time student. Each child's allocation deduction is reduced by that child's income, including public income maintenance payments, using the methodology under 20 CFR 416.1163(b)(1) and (2) as of April 1, 2013, 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.
  4. In determining the income deemed available to an applicant who is a child from an ineligible parent or parents, an allocation for each eligible or ineligible child of the parent is allowed as a deduction from the parent's income under 20 CFR 416.1165(b). The child's allocation is reduced by that child's income, including public income maintenance payments.

5. In determining the income of a person who receives an annual Title II Cost of Living Allowance (COLA) increase, the COLA amount is disregarded from January until the Administration applies the effective income limits under R9-22-1504 based on the FPL for the calendar year.

##### **Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

#### **R9-22-1504. Eligibility For A Person Who is Aged, Blind, or Disabled**

- A.** To be eligible for AHCCCS medical coverage, an applicant shall meet the conditions of eligibility and requirements in this Article and:
  1. Meet one of the income tests described in subsection (B) or (C), or
  2. The special requirements in R9-22-1505.
- B.** The Administration shall determine whether the applicant's countable income, as described in R9-22-1503, is less than or equal to 100 percent of the SSI FBR, as adjusted annually.
- C.** The Administration shall determine whether the applicant's countable income, as described in R9-22-1503, without deducting the amount from earned income under 42 U.S.C. 1382a(b)(4)(B)(iii), is less than or equal to 100 percent FPL as adjusted annually.

##### **Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4).

#### **R9-22-1505. Eligibility for Special Groups**

- A.** The following are considered special groups:
  1. A person meeting the requirements in A.R.S. § 36-2903.03 who:
    - a. Is aged, blind, or disabled under 42 CFR 435.520, 42 CFR 435.530, or 42 CFR 435.540 as of October 1, 2012, which are 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. Received SSI cash or AHCCCS medical coverage under this subsection, or subsections (A)(2), (A)(3), or (A)(4) on or before August 21, 1996;
    - c. Was residing in the United States under color of law on or before August 21, 1996; and
    - d. Meets the requirements under this Article;
  2. A disabled child (DC) under 42 U.S.C. 1396a(a)(10)(A)(i)(II). A disabled child is a child who:
    - a. Was receiving SSI cash benefits as a disabled child on August 22, 1996;
    - b. Lost SSI cash benefits effective July 1, 1997, or later, due to a disability determination under Section 211(d) of Subtitle B of P.L. 104-193;

- c. Continues to meet the disability requirements for a child that were in effect on August 21, 1996; and
- d. Meets the requirements under this Article;
- 3. A disabled adult child (DAC), under 42 U.S.C. 1383c(c) who:
  - a. Was determined disabled by the Social Security Administration before attaining the age of 22 years,
  - b. Became entitled to or received an increase in child's insurance benefits under Title II of the Act on the basis of blindness or disability,
  - c. Was terminated from SSI cash benefits due to entitlement to or an increase in income under Title II of the Act,
  - d. Meets the requirements under this Article, and
  - e. Is 18 years of age or older;
- 4. A disabled widow or widower (DWW) under 42 U.S.C. 1383c(b) and (d) who:
  - a. Is blind or disabled,
  - b. Is ineligible for Medicare Part A benefits,
  - c. Received SSI cash benefits the month before Title II of the Act benefit payments began,
  - d. Meets the requirements under this Article;
  - e. Is at least 50 years of age but under age 65; and
  - f. Is unmarried.
- 5. Under 42 CFR 435.135, a person who:
  - a. Is aged, blind, or disabled;
  - b. Receives benefits under Title II of the Act;
  - c. Received SSI cash benefits in the past;
  - d. Received SSI cash benefits and Title II of the Social Security Act benefits concurrently for at least one month anytime after April 1977;
  - e. Became ineligible for SSI cash benefits while receiving SSI and benefits under Title II of the Act concurrently; and
  - f. Meets the requirements under this Article.
- B. Income for special groups.**
  - 1. Except as provided in subsection (B)(2), income eligibility is determined using the income criteria in R9-22-1503.
  - 2. Exceptions to income for special groups.
    - a. For a person in the DAC coverage group under subsection (A)(3), the applicant's Title II of the Social Security Act benefits are disregarded in determining income eligibility under 42 U.S.C. 1383c(c).
    - b. For a person in the DWW coverage group, under subsection (A)(4), the applicant's Title II of the Social Security Act benefits are disregarded in determining income eligibility under 42 U.S.C. 1383c(b) and (d).
    - c. For an applicant or member in the coverage group under subsection (A)(5), the portion of the applicant's or member's Title II of the Social Security Act benefits attributed to cost-of-living adjustments received by the applicant since the effective date of SSI ineligibility is disregarded in determining income eligibility under 42 CFR 435.135.
- C. 100 percent FBR.** As a condition of eligibility for all special groups, countable income shall be equal to or less than 100 percent of the SSI FBR, as adjusted annually.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final

rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

**R9-22-1506. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

**R9-22-1507. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

**R9-22-1508. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

**ARTICLE 16. EXPIRED****R9-22-1601. Expired****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). New Section made by exempt rulemaking at 12 A.A.R. 3892, effective October 1, 2006 (Supp. 06-3). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 2384, effective October 31, 2011 (Supp. 11-4).

**R9-22-1602. Expired****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). New Section made by exempt rulemaking at 12 A.A.R. 3892, effective October 1, 2006 (Supp. 06-3). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 2384, effective October 31, 2011 (Supp. 11-4).

**R9-22-1603. Expired****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). New Section made by exempt rulemaking at 12 A.A.R. 3892, effective October 1, 2006 (Supp. 06-3). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 2384, effective October 31, 2011 (Supp. 11-4).

**R9-22-1604. Expired****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). New Section made by exempt rulemaking at 12 A.A.R. 3892, effective October 1, 2006 (Supp. 06-3). Section expired under A.R.S. § 41-



**R9-22-1617. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

**R9-22-1618. Expired****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). New Section made by exempt rulemaking at 12 A.A.R. 3892, effective October 1, 2006 (Supp. 06-3). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 2384, effective October 31, 2011 (Supp. 11-4).

**R9-22-1619. Expired****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). New Section made by exempt rulemaking at 12 A.A.R. 3892, effective October 1, 2006 (Supp. 06-3). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 2384, effective October 31, 2011 (Supp. 11-4).

**R9-22-1620. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

**R9-22-1621. Reserved****R9-22-1622. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

**R9-22-1623. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

**R9-22-1624. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

**R9-22-1625. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

**R9-22-1626. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

**R9-22-1627. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

**R9-22-1628. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

**R9-22-1629. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

**R9-22-1630. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

**R9-22-1631. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

**R9-22-1632. Reserved****R9-22-1633. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

**R9-22-1634. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

**R9-22-1635. Reserved****R9-22-1636. Repealed****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).



**ARTICLE 17. ENROLLMENT****R9-22-1701. Enrollment-Related Definitions**

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

“Annual enrollment choice” means the annual opportunity for a person to change contractors.

“Auto-assignment algorithm” or “Algorithm” means a formula used by the Administration to assign to a contractor a member who did not make a timely choice under R9-22-1702.

“CMDP” means Comprehensive Medical and Dental Program.

“Disenrollment” means the discontinuance of a person’s entitlement to receive covered services from a contractor of record.

“Enrollment” means the process by which an eligible person becomes a member of a contractor’s plan.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Amended by exempt rulemaking at 7

A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

Amended to correct a typographical error, filed in the Office of the Secretary of State October 30, 2001 (Supp. 01-4). Amended by exempt rulemaking at 7 A.A.R. 5701, effective December 1, 2001 (Supp. 01-4). Amended by exempt rulemaking at 10 A.A.R. 4588, effective October

12, 2004 (Supp. 04-4). Section repealed; new Section

made by final rulemaking at 14 A.A.R. 1598, effective May 31, 2008 (Supp. 08-2).

**R9-22-1702. Enrollment of a Member with an AHCCCS Contractor**

**A.** General enrollment requirements. The Administration shall enroll a member with a contractor as described in this Section, unless the member has pre-selected a contractor on the application:

1. Except as provided in subsections (A)(3), (A)(5), and (C), a member who is determined to be eligible under this Chapter and resides in an area served by more than one contractor, may choose an available contractor serving the member’s GSA within 30 days from the date of notice of enrollment. A Native American member may select IHS or another available contractor.
2. If the member does not make a choice under subsection (A)(1), the Administration shall immediately auto-assign the member to:
  - a. IHS if the member is a Native American living on a reservation,
  - b. A contractor based on family continuity, or
  - c. A contractor by using the auto-assignment algorithm.
3. If the member’s period of ineligibility and disenrollment from the contractor of record is for a period of less than 90 days, the Administration shall enroll the member with the member’s most recent contractor of record, if available, except if:
  - a. The member no longer resides in the contractor’s GSA;
  - b. The contractor’s contract is suspended or terminated;

- c. The member was previously enrolled with CMDP but at the time of re-enrollment the member is not a foster care child;
  - d. The member chooses another contractor or chooses IHS, if available to the member, during the annual enrollment choice period; or
  - e. The member was previously enrolled with a contractor but at the time of re-enrollment the member is a foster care child.
4. When the member’s disenrollment period is more than 90 days, the member may select a contractor as described in subsection (A)(1).
  5. The Administration shall not enroll a member with a contractor if a member:
    - a. Is eligible for the FESP under R9-22-1419;
    - b. Is eligible for less than 30 days from the date the Administration receives notification of a member’s eligibility, except for a member who is enrolled with CMDP or IHS;
    - c. Is eligible only for a retroactive period of eligibility, except for a member who is enrolled with CMDP or IHS; or
    - d. Resides in an area not served by a contractor.
- B.** Fee-for-service coverage. A member not enrolled with a contractor under subsection (A)(5) shall obtain covered medical services from an AHCCCS-registered provider on a fee-for-service basis under Article 7.
- C.** Foster care child. The Administration shall enroll a member with CMDP if the member is a foster care child under A.R.S. § 8-512.
- D.** Family Planning Services Extension Program. A member eligible for the Family Planning Services Extension Program under R9-22-1431, shall remain enrolled with the member’s contractor of record or IHS.
- E.** Contractor or IHS enrollment change for a member.
1. The Administration shall change a member’s enrollment if the member requests a change to an available contractor or IHS during an annual enrollment period. A Native American may change from an available contractor to IHS or from IHS to an available contractor at any time.
  2. The Administration shall approve a change in enrollment for any member if the change is a result of the final outcome of a grievance under 9 A.A.C. 34.
  3. A member may choose a different contractor if the member moves into a GSA not served by the current contractor or if the contractor is no longer available. If the member does not select a contractor, the Administration shall auto-assign the member as provided in subsection (A)(2).
  4. The Administration shall provide the member 60-day advance notice of the member’s option to change plans by the member’s annual enrollment date.
  5. A member may disenroll from a plan if:
    - a. The member moves out of the GSA;
    - b. The plan does not, because of moral or religious objections, cover the service a member seeks; or
    - c. The member needs related services to be performed at the same time; not all related services are available within the network; and the member’s primary care provider or another provider determines that receiving the services separately would subject the member to unnecessary risk.
  6. For exceptions to this Article, the Administration shall approve a change for an enrolled member as determined by the Director.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 14 A.A.R. 1598, effective May 31, 2008 (Supp. 08-2).

**R9-22-1703. Effective Date of Enrollment with a Contractor**

- A.** Effective date of enrollment. A member's date of enrollment is the date enrollment action is taken by the Administration. However, if a plan change occurs for an annual enrollment choice, the effective date is the month of the member's enrollment anniversary date.
- B.** Financial liability of the contractor. The contractor shall be financially liable for an enrolled member's care as specified in contract.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 14 A.A.R. 1598, effective May 31, 2008 (Supp. 08-2).

**R9-22-1704. Newborn Enrollment**

- A.** General.
1. The Administration shall enroll a newborn child of an eligible mother with an available contractor or IHS, based on the mother's enrollment.
  2. The Administration shall auto-assign a newborn child of an eligible mother who is not enrolled with a contractor or IHS or who is enrolled with CMDP. When a mother enrolled in CMDP has a newborn and the newborn is surrendered to Administration on Children, Youth and Families (ACYF), the newborn is then enrolled with CMDP.
  3. The Administration shall notify the mother of the right to choose a different contractor for her newborn child. The mother may make her choice within 30 days from the date of notice of enrollment.
- B.** Financial liability for newborns. The contractor shall be financially liable for the medical care of a newborn as specified in contract.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended to correct a typographical error, filed in the Office of the Secretary of State October 30, 2001 (Supp. 01-4). Section repealed; new Section made by final rulemaking at 14 A.A.R. 1598, effective May 31, 2008 (Supp. 08-2).

**R9-22-1705. Guaranteed Enrollment Period**

- A.** General. Except for members enrolled with IHS or CMDP, the Administration shall provide a guaranteed enrollment period for a one-time period that begins on the effective date of the member's initial enrollment with a contractor and ends on the last day of the fifth full calendar month after the date of the member's initial enrollment.
- B.** Exceptions to guaranteed period. The Administration shall not grant a guaranteed enrollment period or shall terminate a guaranteed enrollment period as provided in subsection (C), if the member:

1. Did not meet the conditions of eligibility when initially enrolled with the contractor;
  2. Except as provided in 9 A.A.C. 22, Article 12, is an inmate of a public institution as defined in 42 CFR 435.1010;
  3. Dies;
  4. Moves out-of-state;
  5. Voluntarily withdraws from the AHCCCS program;
  6. Is adopted; or
  7. Has whereabouts that are unknown.
- C.** Disenrollment effective date. The Administration shall terminate any guaranteed enrollment period to which the member is not entitled effective on:
1. The date the member is admitted to a public institution under subsection (B);
  2. The member's date of death;
  3. The last day of the month in which the Administration receives notification that a member moved out-of-state;
  4. The date the Administration receives written notification of the member's voluntary withdrawal from the AHCCCS program;
  5. The last day of the month in which the Administration receives notification that a member's adoption proceedings are finalized; or
  6. The last day of the month in which the Administration receives notification that a member's whereabouts are unknown.
- D.** Retroactive adjustments. The Administration shall adjust the member's eligibility and enrollment retroactively under subsection (C).

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 1598, effective May 31, 2008 (Supp. 08-2).

**ARTICLE 18. RESERVED****ARTICLE 19. FREEDOM TO WORK**

*Article 19, consisting of Sections R9-22-1901 through R9-22-1922, made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4).*

**R9-22-1901. General Freedom to Work Requirements**

Under 42 U.S.C. 1396a(a)(10)(A)(ii)(XV) and (XVI), the Administration shall determine eligibility for AHCCCS medical services, under Article 2 of this Chapter, using the eligibility criteria and requirements under this Article for an applicant or member who is:

1. At least 16 years of age, but less than 65 years of age,
2. Employed, and
3. Not income eligible under A.R.S. § 36-2901(6)(a).

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4).

**R9-22-1902. General Administration Requirements**

The Administration shall comply with the confidentiality rule under R9-22-512(C).

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Amended by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

**R9-22-1903. Application for Coverage**

- A.** A person may apply by submitting an application to an Administration office.

- B. The application date is the date the application is received at an Administration office or outstation location approved by the Director as described under R9-22-1406(A).
- C. The provisions in R9-22-1406(B) and (D) apply to this Section.
- D. The applicant or representative who files the application may withdraw the application for coverage either orally or in writing. An applicant withdrawing an application shall receive a denial notice under R9-22-1904.
- E. Except as provided in 42 CFR 435.911, the Administration shall determine eligibility within 45 days.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Amended by final rulemaking at 9 A.A.R. 5123, effective January 3, 2004 (Supp. 03-4). Amended by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

**R9-22-1904. Notice of Approval or Denial**

The Administration shall send an applicant a written notice of the decision regarding the application. This notice shall include a statement of the action, and:

- 1. If approved, the notice shall contain:
  - a. The effective date of eligibility,
  - b. The amount the person shall pay, and
  - c. An explanation of the person's hearing rights specified in 9 A.A.C. 34.
- 2. If denied, R9-22-1501(G)(3) applies.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Amended by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

**R9-22-1905. Reporting and Verifying Changes**

An applicant or member shall report and verify changes, as described under R9-22-1501(H), to the Administration.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Amended by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

**R9-22-1906. Actions that Result from a Redetermination or Change**

The processing of a redetermination or change shall result in one of the following actions:

- 1. No change in eligibility or premium,
- 2. Discontinuance of eligibility if a condition of eligibility is no longer met,
- 3. A change in premium amount, or
- 4. A change in the coverage group under which a person receives AHCCCS medical coverage.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4).

**R9-22-1907. Notice of Adverse Action Requirements**

- A. The requirements under R9-22-1501(K)(1) apply.
- B. Advance notice of a change in eligibility or premium amount. Advance notice means a notice of proposed action that is issued to the member at least 10 days before the effective date of the proposed action. Except under subsection (C), advance notice shall be issued whenever an adverse action is taken to discontinue eligibility, or increase the premium amount.

- C. Exceptions from advance notice. A notice shall be issued to the member to discontinue eligibility no later than the effective date of action if:

- 1. A member provides a clearly written statement, signed by that member, that services are no longer wanted.
- 2. A member provides information that requires termination of eligibility or reduction of services, indicates that the member understands that this must be the result of supplying that information, and the member signs a written statement waiving advance notice;
- 3. A member cannot be located and mail sent to the member's last known address has been returned as undeliverable subject to reinstatement of discontinued services under 42 CFR 431.231(d);
- 4. A member has been admitted to a public institution where a person is ineligible for coverage;
- 5. A member has been approved for Medicaid in another state; or
- 6. The Administration receives information confirming the death of a member.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Amended by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

**R9-22-1908. Request for Hearing**

An applicant or member may request a hearing under 9 A.A.C. 34.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Amended by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

**R9-22-1909. Conditions of Eligibility**

An applicant or member shall meet the following conditions to qualify for the Freedom to Work program:

- 1. Furnish a valid Social Security Number (SSN);
- 2. Be a resident of Arizona;
- 3. Be a citizen of the United States, or meet requirements for a qualified alien under A.R.S. § 36-2903.03(B);
- 4. Be at least 16 years of age, but less than 65 years of age;
- 5. Have countable income that does not exceed 250 percent of FPL. The Administration shall count the income under 42 U.S.C. 1382a and 20 CFR 416 Subpart K with the following exceptions:
  - a. The unearned income of the applicant or member shall be disregarded,
  - b. The income of a spouse or other family member shall be disregarded, and
  - c. The deduction for a minor child shall not apply;
- 6. Comply with the member responsibility provisions under R9-22-1502(D) and (F).

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Amended by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1). Section repealed; new Section made by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

**R9-22-1910. Prior Quarter Eligibility**

A person may be made eligible during a prior quarter period when applying for the Freedom to Work program, as described under Article 3.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1). New Section made by final rulemaking at 19 A.A.R. 3309, effective November 30, 2013 (Supp. 13-4).

**R9-22-1911. Repealed****Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

**R9-22-1912. Repealed****Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

**R9-22-1913. Premium Requirements**

- A.** As a condition of eligibility, an applicant or member shall:
1. Pay the premium required under subsection (B).
  2. Not have any unpaid premiums for more than one month's premium amount.
- B.** The Administration shall process premiums under 9 A.A.C. 31, Article 14 with the following exceptions:
1. A member who has countable income:
    - a. Under \$500, the monthly premium payment shall be \$0.
    - b. Over \$500 but not greater than \$750, the monthly premium payment shall be \$10.
  2. The premium for a member shall be increased by \$5 for each \$250 increase in countable income above \$750.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Amended by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

**R9-22-1914. Repealed****Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

**R9-22-1915. Institutionalized Person**

A person is not eligible for AHCCCS medical coverage if the person is:

1. An inmate of a public institution if federal financial participation (FFP) is not available, or
2. Age 21 through age 64 and is residing in an Institution for Mental Disease under 42 CFR 435.1009 except when allowed under the Administration's Section 1115 IMD waiver or allowed under a managed care contract approved by CMS.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Amended by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

**R9-22-1916. Repealed****Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

**R9-22-1917. Repealed****Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

**R9-22-1918. Additional Eligibility Criteria for the Basic Coverage Group**

An applicant or member shall meet the following eligibility criteria:

1. Disabled. As a condition of eligibility, an applicant or member shall be disabled. Disabled means a person who has been determined disabled by the Department of Economic Security, Disability Determination Services Administration, under 42 U.S.C. 1382c(a)(3)(A) through (E), except employment activity, earnings, and substantial gainful activity shall not be considered in determining whether the individual meets the definition of disability.
2. Employed. As a condition of eligibility, an applicant or member shall be employed. Employed means that an applicant or member is paid for working and Social Security or Medicare taxes are paid on the applicant or member's work.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4).

**R9-22-1919. Additional Eligibility Criteria for the Medically Improved Group**

As a condition of eligibility for the Medically Improved Group, a member shall:

1. Be employed. Under this Section, employed means an individual who:
  - a. Earns at least the minimum wage and works at least 40 hours per month, or
  - b. Has gross monthly earnings at least equal to those earned by an individual who is earning the minimum wage working 40 hours per month.
2. Cease to be eligible for medical coverage under R9-22-1918 or a similar Basic Coverage Group program administered by another state because the member, by reason of medical improvement, is determined at the time of a regularly scheduled continuing disability review to no longer be disabled; and
3. Continues to have a severe medically determinable impairment, as determined under Social Security Act section 1902(a)(10)(A)(ii)(XVI).

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Amended by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

**R9-22-1920. Repealed****Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 220, effective March 7, 2009 (Supp. 09-1).

**R9-22-1921. Enrollment**

The Administration shall enroll members under Article 17 of this Chapter. If a member has not paid a required premium, the Administration shall not grant a guaranteed enrollment period.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4).

**R9-22-1922. Redetermination of Eligibility**

- A. Redetermination. Except as provided in subsection (B), the Administration shall complete a redetermination of eligibility at least once a year.
- B. Change in circumstance. The Administration may complete a redetermination of eligibility if there is a change in the member's circumstances, including a change in disability or employment that may affect eligibility.
- C. Medical Improvement. If a member is no longer disabled under R9-22-1918, the Administration shall determine if the member is eligible under other coverage groups including the medically improved group.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 95, effective January 1, 2003 (Supp. 02-4).

## **ARTICLE 20. BREAST AND CERVICAL CANCER TREATMENT PROGRAM**

**R9-22-2001. Breast and Cervical Cancer Treatment Program Related Definitions**

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

“AZ-NBCCEDP” means the Arizona programs of the National Breast and Cervical Cancer Early Detection Program. AZ-NBCCEDP provides breast and cervical cancer screening and diagnosis in Arizona.

“Cryotherapy” means the destruction of abnormal tissue using an extremely cold temperature.

“LEEP” means the loop electrosurgical excision procedure that passes an electric current through a thin wire loop.

“Peer-reviewed study” means that, prior to publication, a medical study has been subjected to the review of medical experts who:

- Have expertise in the subject matter of the study,
- Evaluate the science and methodology of the study,
- Are selected by the editorial staff of the publication, and
- Review the study without knowledge of the identity or qualifications of the author.

“WWHP” means the Well Women Healthcheck Program administered by the Arizona Department of Health Services. The WWHP is one of the programs within AZ-NBCCEDP that provides breast and cervical cancer screening and diagnosis.

**Historical Note**

New Section made by final rulemaking at 7 A.A.R. 5814, effective December 6, 2001 (Supp. 01-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4488, effective January 6, 2007 (Supp. 06-4).

**R9-22-2002. General Requirements**

- A. Confidentiality. The Administration shall maintain the confidentiality of a woman's records and shall not disclose a woman's financial, medical, or other confidential information except as allowed under R9-22-512.
- B. Covered services. A woman who is eligible under this Article receives all medically necessary services under Articles 2 and 12 of this Chapter.

- C. Choice of health plan. A woman who is eligible under this Article shall be enrolled with a contractor under Article 17 of this Chapter.
- D. A Native American woman who receives services through Indian Health Service (IHS) or through a tribal health program qualifies for services provided under this Article if all eligibility requirements are met.
- E. A woman qualified under this Article shall pay co-pays as described in R9-22-711.

**Historical Note**

New Section made by final rulemaking at 7 A.A.R. 5814, effective December 6, 2001 (Supp. 01-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4488, effective January 6, 2007 (Supp. 06-4).

**R9-22-2003. Eligibility Criteria**

- A. General. To be eligible under this Article, a woman shall meet the requirements of this Article and:
  1. Be screened for breast and cervical cancer through AZ-NBCCEDP;
  2. Be less than 65 years of age;
  3. Be ineligible for Title XIX under Articles 14 and 15 in this Chapter;
  4. Receive a positive screen under subsection (A)(1), a confirmed diagnosis through AZ-NBCCEDP, and need treatment for breast cancer or cervical cancer, including a pre-cancerous cervical lesion, as specified in R9-22-2004;
  5. Not be covered under creditable coverage as specified in Section 2701(c) of the Public Health Services Act, 42 U.S.C. 300gg(c). For purposes of this Article, IHS or Tribal health coverage is not considered creditable coverage as specified in 42 U.S.C. 1396a(a)(10)(A)(ii), as amended by the Native American Breast and Cervical Cancer Treatment Technical Amendment Act of 2002; and
  6. Meet the requirements under R9-22-1417 and R9-22-1418.
- B. Ineligible woman. A woman is ineligible under this Article if the woman:
  1. Is an inmate of a public institution and federal financial participation (FFP) is not available,
  2. Is at least age 21 but less than age 65 and resides in an Institution for Mental Disease (IMD) as defined in R9-22-112, except if allowed under the Administration's Section 1115 waiver, or
  3. No longer meets an eligibility requirement under this Article.
- C. Metastasized cancer. The AHCCCS Chief Medical Officer may continue a woman's eligibility under this Article if a metastasized cancer is found in another part of the woman's body and that metastasized cancer is a known or a presumed complication of the breast or cervical cancer as determined by the treating physician.
- D. Reoccurrence of cancer. A woman shall have eligibility reestablished after eligibility under this Article ends if the woman is screened under the AZ-NBCCEDP program and additional breast cancer or cervical cancer, including a pre-cancerous cervical lesion, is found.
- E. Ineligible male. A male is precluded from receiving screening and diagnostic services under the AZ-NBCCEDP program and is ineligible under this Article.

**Historical Note**

New Section made by final rulemaking at 7 A.A.R. 5814, effective December 6, 2001 (Supp. 01-4). Amended by

final rulemaking at 12 A.A.R. 4488, effective January 6, 2007 (Supp. 06-4).

#### **R9-22-2004. Treatment**

- A.** Breast cancer. Coverage for treatment for breast cancer under this Article shall conclude on the last provider visit for the specific treatment of the cancer or at the end of hormonal therapy for the cancer, whichever is later. For purposes of this subsection treatment means:
1. Lumpectomy or surgical removal of breast cancer;
  2. Chemotherapy;
  3. Radiation therapy; and
  4. A treatment for breast cancer that, as determined by the AHCCCS Chief Medical Officer, is considered the standard of care as supported by a peer-reviewed study published in a medical journal.
- B.** Pre-cancerous cervical lesion. Coverage for treatment for a pre-cancerous cervical lesion under this Article, including moderate or severe cervical dysplasia or carcinoma in situ, shall conclude on the last provider visit for specific treatment for the pre-cancerous lesion. For purposes of this subsection treatment means:
1. Conization;
  2. LEEP;
  3. Cryotherapy; and
  4. A treatment for pre-cancerous cervical lesion that, as determined by the AHCCCS Chief Medical Officer, is considered the standard of care as supported by a peer-reviewed study published in a medical journal.
- C.** Cervical cancer. Coverage for treatment for cervical cancer under this Article shall conclude on the last provider visit for the specific treatment for the cancer. For purposes of this subsection treatment means:
1. Surgery;
  2. Radiation therapy;
  3. Chemotherapy; and
  4. A treatment for cervical cancer that, as determined by the AHCCCS Chief Medical Officer, is considered the standard of care as supported by a peer-reviewed study published in a medical journal.

#### **Historical Note**

New Section made by final rulemaking at 7 A.A.R. 5814, effective December 6, 2001 (Supp. 01-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4488, effective January 6, 2007 (Supp. 06-4).

#### **R9-22-2005. Application Process**

- A.** Application. A woman may apply for eligibility under this Article by submitting a complete application as specified in R9-22-1406.
- B.** Submitting the application. The woman may complete and submit an application at the time of the AZ-NBCCEDP screening. The AZ-NBCCEDP staff may mail or fax the application directly to the Administration.
- C.** Date of application. The date of the application is the date of the diagnostic procedure that results in a positive diagnosis for breast cancer or cervical cancer, including a pre-cancerous cervical lesion.
- D.** Responsibility of a woman who is applying or who is a member. A woman who is applying or who is a member shall:
1. Provide medical insurance information, including any changes in medical insurance; and
  2. Inform the Administration about a change in address, residence, and alienage status.

#### **Historical Note**

New Section made by final rulemaking at 7 A.A.R. 5814, effective December 6, 2001 (Supp. 01-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4488, effective January 6, 2007 (Supp. 06-4).

#### **R9-22-2006. Approval, Denial, or Discontinuance of Eligibility**

- A.** Eligibility determination. The Administration shall determine eligibility under this Article and send the notice under subsection (B) or (C) within seven days of receiving a complete application.
- B.** Approval. If a woman meets all the eligibility requirements in this Article, the Administration shall provide the woman with an approval notice. The approval notice shall contain:
1. The name of the eligible woman, and
  2. The effective date of eligibility.
- C.** Denial. If the Administration denies eligibility, the Administration shall provide the woman with a denial notice. The denial notice shall contain:
1. The name of the ineligible woman,
  2. The specific reason why the woman is ineligible,
  3. The legal citations supporting the reason for the denial,
  4. The location where the woman can review the legal citations, and
  5. Information regarding the woman's appeal and request for hearing rights.
- D.** Discontinuance.
1. Except as specified in subsection (D)(2), if a woman no longer meets an eligibility requirement under this Article, the Administration shall provide the woman a Notice of Action no later than 10 days before the effective date of the discontinuance.
  2. The Administration may mail the Notice of Action no later than the effective date of the discontinuance if the Administration:
    - a. Receives a written statement from the woman voluntarily withdrawing from AHCCCS,
    - b. Receives information confirming the death of the woman,
    - c. Receives returned mail with no forwarding address from the post office and the woman's whereabouts are unknown, or
    - d. Receives information confirming that the woman has been approved for Title XIX services outside the state of Arizona.
  3. The Notice of Action shall contain the:
    - a. Name of the ineligible woman,
    - b. Effective date of the discontinuance,
    - c. Specific reason why the woman is discontinued,
    - d. Legal citations supporting the reason for the discontinuance,
    - e. Location where the woman can review the legal citations, and
    - f. Information regarding the woman's appeal and request for hearing rights.
- E.** Request for hearing. A woman who is denied, or discontinued for the Breast and Cervical Cancer Treatment Program may request a hearing under Chapter 34.

#### **Historical Note**

New Section made by final rulemaking at 7 A.A.R. 5814, effective December 6, 2001 (Supp. 01-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4488, effective January 6, 2007 (Supp. 06-4).

**R9-22-2007. Effective and End Date of Eligibility**

- A. Eligibility is effective on the first day of the month that all eligibility requirements are met, including the period described under R9-22-303.
- B. The end date of eligibility:
  1. For breast cancer, is 12 months after the last provider visit for a treatment specified in R9-22-2004 for the cancer or at the end of hormonal therapy for the cancer, whichever is later.
  2. For pre-cancerous cervical lesion, is four months after the last provider visit for a treatment specified in R9-22-2004 for the pre-cancerous lesion.
  3. For cervical cancer, is 12 months after the last provider visit for a treatment specified in R9-22-2004 for the cancer.

**Historical Note**

New Section made by final rulemaking at 7 A.A.R. 5814, effective December 6, 2001 (Supp. 01-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4488, effective January 6, 2007 (Supp. 06-4). Section amended by final rulemaking at 19 A.A.R. 3309, effective November 30, 2013 (Supp. 13-4).

**R9-22-2008. Redetermination of Eligibility**

- A. Redetermination. Except as provided in subsection (B), the Administration shall redetermine eligibility at least once a year. If a woman continues to meet the requirements of eligibility for the Breast and Cervical Cancer Treatment Program under this Article, the Administration shall notify the woman of continued eligibility. A woman is not required to be screened for breast and cervical cancer through AZ-NBC-CEDP at redetermination.
- B. Change in circumstance. The Administration shall complete a redetermination of eligibility if there is a change in the woman's circumstances that may affect eligibility, including a change in treatment.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4488, effective January 6, 2007 (Supp. 06-4).

**ARTICLE 21. TRAUMA AND EMERGENCY SERVICES FUND**

*Article 21, consisting of Sections R9-22-2101 through R9-22-2103, made by exempt rulemaking at 9 A.A.R. 4001, effective October 19, 2003 (Supp. 03-3).*

**R9-22-2101. General Provisions**

- A. A.R.S. § 36-2903.07 establishes the Administration as the authority to administer the Trauma and Emergency Services Fund.
- B. The Administration shall distribute 90% of monies from the trauma and emergency services fund to a level I trauma center, as defined in subsection (F) of this Section, for unrecovered trauma center readiness costs as defined in subsection (F) of this Section. Reimbursement is limited to no more than the amount of unrecovered trauma center readiness costs as determined in subsections (D) and (E) of this Section. Unexpended funds may be used to reimburse unrecovered emergency room costs under subsection (C) of this Section.
- C. The Administration shall distribute 10% of monies from the trauma and emergency services fund, for unrecovered emergency services costs, to a hospital having an emergency department, using criteria under R9-22-2103. Reimbursement is limited to no more than the amount of unrecovered emergency services costs as determined in R9-22-2103. The Administration may distribute more than 10% of the monies

for unrecovered emergency room costs when there are unexpended monies under subsection (B) of this Section.

- D. The Administration shall distribute a reporting tool and guidelines to level I trauma centers to determine, on an annual basis, the unrecovered trauma center readiness costs for level I trauma centers as defined in subsection (F) of this Section. The reporting time-frame is July 1 of the prior year through June 30 of the reporting year. A level I trauma center shall submit the requested data and a copy of the most recently completed uniform accounting report under A.R.S. § 36-125.04 to the Administration no later than October 31 of each reporting year.
- E. When a level I trauma center closes in a county where there are one or more level I trauma center(s) remaining in operation, the following shall occur:
  1. The closing level I trauma center shall submit the requested data under subsection (D) of this Section for the months of the reporting time-frame in which it met the definition of a level I trauma center, and
  2. The data under subsection (D) of this Section, which is submitted by the closing level I trauma center, shall be added to the remaining level I trauma center(s) in that county for the current reporting time-frame only.
- F. In addition to definitions contained in A.R.S. § 36-2901, the words and phrases in this Chapter have the following meanings unless the context explicitly requires another meaning:
  1. "Level I trauma center" means any acute care hospital that:
    - a. Provides in-house 24-hour daily dedicated trauma surgical services as defined in A.R.S. § 36-2201(26) pertaining to a trauma center, or
    - b. Is recognized as a rural regional trauma center that was providing formal organized trauma services on or before January 1, 2003.
  2. On or after January 1, 2005, "level I trauma center" means any acute care hospital designated by the Arizona Department of Health Services as a level I trauma center.
  3. "Unrecovered trauma center readiness costs" means losses incurred treating trauma patients:
    - a. Determined in accordance with Generally Accepted Accounting Principles,
    - b. Based on both clinical and professional costs incurred by a level I trauma center necessary for the provision of level I trauma care, and
    - c. Based on administrative and overhead costs directly associated with providing level I trauma care.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 4001, effective October 19, 2003 (Supp. 03-3).

**R9-22-2102. Distribution of Trauma and Emergency Services Fund: Level I Trauma Centers**

- A. On or after November 1, 2003, the Administration shall distribute monies, under R9-22-2101(B), to level I trauma centers using monies available in the trauma and emergency services fund at the time of payment. The Administration shall take into consideration the proportion of those hospitals' trauma case volume. The Administration shall:
  1. Recalculate the November 2003 payments in July 2004 using the formula in subsection (B) of this Section;
  2. Recoup November 2003 overpayments by reducing the July 2004 distributions under subsection (C) as appropriate; and
  3. Redistribute recouped funds, with the July 2004 payment, to level I trauma centers underpaid in November 2003.
- B. On or after January 31 of each year, the Administration shall distribute monies, under R9-22-2101(B), to level I trauma cen-

ters using monies available in the trauma and emergency services fund at the time of payment. The Administration shall determine each hospital's unrecovered trauma center readiness costs for the current fiscal year using data from the most recent reporting year as provided under R9-22-2101(D) and (E). The proportion of each hospital's share of the fund for unrecovered trauma center readiness costs is determined after considering:

1. The professional, clinical, administrative, and overhead costs directly associated with providing level I trauma care, and
  2. The volume and acuity of trauma care provided by each hospital.
- C. On or after July 31 of each year, the Administration shall distribute monies to level I trauma centers using monies, under R9-22-2101(B), available in the trauma and emergency services fund at the time of payment according to the proportions calculated and used for the January payments in the same year, under subsection (B) of this Section.

#### Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 4001, effective October 19, 2003 (Supp. 03-3).

#### R9-22-2103. Distribution of Trauma and Emergency Services Fund: Emergency Services

On or after June 30 of each year, the Administration shall distribute monies available in the trauma and emergency services fund at the time of payment as follows:

1. As allocated under R9-22-2101(C),
2. To hospitals that had an emergency department from July 1 through June 30 of the prior year, and
3. On a pro rata share of each hospital's cost of uncompensated emergency care as a percentage of the total statewide cost of uncompensated emergency care provided by hospitals under subsection (2) as reported in the uniform accounting reports to the Arizona Department of Health Services under A.R.S. § 36-125.04.

#### Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 4001, effective October 19, 2003 (Supp. 03-3). Amended by exempt rulemaking at 18 A.A.R. 1748, effective July 1, 2012 (Supp. 12-2).

#### R9-22-2104. Additional Trauma and Emergency Services Payments under the Section 1115 Waiver

- A. Notwithstanding R9-22-2101(D), for the reporting years ending June 30, 2011 and June 30, 2012, the Administration shall distribute an amount equal to the balance of the Trauma and Emergency Services fund in the following manner:
1. Ninety percent of the amount shall be distributed to Level I trauma centers based upon each center's pro rata share of each center's acuity-adjusted volume as a percentage of the total acuity-adjusted volume for all centers in the state. The acuity-adjusted volume is calculated by multiplying the Injury Severity Score employed by trauma.org by the number of trauma cases at that level treated at the

center during the reporting year. Hospitals shall report trauma scores and case volume on a worksheet prescribed by the Administration.

2. Ten percent of the amount shall be distributed proportionately to hospitals that had an emergency department from July 1 through June 30 of the reporting year based the pro rata share of each hospital's cost of emergency care as a percentage of the total statewide cost of emergency care provided by hospitals as reported on the Worksheet B, column 27, line 61 of the hospital's most current Medicare Cost Report as of January 31 following the end of each reporting year.
- B. For the reporting years ending June 30, 2011 and June 30, 2012, the Administration shall distribute an amount equal to the federal financial participation made available under the section 1115 waiver for the purpose of making payments for unrecovered trauma and emergency services as follows:
1. Thirty percent of such funds to a Level I trauma center, in amounts calculated in the same manner as described in subsection (A)(1) of this Section, for any unrecovered trauma center readiness costs not reimbursed under subsection (A) of this Section;
  2. Thirty percent of such funds to a hospital having an emergency department from July 1 through June 30 of the reporting year, in amounts calculated in the same manner as described in subsection (A)(2) of this Section, for any unrecovered emergency services costs not reimbursed under subsection (A) of this Section; and
  3. Forty percent of such funds to rural hospitals, as defined in R9-22-718 that are not Level 1 trauma centers as defined in R9-22-2101(F), having an emergency department from July 1 through June 30 of the reporting year, in amounts calculated in the same manner as described in subsection (A)(2) of this Section, for any unrecovered emergency services costs not reimbursed under subsections (A) and (B)(2) of this Section.
- C. For the reporting years ending June 30, 2011 and June 30, 2012, payments made under this Article shall not be made in an amount that results in aggregate payments to the hospital by the Administration and contractors exceeding of the upper payment limit for the hospital services as calculated in accordance with 42 CFR 447.
- D. For the reporting years ending June 30, 2011 and June 30, 2012, to ensure compliance with subsection (C), payments under this Article shall be reconciled to the federal fiscal year that is two years subsequent to the payment.
- E. Any payments that are determined under subsection (D) to exceed the limit in subsection (C) shall be distributed as described in this Article to hospitals that have not received payments in excess of the limit in subsection (C).

#### Historical Note

New Section made by exempt rulemaking at 18 A.A.R. 1748, effective July 1, 2012 (Supp. 12-2).



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## TITLE 9. HEALTH SERVICES

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

*Editor's Note: The Office of the Secretary of State publishes all Code Chapters on white paper (Supp. 01-3).*

*Editor's Note: This Chapter contains rules which were adopted under an exemption from the rulemaking provisions of the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6, §§ 1001 et seq.) as specified in Laws 1992, Ch. 301, § 61 and Ch. 302, § 13, and Laws 1994, Ch. 322, § 21. Exemption from A.R.S. Title 41, Chapter 6 means that AHCCCS did not submit notice of this rulemaking to the Secretary of State's Office for publication in the Arizona Administrative Register; AHCCCS did not submit these rules to the Governor's Regulatory Review Council; AHCCCS was not required to hold public hearings on these rules; and the Attorney General did not certify these rules. Because this Chapter contains rules which are exempt from the regular rulemaking process, the Chapter is printed on blue paper. The rules affected by this exemption appear throughout this Chapter.*

## ARTICLE 1. DEFINITIONS

*Former Section R9-28-101 repealed; new Sections R9-28-101 thru R9-28-111 adopted effective December 8, 1997 (Supp. 97-4).*

## Section

- R9-28-101. General Definitions
- R9-28-102. Covered Services Related Definitions
- R9-28-103. Preadmission Screening Related Definitions
- R9-28-104. Repealed
- R9-28-105. Repealed
- R9-28-106. Request for Proposals and Contract Process Related Definitions
- R9-28-107. Repealed
- R9-28-108. Repealed
- R9-28-109. Repealed
- R9-28-110. Reserved
- R9-28-111. Behavioral Health Services Related Definitions

## ARTICLE 2. COVERED SERVICES

## Section

- R9-28-201. General Requirements
- R9-28-202. Medical Services
- R9-28-203. Coverage for CRS Services
- R9-28-204. Institutional Services
- R9-28-205. Home and Community Based Services (HCBS)
- R9-28-206. ALTCS Services that may be Provided to a Member Residing in either an Institutional or HCBS Setting

## ARTICLE 3. PREADMISSION SCREENING (PAS)

## Section

- R9-28-301. Definitions
- R9-28-302. General Provisions
- R9-28-303. Preadmission Screening (PAS) Process
- R9-28-304. Preadmission Screening Criteria for an Applicant or Member who is Elderly and Physically Disabled (EPD)
- R9-28-305. Preadmission Screening Criteria for an Applicant or Member who is Developmentally Disabled (DD)
- R9-28-306. Reassessments
- R9-28-307. The ALTCS Transitional Program for a Member who is Elderly and Physically Disabled (EPD) or Developmentally Disabled (DD)

## ARTICLE 4. ELIGIBILITY AND ENROLLMENT

## Section

- R9-28-401. Eligibility and Enrollment-Related Definitions
- R9-28-401.01. General
- R9-28-402. Repealed
- R9-28-403. Repealed
- R9-28-404. Repealed
- R9-28-405. Repealed
- R9-28-406. ALTCS Living Arrangements
- R9-28-407. Resource Criteria for Eligibility

- R9-28-408. Income Criteria for Eligibility
- R9-28-409. Transfer of Assets
- R9-28-410. Community Spouse
- R9-28-411. Changes, Redeterminations, and Notices
- R9-28-412. General Enrollment
- R9-28-413. Enrollment with an Elderly and Physically Disabled (EPD) Program Contractor
- R9-28-414. Enrollment with the DD Program Contractor
- R9-28-415. Enrollment with a Tribal Program Contractor
- R9-28-416. Enrollment with the Fee-for-Service (FFS) Program
- R9-28-417. Notification Requirements
- R9-28-418. Disenrollment

## ARTICLE 5. PROGRAM CONTRACTOR AND PROVIDER STANDARDS

## Section

- R9-28-501. Program Contractor and Provider Standards – Related Definitions
- R9-28-501.01. Pre-Existing Conditions
- R9-28-502. Long-term Care Provider Requirements
- R9-28-503. Licensure and Certification for Long-term Care Institutional Facilities
- R9-28-504. Standards of Participation, Licensure, and Certification for HCBS Providers
- R9-28-505. Standards, Licensure, and Certification for Providers of Hospital and Medical Services
- R9-28-506. Requirements for Spouse as Paid Caregiver
- R9-28-507. Program Contractor General Requirements
- R9-28-508. Self-directed Attendant Care (SDAC)
- R9-28-509. Agency with Choice
- R9-28-510. Case Management
- R9-28-511. Quality Management/Utilization Management (QM/UM) Requirements
- R9-28-512. Expired
- R9-28-513. Program Compliance Audits
- R9-28-514. Release of Safeguarded Information by the Administration and Contractors
- R9-28-515. Repealed

## ARTICLE 6. RFP AND CONTRACT PROCESS

*Article 6, consisting of Sections R9-28-601 through R9-28-610, repealed; new Article 6, consisting of Sections R9-28-601 through R9-28-608, adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1).*

## Section

- R9-28-601. General Provisions
- R9-28-602. RFP
- R9-28-603. Contract Award
- R9-28-604. Contract or Proposal Protests; Appeals
- R9-28-605. Waiver of Contractor's Subcontract with Hospitals
- R9-28-606. Contract Compliance Sanction
- R9-28-607. Repealed
- R9-28-608. Repealed

R9-28-609. Repealed  
R9-28-610. Repealed

#### ARTICLE 7. STANDARDS FOR PAYMENTS

##### Section

R9-28-701. Standards for Payment Related Definitions  
R9-28-701.10. General Requirements  
R9-28-702. Nursing Facility Assessment  
R9-28-703. Nursing Facility Supplemental Payments  
R9-28-704. Repealed  
R9-28-705. Repealed  
R9-28-706. Repealed  
R9-28-707. Repealed  
R9-28-708. Repealed  
R9-28-709. Repealed  
R9-28-710. Repealed  
R9-28-711. Repealed  
R9-28-712. County of Fiscal Responsibility  
R9-28-713. Repealed  
R9-28-714. Repealed  
R9-28-715. Repealed

#### ARTICLE 8. TEFRA LIENS AND RECOVERIES

*Article 8, consisting of Sections R9-28-801 through R9-28-807, made by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).*

*Article 8, consisting of Sections R9-28-801 through R9-28-803, repealed by final rulemaking at 10 A.A.R. 820, effective April 3, 2004. The subject matter of Article 8 is now in 9 A.A.C. 34 (Supp. 04-1).*

##### Section

R9-28-801. Definitions Related to TEFRA Liens  
R9-28-801.01. TEFRA Liens – General  
R9-28-802. TEFRA Liens – Affected Members  
R9-28-803. TEFRA Liens – Prohibitions  
R9-28-804. TEFRA Liens – AHCCCS Notice of Intent  
R9-28-805. TEFRA Liens and Estate Recovery – Member's Request for a State Fair Hearing  
R9-28-806. TEFRA Liens – Recovery  
R9-28-807. TEFRA Liens – Release

#### ARTICLE 9. FIRST- AND THIRD-PARTY LIABILITY AND RECOVERIES

##### Section

R9-28-901. Definitions  
R9-28-902. General Provisions  
R9-28-903. Cost Avoidance  
R9-28-904. Member Participation  
R9-28-905. Collections  
R9-28-906. AHCCCS Monitoring Responsibilities  
R9-28-907. Notification for Perfection, Recording, and Assignment of AHCCCS Liens  
R9-28-908. Notification Information for Liens  
R9-28-909. Notification of Health Insurance Information  
R9-28-910. Recoveries  
R9-28-911. Estate Recovery and Undue Hardship  
R9-28-912. Partial Recovery  
R9-28-913. Repealed  
R9-28-914. Repealed  
R9-28-915. Repealed  
R9-28-916. Repealed  
R9-28-917. Repealed  
R9-28-918. Repealed  
R9-28-919. Repealed

#### ARTICLE 10. CIVIL MONETARY PENALTIES AND ASSESSMENTS

##### Section

R9-28-1001. Basis for Civil Monetary Penalties and Assessments for Fraudulent Claims  
R9-28-1002. Repealed  
R9-28-1003. Repealed  
R9-28-1004. Repealed

#### ARTICLE 11. BEHAVIORAL HEALTH SERVICES

*Article 11, consisting of Sections R9-28-1101 through R9-28-1106, repealed; new Article 11, consisting of Sections R9-28-1101 through R9-28-1108, adopted by final rulemaking at 6 A.A.R. 200, effective December 13, 1999 (Supp. 99-4).*

##### Section

R9-28-1101. General Requirements  
R9-28-1102. Program or Tribal Contractor Responsibilities  
R9-28-1103. Eligibility for Covered Services  
R9-28-1104. General Service Requirements  
R9-28-1105. Scope of Behavioral Health Services  
R9-28-1106. General Provisions and Standards for Service Providers  
R9-28-1107. General Provisions for Payment  
R9-28-1108. Repealed

#### ARTICLE 12. REPEALED

*Article 12, consisting of Section R9-28-1201, repealed by final rulemaking at 10 A.A.R. 820, effective April 3, 2004. The subject matter of Article 12 is now in 9 A.A.C. 34 (Supp. 04-1).*

*Article 12, consisting of Section R9-28-1201, adopted effective September 9, 1998 (Supp. 98-3).*

##### Section

R9-28-1201. Repealed

#### ARTICLE 13. FREEDOM TO WORK

*Article 13, consisting of Sections R9-28-1301 through R9-28-1324, made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4).*

##### Section

R9-28-1301. General Freedom to Work Requirements  
R9-28-1302. General Administration Requirements  
R9-28-1303. Application for Coverage  
R9-28-1304. Notice of Approval or Denial  
R9-28-1305. Reporting and Verifying Changes  
R9-28-1306. Actions that Result from a Redetermination or Change  
R9-28-1307. Notice of Adverse Action  
R9-28-1308. Request for Hearing  
R9-28-1309. Conditions of Eligibility  
R9-28-1310. Repealed  
R9-28-1311. Repealed  
R9-28-1312. Repealed  
R9-28-1313. Premium Requirements  
R9-28-1314. Repealed  
R9-28-1315. Repealed  
R9-28-1316. Institutionalized Person  
R9-28-1317. Repealed  
R9-28-1318. Repealed  
R9-28-1319. Repealed  
R9-28-1320. Additional Eligibility Criteria for the Basic Coverage Group  
R9-28-1321. Share of Cost  
R9-28-1322. Repealed  
R9-28-1323. Enrollment

## Arizona Health Care Cost Containment System – Arizona Long-term Care System

R9-28-1324. Redetermination of Eligibility

**ARTICLE 1. DEFINITIONS****R9-28-101. General Definitions**

A. Location of definitions. Definitions applicable to Chapter 28 are found in the following:

Definition	Section or Citation
"210"	42 CFR 435.211
"217"	42 CFR 435.217
"236"	42 CFR 435.236
"Acute"	R9-28-301
"ADHS"	R9-22-101
"ADL"	R9-28-101
"Administration"	A.R.S. § 36-2931
"Advance notice"	R9-28-411
"Aged"	R9-28-402
"Aggregate"	R9-22-701
"Aggression"	R9-28-301
"AHCCCS"	R9-22-101
"AHCCCS registered provider"	R9-22-101
"ALTCS"	R9-28-101
"ALTCS acute care services"	R9-28-401
"Alternative HCBS setting"	R9-28-101
"Ambulance"	A.R.S. § 36-2201
"Ambulation"	R9-28-301
"Applicant"	R9-22-101
"Assessor"	R9-28-301
"Auto-assignment algorithm" or "Algorithm"	R9-22-1701
"Bathing"	R9-28-301
"Bathing or showering"	R9-28-301
"Bed hold"	R9-28-102
"Behavior intervention"	R9-28-102
"Behavior management services"	R9-22-1201
"Behavioral health evaluation"	R9-22-1201
"Behavioral health medical practitioner"	R9-22-1201
"Behavioral health professional"	R9-20-101
"Behavioral health service"	R9-20-101
"Behavioral health technician"	R9-20-101
"Billed charges"	R9-22-701
"Blind"	42 U.S.C. 1382c(a)(2)
"Capped fee-for-service"	R9-22-101
"Case management plan"	R9-28-101
"Case management"	R9-28-1101
"Case manager"	R9-28-101
"Case record"	R9-22-101
"Categorically-eligible"	R9-22-101
"Certification"	R9-28-501
"Certified psychiatric nurse practitioner"	R9-22-1201
"CFR"	R9-28-101
"Child"	R9-22-1503
"Clarity of communication"	R9-28-301
"Clean claim"	A.R.S. § 36-2904
"Clinical supervision"	R9-22-201
"CMS"	R9-22-101
"Community mobility"	R9-28-301
"Community spouse"	R9-28-401
"Consecutive days"	R9-28-801
"Continence"	R9-28-301
"Contract"	R9-22-101
"Contract year"	R9-22-101
"Contractor"	A.R.S. § 36-2901
"Cost avoid"	R9-22-1201 or R9-22-1001
"County of fiscal responsibility"	R9-28-701
"Covered services"	R9-28-101
"CPT"	R9-22-701
"Crawling and standing"	R9-28-301

"CSRD"	R9-28-401
"Current"	R9-28-301
"Day"	R9-22-101 or R9-22-1101
"De novo hearing"	42 CFR 431.201
"Department"	A.R.S. § 36-2901
"Developmental disability" or "DD"	A.R.S. § 36-551
"Diagnostic services"	R9-22-101
"Director"	R9-22-101
"Disabled"	R9-28-402
"Disenrollment"	R9-22-1701
"Disruptive behavior"	R9-28-301
"DME"	R9-22-101
"Dressing"	R9-28-301
"Eating"	R9-28-301
"Eating or drinking"	R9-28-301
"Emergency medical services for the non-FES member"	R9-22-201
"Emotional and cognitive functioning"	R9-28-301
"Employed"	R9-28-1320
"Encounter"	R9-22-701
"Enrollment"	R9-22-1701
"EPD"	R9-28-301
"E.P.S.D.T. services"	42 CFR 440.40(b)
"Estate"	A.R.S. § 14-1201
"Experimental services"	R9-22-203
"Expressive verbal communication"	R9-28-301
"Facility"	R9-22-101
"Factor"	42 CFR 447.10
"Fair consideration"	R9-28-401
"FBR"	R9-22-101
"Federal financial participation" or "FFP"	42 CFR 400.203
"Fee-For-Service" or "FFS"	R9-22-101
"File" R9-28-801 "First continuous period of institutionalization"	R9-28-401
"Food preparation"	R9-28-301
"Frequency"	R9-28-301
"Functional assessment"	R9-28-301
"Grievance"	R9-34-202
"Grooming"	R9-28-301
"GSA"	R9-22-101
"Guardian"	A.R.S. § 14-5311
"Hand use"	R9-28-301
"HCBS" or "Home and community based services"	A.R.S. § 36-2931
"Health care practitioner"	R9-22-1201
"History"	R9-28-301
"Home"	R9-28-101 and R9-28-801
"Home health services"	R9-22-201
"Hospice"	A.R.S. § 36-401
"Hospital"	R9-22-101
"ICF-MR" or "Intermediate care facility for the mentally retarded"	42 U.S.C. 1396d(d)
"IADL"	R9-28-101
"IHS"	R9-22-101
"IMD" or "Institution for mental diseases"	42 CFR 435.1010
"Immediate risk of institutionalization"	R9-28-301
"Individual Representative"	R9-28-509
"Institutionalized"	R9-28-401
"Institutionalized spouse"	R9-28-101
"Interested Party"	R9-28-106
"Intergovernmental agreement" or "IGA"	R9-28-1101
"Intervention"	R9-28-301
"JCAHO"	R9-28-101
"License" or "licensure"	R9-22-101
"Medical assessment"	R9-28-301

## Arizona Health Care Cost Containment System – Arizona Long-term Care System

“Medical or nursing services and treatments”		“Toileting”	R9-28-301
or “services and treatments”	R9-28-301	“Transferring”	R9-28-301
“Medical record”	R9-22-101	“TRBHA”	R9-22-1201
“Medical services”	A.R.S. § 36-401	“Tribal contractor”	R9-28-1101
“Medically eligible”	R9-28-401	“Tribal facility”	A.R.S. § 36-2981
“Medically necessary”	R9-22-101	“Utilization management/review”	R9-22-501
“Member”	A.R.S. § 36-2931 and R9-28-901	“Ventilator dependent”	R9-28-102
“Mental disorder”	A.R.S. § 36-501	“Verbal or physical threatening”	R9-28-301
“MMMNA”	R9-28-401	“Vision”	R9-28-301
“Mobility”	R9-28-301	“Wandering”	R9-28-301
“Natural Support Services”	R9-28-101	“Wheelchair mobility”	R9-28-301
“Noncontracting provider”	A.R.S. § 36-2931	<b>B.</b> General definitions. In addition to definitions contained in A.R.S. §§ 36-551, 36-2901, 36-2931, and 9 A.A.C. 22, Article 1, the following words and phrases have the following meanings unless the context of the Chapter explicitly requires another meaning:	
“Nursing facility” or “NF”	42 U.S.C. 1396r(a)		
“Occupational therapy”	R9-22-201	“ADL” or “Activities of Daily Living” mean activities a member must perform daily for the member’s regular day-to-day necessities, including but not limited to mobility, transferring, bathing, dressing, grooming, eating, and toileting.	
“Orientation”	R9-28-301	“ALTCS” means the Arizona Long-term Care System as authorized by A.R.S. § 36-2932.	
“Partial care”	R9-22-1201	“Alternative HCBS setting” means a living arrangement approved by the Director and licensed or certified by a regulatory agency of the state, where a member may reside and receive HCBS, including:	
“PAS”	R9-28-103	For a person with a developmental disability specified in A.R.S. § 36-551:	
“Personal hygiene”	R9-28-301	Community residential setting defined in A.R.S. § 36-551;	
“Pharmaceutical service”	R9-22-201	Group home defined in A.R.S. § 36-551;	
“Physical therapy”	R9-22-201	State-operated group home under A.R.S. § 36-591;	
“Physically disabled”	R9-28-301	Group foster home under R6-5-5903;	
“Physician”	R9-22-101	Licensed residential facility for a person with traumatic brain injury under A.R.S. § 36-2939;	
“Physician consultant”	R9-28-301	Behavioral health adult therapeutic home under 9 A.A.C. 20, Articles 1 and 15;	
“Post-stabilization care services”	42 CFR 438.114	Level 2 and Level 3 behavioral health residential agencies under 9 A.A.C. 20, Articles 1, 4, 5, and 6; and	
“Practitioner”	R9-22-101	Rural substance abuse transitional centers under 9 A.A.C. 20, Articles 1 and 14; and	
“Primary care provider” or “(PCP)”	R9-22-101	For a person who is Elderly and Physically Disabled (EPD) under R9-28-301, and the facility, setting, or institution is registered with AHCCCS:	
“Primary care provider services”	R9-22-201	Adult foster care defined in A.R.S. § 36-401 and as authorized in A.R.S. § 36-2939;	
“Prior authorization”	R9-22-101	Assisted living home or assisted living center, units only, under A.R.S. § 36-401, and as authorized in A.R.S. § 36-2939;	
“Prior period coverage” or “PPC”	R9-22-101	Licensed residential facility for a person with a traumatic brain injury specified in A.R.S. § 36-2939;	
“Program contractor”	A.R.S. § 36-2931	Behavioral health adult therapeutic home under 9 A.A.C. 20, Articles 1 and 15;	
“Provider”	A.R.S. § 36-2931	Level 2 and Level 3 behavioral health residential agencies under 9 A.A.C. 20, Articles 1, 4, 5, and 6; and	
“Psychiatrist”	R9-22-1201		
“Psychologist”	R9-22-1201		
“Psychosocial rehabilitation services”	R9-22-201		
“Qualified behavioral health service provider”	R9-28-1101		
“Quality management”	R9-22-501		
“Radiology”	R9-22-101		
“Reassessment”	R9-28-103		
“Recover”	R9-28-901		
“Redetermination”	R9-28-401		
“Referral”	R9-22-101		
“Regional behavioral health authority”			
or “RBHA”	A.R.S. § 36-3401		
“Reinsurance”	R9-22-701		
“Representative”	R9-28-401		
“Resistiveness”	R9-28-301		
“Respiratory therapy”	R9-22-201		
“Respite care”	R9-28-102		
“RFP”	R9-22-101		
“Room and board”	R9-28-102		
“Rolling and sitting”	R9-28-301		
“Running or wandering away”	R9-28-301		
“Scope of services”	R9-28-102		
“Section 1115 Waiver”	A.R.S. § 36-2901		
“Self-injurious behavior”	R9-28-301		
“Sensory”	R9-28-301		
“Seriously mentally ill” or “SMI”	A.R.S. § 36-550		
“Social worker”	R9-28-301		
“Special diet”	R9-28-301		
“Speech therapy”	R9-22-201		
“Spouse”	R9-28-401		
“SSA”	42 CFR 1000.10		
“SSI”	42 CFR 435.4		
“Subcontract”	R9-22-101		
“TEFRA lien”	R9-28-801		
“Therapeutic leave”	R9-28-501		

Rural substance abuse transitional centers under 9 A.A.C. 20, Articles 1 and 14.

“Case management plan” means a service plan developed by a case manager that involves the overall management of a member’s care, and the continued monitoring and reassessment of the member’s need for services.

“Case manager” means a person who is either a degreed social worker, a licensed registered nurse, or has a minimum of two years of experience in providing case management services to a person who is EPD.

“CFR” means Code of Federal Regulations, unless otherwise specified in this Chapter.

“Covered services” means the health and medical services described in Articles 2 and 11 of this Chapter as being eligible for reimbursement by AHCCCS.

“Home” means a residential dwelling that is owned, rented, leased, or occupied by a member, at no cost to the member, including a house, a mobile home, an apartment, or other similar shelter. A home is not a facility, a setting, or an institution, or a portion of any of these that is licensed or certified by a regulatory agency of the state as:

Health care institution under A.R.S. § 36-401;

Residential care institution under A.R.S. § 36-401;

Community residential setting under A.R.S. § 36-551; or

Behavioral health facility under 9 A.A.C. 20, Articles 1, 4, 5, and 6.

“IADL” or “Instrumental Activities of Daily Living” mean activities related to independent living that a member must perform, including but not limited to:

Preparing meals,

Managing money,

Shopping for groceries or personal items,

Performing light or heavy housework, and

Use of the telephone.

“IHS” means the Indian Health Service.

“Institutionalized spouse” means the same as defined in 42 U.S.C. 1396r-5.

“JCAHO” means the Joint Commission on Accreditation of Healthcare Organizations.

“Natural Support Services” are services provided voluntarily by a person not legally obligated to provide those services. The services are specified in the service plan as described under R9-28-510 and cannot supplant other covered services.

#### Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Amended effective July 13, 1992 (Supp. 92-3). Amended effective November 5, 1993 (Supp. 93-4). Section repealed; new Section adopted effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 5 A.A.R. 369, effective January 6, 1999 (Supp. 99-1). Amended by final rulemaking at 5 A.A.R. 874, effective March 4, 1999 (Supp. 99-1). Subsection (A)(69) amended to correct a printing error, filed in the Office of the Secretary of State August 13, 1999 (Supp. 99-3). Amended by final rulemaking at 6 A.A.R. 200, effective December 13, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 2461, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 6 A.A.R.

3365, effective August 7, 2000 (Supp. 00-3). Amended by exempt rulemaking at 7 A.A.R. 4691, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 2356, effective May 9, 2002 (Supp. 02-2). Amended by final rulemaking at 8 A.A.R. 3340, effective July 15, 2002 (Supp. 02-3).

Amended by final rulemaking at 9 A.A.R. 3810, effective

October 4, 2003 (Supp. 03-3). Amended by final rulemaking at 10 A.A.R. 1312, effective May 1, 2004

(Supp. 04-1). Amended by final rulemaking at 11 A.A.R.

3165, effective October 1, 2005 (Supp. 05-3). Amended

by final rulemaking at 11 A.A.R. 4286, effective December

5, 2005 (Supp. 05-4). Amended by final rulemaking

at 13 A.A.R. 1090, effective May 5, 2007 (Supp. 07-1).

Amended by final rulemaking at 14 A.A.R. 2090, effective

July 5, 2008 (Supp. 08-2). Amended by final

rulemaking at 18 A.A.R. 3380, effective January 1, 2013

(Supp. 12-4).

#### R9-28-102. Covered Services Related Definitions

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

“Bed hold” means a 24 hour per day unit of service that is authorized by an ALTCS case manager or designee during a period of short-term hospitalization or therapeutic leave that meets the requirement specified in 42 CFR 483.12.

“Behavior intervention” means the planned interruption of a member’s inappropriate behavior using techniques such as reinforcement, training, behavior modification, and other systematic procedures intended to result in more acceptable behavior.

“Respite care” means a short-term service provided in a NF or a home and community based service setting to an individual if necessary to relieve a family member or other person caring for the individual.

“Room and board” means lodging and meals.

“Scope of services” means the covered, limited, and excluded services under Articles 2 and 12 of this Chapter.

“Ventilator dependent,” for purposes of ALTCS eligibility, means an individual is medically dependent on a ventilator for life support at least six hours per day and has been dependent on ventilator support as an inpatient in a hospital, NF, or ICF-MR for at least 30 consecutive days.

#### Historical Note

Adopted effective December 8, 1997 (Supp. 97-4).

Amended by final rulemaking at 6 A.A.R. 2461, effective

June 9, 2000 (Supp. 00-2). Amended by final rulemaking

at 9 A.A.R. 3810, effective October 4, 2003 (Supp. 03-3).

#### R9-28-103. Preadmission Screening Related Definitions

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

“Developmental disability” is defined in A.R.S. § 36-551.

“PAS” means preadmission screening, which is the process of determining an individual’s risk of institutionalization at a NF or ICF-MR level of care, as specified in Article 3 of this Chapter.

“Reassessment” means the process of redetermining PAS eligibility for ALTCS services as appropriate, for all members.

#### **Historical Note**

Adopted effective December 8, 1997 (Supp. 97-4).  
Amended by final rulemaking at 6 A.A.R. 2461, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 9 A.A.R. 3810, effective October 4, 2003 (Supp. 03-3).  
Amended by final rulemaking at 10 A.A.R. 1312, effective May 1, 2004 (Supp. 04-1).

#### **R9-28-104. Repealed**

Adopted effective December 8, 1997 (Supp. 97-4).  
Amended effective November 4, 1998 (Supp. 98-4). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 369, effective January 6, 1999 (Supp. 99-1).  
Amended by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Amended by final rulemaking at 6 A.A.R. 2461, effective June 9, 2000 (Supp. 00-2). Repealed by final rulemaking at 14 A.A.R. 2090, effective July 5, 2008 (Supp. 08-2).

#### **R9-28-105. Repealed**

#### **Historical Note**

Adopted effective December 8, 1997 (Supp. 97-4).  
Amended by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Section repealed by final rulemaking at 11 A.A.R. 4286, effective December 5, 2005 (Supp. 05-4).

#### **R9-28-106. Request for Proposals and Contract Process Related Definitions**

Definitions. The following words and phrases, in addition to definitions contained in A.R.S. §§ 36-2901 and 36-2931, and 9 A.A.C. 22 Article 1, have the following meanings unless the context of the Chapter explicitly requires another meaning: “Interested Party” means an actual or prospective offeror whose economic interest may be affected substantially and directly by the issuance of a request for proposals, the award of a contract, or the failure to award a contract.

#### **Historical Note**

Adopted effective December 8, 1997 (Supp. 97-4).  
Amended by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1).

#### **R9-28-107. Repealed**

#### **Historical Note**

Adopted effective December 8, 1997 (Supp. 97-4).  
Amended effective November 4, 1998 (Supp. 98-4).  
Amended by final rulemaking at 6 A.A.R. 2461, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 9 A.A.R. 3810, effective October 4, 2003 (Supp. 03-3).  
Section repealed by final rulemaking at 11 A.A.R. 3165, effective October 1, 2005 (Supp. 05-3).

#### **R9-28-108. Repealed**

#### **Historical Note**

Adopted effective December 8, 1997 (Supp. 97-4).  
Amended by final rulemaking at 6 A.A.R. 3365, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 820, effective April 3, 2004 (Supp. 04-1).

#### **R9-28-109. Repealed**

#### **Historical Note**

Adopted effective December 8, 1997 (Supp. 97-4). Section repealed by final rulemaking at 10 A.A.R. 1308, effective May 1, 2004 (Supp. 04-1).

#### **R9-28-110. Reserved**

#### **R9-28-111. Behavioral Health Services Related Definitions**

Definitions. The words and phrases in this Chapter, in addition to definitions contained in A.R.S. §§ 36-2901 and 36-2931, have the same meaning as specified in 9 A.A.C. 22, Article 1.

#### **Historical Note**

Adopted effective December 8, 1997 (Supp. 97-4).  
Amended by final rulemaking at 6 A.A.R. 200, effective December 13, 1999 (Supp. 99-4).

### **ARTICLE 2. COVERED SERVICES**

#### **R9-28-201. General Requirements**

In addition to the exclusions and limitations specified in this Article, services provided to a member are covered services if:

1. Medically necessary, cost effective, and federally reimbursable;
2. Coordinated by a case manager in accordance with requirements specified in R9-28-510;
3. The provider obtains prior authorization as required by a member’s program contractor or by the Administration:
  - a. Failure of the provider to obtain prior authorization is cause for denial.
  - b. Services provided during prior period coverage are exempt from prior authorization requirements;
4. Provided in facilities or areas of facilities that are licensed or certified under Article 5 of this Chapter, or meet other requirements described in Article 5 of this Chapter;
5. Rendered by AHCCCS registered providers as permitted under this Chapter and within their scope of practice; and
6. Provided at an appropriate level of care, as determined by the case manager or the primary care provider.

#### **Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Section repealed; new Section adopted effective September 22, 1997 (Supp. 97-3).  
Amended by final rulemaking at 8 A.A.R. 2356, effective May 9, 2002 (Supp. 02-2).

#### **R9-28-202. Medical Services**

The Administration or a contractor shall cover medical services specified in 9 A.A.C. 22, Article 2 for a member, subject to the limitations and exclusions specified in Article 2, unless otherwise specified in this Chapter.

#### **Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Amended under an exemption from the provisions of the Administrative Procedure Act effective March 22, 1993; received in the Office of the Secretary of State March 24, 1993 (Supp. 93-1). Amended effective November 5, 1993 (Supp. 93-4). Section repealed; new Section adopted effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 2356, effective May 9, 2002 (Supp. 02-2).

#### **R9-28-203. Coverage for CRS Services**

- A. Beginning October 1, 2013, ALTCS DD members who need active treatment for one or more of the qualifying medical condition(s) in A.A.C. R9-22-1303 shall receive CRS services



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through the CRS contractor as described under Chapter 22, Article 13.

- B.** Beginning October 1, 2013, AHCCCS ALTCS EPD members who need active treatment for one or more of the qualifying medical conditions in A.A.C. R9-22-1303 shall not receive CRS services through the CRS contractor as described under Chapter 22, Article 13. These members shall receive treatment for those conditions through their assigned ALTCS EPD contractor. However, an American Indian member with a CRS condition(s) who is enrolled with a tribal contractor or Native American Community Health (NACH) shall obtain CRS services through the CRS contractor.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Amended effective July 13, 1992 (Supp. 92-3). Amended under an exemption from the provisions of the Administrative Procedure Act effective March 22, 1993; received in the Office of the Secretary of State March 24, 1993 (Supp. 93-1). Repealed effective September 22, 1997 (Supp. 97-3). New Section R9-28-203 made by final rulemaking at 19 A.A.R. 2963, effective November 10, 2013 (Supp. 13-3).

**R9-28-204. Institutional Services**

- A.** Institutional services are provided in:
1. A NF;
  2. An ICF-MR; or
  3. A facility identified in R9-28-1105(A)(1)(b), (B), or (C).
- B.** The Administration and a contractor shall include the following services in the per diem rate for a facility listed in subsection (A):
1. Nursing care services;
  2. Rehabilitative services prescribed as a maintenance regimen;
  3. Restorative services, such as range of motion;
  4. Social services;
  5. Nutritional and dietary services;
  6. Recreational therapies and activities;
  7. Medical supplies and non-customized durable medical equipment under 9 A.A.C. 22, Article 2;
  8. Overall management and evaluation of a member's care plan;
  9. Observation and assessment of a member's changing condition;
  10. Room and board services, including supporting services such as food and food preparation, personal laundry, and housekeeping;
  11. Non-prescription and stock pharmaceuticals; and
  12. Respite care services not to exceed 600 hours per benefit year.
- C.** Each facility listed in subsection (A) is responsible for coordinating the delivery of at least the following auxiliary services:
1. Under 9 A.A.C. 22, Article 2:
    - a. Attending physician, practitioner, and primary care provider services;
    - b. Pharmaceutical services;
    - c. Diagnostic services under A.A.C. R9-22-208;
    - d. Emergency medical services; and
    - e. Emergency and medically necessary transportation services.
  2. Therapy services under R9-28-206.
- D.** Limitations. The following limitations apply:
1. A private room in a NF, ICF-MR, or facility identified in R9-28-1105(A)(1)(b), (B), or (C) is covered only if:

- a. The member or has a medical condition that requires isolation, and
  - b. The member's primary care provider or attending physician provides written authorization;
2. Each ICF-MR shall meet the standards in A.R.S. § 36-2939(B)(1), and in 42 CFR 483, Subpart I, February 28, 1992, incorporated by reference and on file with the Administration and available from the U.S. Government Printing Office, 732 N. Capitol St., N.W., Washington, D.C. 20401. This incorporation contains no future editions or amendments;
  3. Bed hold days as authorized by the Administration or its designee for a fee-for-service provider shall meet the following criteria:
    - a. Short-term hospitalization leave for a member age 21 and over is limited to 12 days per AHCCCS benefit year, and is available if a member is admitted to a hospital for a short stay. After the short-term hospitalization, the member is returned to the institutional facility from which leave is taken, and to the same bed if the level of care required can be provided in that bed; and
    - b. Therapeutic leave for a member age 21 and older is limited to nine days per AHCCCS benefit year. A physician order is required for therapeutic leave from the facility for one or more overnight stays to enhance psycho-social interaction, or as a trial basis for discharge planning. After the therapeutic leave, the member is returned to the same bed within the institutional facility;
    - c. Therapeutic leave and short-term hospitalization leave are limited to any combination of 21 days per benefit year for a member under age 21;
  4. The Administration or a contractor shall cover services that are not part of a per diem rate but are ALTCS covered services included in this Article, and deemed necessary by a member's case manager or the case manager's designee if:
    - a. The services are ordered by the member's primary care provider; and
    - b. The services are specified in a case management plan under R9-28-510;
  5. A member age 21 through 64 is eligible for behavioral health services provided in a facility under subsection (A)(3) that has more than 16 beds, for up to 30 days per admission and no more than 60 days per benefit year as allowed under the Administration's Section 1115 Waiver with CMS and except as specified by 42 CFR 441.151, May 22, 2001, incorporated by reference, on file with the Administration and available from the U.S. Government Printing Office, 732 N. Capitol St., N.W., Washington, D.C. 20401. This incorporation contains no future editions or amendments; and
  6. The limitations in subsection (D)(5) do not apply to a member:
    - a. Under age 21 or age 65 or over, or
    - b. In a facility with 16 beds or less.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended subsections (A) and (D) effective June 6, 1989 (Supp. 89-2). Amended effective November 5, 1993 (Supp. 93-4). Section repealed; new Section adopted effective September 22, 1997 (Supp. 97-3). Amended by exempt rulemaking at 7 A.A.R. 4691, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 2356, effective May 9, 2002

(Supp. 02-2). Amended by exempt rulemaking at 17 A.A.R. 1876, effective October 1, 2011 (Supp. 11-3). Exemption to amend rules to expire December 31, 2013 under Laws 2012, Chapter 299, Section 8 therefore this Section was amended by final rulemaking at 19 A.A.R. 2758, effective October 8, 2013 (Supp. 13-3).

**R9-28-205. Home and Community Based Services (HCBS)**

- A.** Subject to the availability of federal funds, HCBS are covered services if provided to a member residing in the member's own home or an alternative residential setting. Room and board services are not covered in a HCBS setting.
- B.** The case manager shall authorize and specify in a case management plan any additions, deletions, or changes in home and community based services provided to a member or in accordance with R9-28-510.
- C.** Home and community based services include the following:
  - 1. Home health services provided on a part-time or intermittent basis. These services include:
    - a. Nursing care;
    - b. Home health aide;
    - c. Medical supplies, equipment, and appliances;
    - d. Physical therapy;
    - e. Occupational therapy;
    - f. Respiratory therapy; and
    - g. Speech and audiology services;
  - 2. Private duty nursing services;
  - 3. Medical supplies and durable medical equipment, including customized DME, as described in 9 A.A.C. 22, Article 2;
  - 4. Transportation services to obtain covered medically necessary services;
  - 5. Adult day health services provided to a member in an adult day health care facility licensed under 9 A.A.C. 10, Article 5, including:
    - a. Supervision of activities specified in the member's care plan;
    - b. Personal care;
    - c. Personal living skills training;
    - d. Meals and health monitoring;
    - e. Preventive, therapeutic, and restorative health related services; and
    - f. Behavioral health services, provided either directly or through referral, if medically necessary;
  - 6. Personal care services;
  - 7. Homemaker services;
  - 8. Home delivered meals, that provide at least one-third of the recommended dietary allowance, for a member who does not have a developmental disability under A.R.S. § 36-551;
  - 9. Respite care services for no more than 600 hours per benefit year;
  - 10. Habilitation services including:
    - a. Physical therapy;
    - b. Occupational therapy;
    - c. Speech and audiology services;
    - d. Training in independent living;
    - e. Special development skills that are unique to the member;
    - f. Sensory-motor development;
    - g. Behavior intervention; and
    - h. Orientation and mobility training;
  - 11. Developmentally disabled day care provided in a group setting during a portion of a 24-hour period, including:
    - a. Supervision of activities specified in the member's care plan;
    - b. Personal care;

- c. Activities of daily living skills training; and
- d. Habilitation services;
- 12. Supported employment services provided to a member in the ALTCS transitional program under R9-28-306 who is developmentally disabled under A.R.S. § 36-551.

**Historical Note**

Adopted effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 2356, effective May 9, 2002 (Supp. 02-2). Amended by exempt rulemaking at 17 A.A.R. 1876, effective October 1, 2011 (Supp. 11-3). Exemption to amend rules to expire December 31, 2013 under Laws 2012, Chapter 299, Section 8 therefore this Section was amended by final rulemaking at 19 A.A.R. 2758, effective October 8, 2013 (Supp. 13-3).

**R9-28-206. ALTCS Services that may be Provided to a Member Residing in either an Institutional or HCBS Setting**

The Administration shall cover the following services if the services are provided to a member within the limitations listed:

- 1. Occupational and physical therapies, speech and audiology services, and respiratory therapy:
  - a. The duration, scope, and frequency of each therapeutic modality or service is prescribed by the member's primary care provider or attending physician;
  - b. The therapy or service is authorized by the member's contractor or the Administration; and
  - c. The therapy or service is included in the members case management plan;
  - d. AHCCCS will not cover more than 15 outpatient physical therapy visits for the contract year with the exception of the required Medicare coinsurance and deductible payment as described in 9 A.A.C. 29, Article 3.
- 2. Medical supplies, durable medical equipment, and customized durable medical equipment, which conform with the requirements and limitations of 9 A.A.C. 22, Article 2;
- 3. Ventilator dependent services:
  - a. Inpatient or institutional services are limited to services provided in a general hospital, special hospital, NF, or ICF-MR. Services provided in a general or special hospital are included in the hospital's unit tier rate under 9 A.A.C. 22, Article 7;
  - b. A ventilator dependent member may receive the array of home and community based services under R9-28-205 as appropriate.
- 4. Hospice services:
  - a. Hospice services are covered only for a member who is in the final stages of a terminal illness and has a prognosis of death within six months;
  - b. Covered hospice services for a member are those allowable under 42 CFR 418.202, December 20, 1994, 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; and
  - c. Covered hospice services do not include:
    - i. Medical services provided that are not related to the terminal illness, or
    - ii. Home delivered meals.
  - d. Medicare is the primary payor of hospice services for a member if applicable.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Amended effective July 13, 1992 (Supp.

92-3). Amended effective November 5, 1993 (Supp. 93-4). Section repealed; new Section adopted effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 2356, effective May 9, 2002 (Supp. 02-2). Amended by exempt rulemaking at 16 A.A.R. 1664, effective October 1, 2010 (Supp. 10-3).

### ARTICLE 3. PREADMISSION SCREENING (PAS)

#### R9-28-301. Definitions

A. Common definitions. In addition to definitions contained in A.R.S. Title 36, Chapter 29, and 9 A.A.C. 28, Article 1, the words and phrases in this Article have the following meanings for an individual who is elderly or physically disabled (EPD) or developmentally disabled (DD) unless the context explicitly requires another meaning:

“Applicant” is defined in A.A.C. R9-22-101.

“Assessor” means a social worker as defined in this subsection or a licensed registered nurse (RN) who:

Is employed by the Administration to conduct PAS assessments,

Completes a minimum of 30 hours of classroom training in both EPD and DD PAS for a total of 60 hours, and

Receives intensive oversight and monitoring by the Administration during the first 30 days of employment and ongoing oversight by the Administration during all periods of employment.

“Current” means belonging to the present time.

“Disruptive behavior” means inappropriate behavior by the applicant or member including urinating or defecating in inappropriate places, sexual behavior inappropriate to time, place, or person or excessive whining, crying, or screaming that interferes with an applicant’s or member’s normal activities or the activities of others and requires intervention to stop or interrupt the behavior.

“Frequency” means the number of times a specific behavior occurs within a specified interval.

“Functional assessment” means an evaluation of information about an applicant’s or member’s ability to perform activities related to:

Developmental milestones,

Activities of daily living,

Communication, and

Behavior.

“Immediate risk of institutionalization” means the status of an applicant or member under A.R.S. § 36-2934(A)(5) and as specified in A.R.S. § 36-2936 and in the Administration’s Section 1115 Waiver with Centers for Medicare and Medicaid Services (CMS).

“Intervention” means therapeutic treatment, including the use of medication, behavior modification, and physical restraints to control behavior. Intervention may be formal or informal and includes actions taken by friends or family to control the behavior.

“Medical assessment” means an evaluation of an applicant’s or member’s medical condition and the applicant’s or member’s need for medical services.

“Medical or nursing services and treatments” or “services and treatments” means specific, ongoing medical, psychiatric, or nursing intervention used actively to resolve or prevent deterioration of a medical condition. Durable medical equipment and activities of daily living assistive

devices are not treatment unless the equipment or device is used specifically and actively to resolve the existing medical condition.

“Physician consultant” means a physician who contracts with the Administration.

“Social worker” means an individual with two years of case management-related experience or a baccalaureate or master’s degree in:

Social work,

Rehabilitation,

Counseling,

Education,

Sociology,

Psychology, or

Other closely related field.

“Special diet” means a diet planned by a dietitian, nutritionist, or nurse that includes high fiber, low sodium, or pureed food.

“Toileting” means the process involved in an applicant’s or member’s managing of the elimination of urine and feces in an appropriate place.

“Vision” means the ability to perceive objects with the eyes.

B. EPD. In addition to definitions contained in subsection (A), the following also apply to an applicant or member who is EPD:

“Aggression” means physically attacking another, including:

Throwing an object,

Punching,

Biting,

Pushing,

Pinching,

Pulling hair,

Scratching, and

Physically threatening behavior.

“Bathing” means the process of washing, rinsing, and drying all parts of the body, including an applicant’s or member’s ability to transfer to a tub or shower and to obtain bath water and equipment.

“Continence” means the applicant’s or member’s ability to control the discharge of body waste from bladder and bowel.

“Dressing” means the physical process of choosing, putting on, securing fasteners, and removing clothing and footwear. Dressing includes choosing a weather-appropriate article of clothing but excludes aesthetic concerns. Dressing includes the applicant’s or member’s ability to put on artificial limbs, braces, and other appliances that are needed daily.

“Eating” means the process of putting food and fluids by any means into the digestive system.

“Emotional and cognitive functioning” means an applicant’s or member’s orientation and mental state, as evidenced by aggressive, self-injurious, wandering, disruptive, and resistive behaviors.

“EPD” means an applicant or member who is elderly and physically disabled.

“Grooming” means an applicant’s or member’s process of tending to appearance. Grooming includes: combing or brushing hair; washing face and hands; shaving; oral hygiene (including denture care); and menstrual care. Grooming does not include aesthetics such as styling hair, skin care, nail care, and applying cosmetics.

“Mobility” means the extent of an applicant’s or member’s purposeful movement within a residential environment.

“Orientation” means an applicant’s or member’s awareness of self in relation to person, place, and time.

“Physically disabled” means an applicant or member who is determined to be physically impaired by the Administration through the PAS assessment as allowed under the Administration’s Section 1115 Waiver with CMS.

“Resistiveness” means inappropriately obstinate and uncooperative behaviors, including passive or active obstinate behaviors, or refusing to participate in self-care or to take necessary medications. Resistiveness does not include difficulties with auditory processing or reasonable expressions of self-advocacy.

“Self-injurious behavior” means repeated self-induced, abusive behavior that is directed toward infliction of immediate physical harm to the body.

“Sensory” means of or relating to the senses.

“Transferring” means an applicant’s or member’s ability to move horizontally or vertically between two surfaces within a residential environment, excluding transfer for toileting or bathing.

“Wandering” means an applicant’s or member’s moving about with no rational purpose and with a tendency to go beyond the physical parameter of the residential environment.

C. DD. In addition to definitions contained in subsection (A), the following also apply to an applicant or member who is DD:

“Acute” means an active medical condition having a sudden onset, lasting a short time, and requiring immediate medical intervention.

“Aggression” means physically attacking another, including:

- Throwing objects,
- Punching,
- Biting,
- Pushing,
- Pinching,
- Pulling hair, and
- Scratching.

“Ambulation” means the ability to walk and includes quality of the walking and the degree of independence in walking.

“Bathing or showering” means an applicant’s or member’s ability to complete the bathing process including drawing the bath water, washing, rinsing, and drying all parts of the body, and washing the hair.

“Clarity of communication” means an ability to speak in recognizable language or use a formal symbolic substitution, such as American-Sign Language.

“Community mobility” means the applicant’s or member’s ability to move about a neighborhood or community independently, by any mode of transportation.

“Crawling and standing” means an applicant’s or member’s ability to crawl and stand with or without support.

“DD” means developmentally disabled.

“Developmental milestone” means a measure of an applicant’s or member’s functional abilities, including:

- Fine motor skills,
- Gross motor skills,
- Communication,
- Socialization,
- Daily living skills, and
- Behaviors.

“Dressing” means the ability to put on and remove an article of clothing. Dressing does not include the ability to put on or remove braces nor does it reflect an applicant’s or member’s ability to match colors or choose clothing appropriate for the weather.

“Eating or drinking” means the process of putting food and fluid by any means into the digestive system.

“Expressive verbal communication” means an applicant’s or member’s ability to communicate thoughts with words or sounds.

“Food preparation” means the ability to prepare a simple meal including a sandwich, cereal, or a frozen meal.

“Hand use” means the applicant’s or member’s ability to use both hands, or one hand if an applicant or member has only one hand or has the use of only one hand.

“History” means a medical condition that occurred in the past, regardless of whether the medical condition required treatment in the past, and is not now active.

“Personal hygiene” means the process of tending to one’s appearance. Personal hygiene may include: combing or brushing hair, washing face and hands, shaving, performing routine nail care, oral hygiene including denture care, and menstrual care. This does not include aesthetics such as styling hair, skin care, and applying cosmetics.

“Rolling and sitting” means an applicant’s or member’s ability to roll and sit independently or with the physical support of another person or with a device such as a pillow or specially-designed chair.

“Running or wandering away” means an applicant or member leaving a physical environment without notifying or receiving permission from the appropriate individuals.

“Self-injurious behavior” means an applicant’s or member’s repeated behavior that causes injury to the applicant or member.

“Verbal or physical threatening” means any behavior in which an applicant or member uses words, sounds, or action to threaten harm to self, others, or an object.

“Wheelchair mobility” means an applicant’s or member’s mobility using a wheelchair and does not include the ability to transfer to the wheelchair.

#### Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended subsection (C) effective June 6, 1989 (Supp. 89-2). Amended effective July 13, 1992 (Supp. 92-3). Amended effective November 5, 1993 (Supp. 93-4). Section repealed by emergency action, new Section adopted by emergency action, subsection (A) effective June 30, 1995, subsection (B) effective September

ber 1, 1995, pursuant to A.R.S. § 41-1026, valid for 180 days; entire Section filed in the Secretary of State's Office June 30, 1995 (Supp. 95-2). Section repealed by emergency action, new Section adopted again by emergency action with changes effective January 2, 1996, pursuant to A.R.S. § 41-1026, valid for 180 days (Supp. 96-1). Emergency expired June 1, 1996. Section in effect before emergency action restored. Section repealed; new Section adopted effective January 14, 1997 (Supp. 97-1). Amended by final rulemaking at 7 A.A.R. 5824, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 12 A.A.R. 4007, effective October 5, 2006 (Supp. 06-4). Amended by final rulemaking at 17 A.A.R. 167, effective March 12, 2011 (Supp. 11-1).

#### **R9-28-302. General Provisions**

To qualify for services described in A.R.S. § 36-2939:

1. An applicant shall meet the financial criteria described in Article 4, and
2. AHCCCS shall determine that the applicant is at immediate risk of institutionalization under the PAS assessment as specified in this Article.

#### **Historical Note**

New Section adopted by emergency action, subsection (A) effective June 30, 1995, subsection (B) effective September 1, 1995, pursuant to A.R.S. § 41-1026, valid for 180 days; entire Section filed in the Office of the Secretary of State June 30, 1995 (Supp. 95-2). New Section adopted again by emergency action with changes effective January 2, 1996, pursuant to A.R.S. § 41-1026 (Supp. 96-1). Emergency expired June 1, 1996. New Section adopted effective January 14, 1997 (Supp. 97-1). Amended by final rulemaking at 7 A.A.R. 5824, effective December 7, 2001 (Supp. 01-4).

#### **R9-28-303. Preadmission Screening (PAS) Process**

- A. The assessor shall use the PAS instrument to determine whether the following applicants or members are at immediate risk of institutionalization:
  1. The assessor shall use the PAS instrument prescribed in R9-28-304 to assess an applicant or member who is EPD except as specified in subsection (A)(2) for an applicant or member who is physically disabled and who is less than 6 years old. After assessing a child who is physically disabled and age 6 years to less than 12 years, the assessor shall refer the child for physician consultant review under subsections (G) through (J).
  2. The assessor shall use the age-specific PAS instrument prescribed in R9-28-305 to assess an applicant or member who is physically disabled and less than 6 years old. After assessing the child, the assessor shall refer the child for physician consultant review under subsections (G) through (J).
  3. The assessor shall use the PAS instrument prescribed in R9-28-305 to assess an applicant or member who is DD, except as specified in subsection (A)(4) for an applicant or member who is DD and residing in a NF. After assessing a child who is DD and less than 6 months of age, the assessor shall refer the child for physician consultant review under subsections (G) through (J).
  4. The assessor shall use the PAS instrument prescribed in R9-28-304 for an applicant or a member who is DD and residing in a NF.
  5. The assessor shall use the PAS instrument prescribed in R9-28-304 or R9-28-305, whichever is applicable, to assess an applicant or member who is classified as venti-

lator-dependent, under Section 1902(e)(9) of the Social Security Act.

- B. For an initial assessment of an applicant who is in a hospital or other acute care setting:
  1. A registered nurse assessor shall complete the PAS assessment; or
  2. In the event that a registered nurse assessor is not available, a social worker assessor shall complete the PAS assessment; and
  3. The assessor shall conduct the PAS assessment and determine medical eligibility when discharge is scheduled within seven days.
- C. An assessor shall conduct a face-to-face PAS assessment with an applicant or member, except as provided in subsection (F). The assessor shall make reasonable efforts to obtain the applicant's or member's available medical records. The assessor may also obtain information for the PAS assessment from face-to-face interviews with the:
  1. Applicant or member,
  2. Parent,
  3. Guardian,
  4. Caregiver, or
  5. Any person familiar with the applicant's or member's functional or medical condition.
- D. Using the information described in subsection (C), an assessor shall complete the PAS assessment based on the assessor's education, experience, professional judgment, and training.
- E. After the assessor completes the PAS assessment, the assessor shall calculate a PAS score. The assessor shall compare the PAS score to an established threshold score. The scoring methodology and threshold scores are specified in R9-28-304 and R9-28-305. Except as determined by physician consultant review as provided in subsections (G) through (J), the threshold score is the point at which an applicant or member is determined to be at immediate risk of institutionalization.
- F. Upon request from a person acting on behalf of the applicant, the Administration shall conduct a PAS assessment to determine whether a deceased applicant who was residing in a NF or who received services in an ICF-MR any time during the time period covered by the application would have been eligible to receive ALTCS benefits for those months.
- G. In the following circumstances, the Administration shall request that a physician consultant review the PAS assessment, the available medical records, and use professional judgment to make the determination that an applicant or member has a developmental disability or has a nonpsychiatric medical condition that, by itself or in combination with other medical conditions, places an applicant or member at immediate risk of institutionalization:
  1. The PAS score of an applicant or member who is EPD is less than the threshold specified in R9-28-304, but is at least 56;
  2. The PAS score of an applicant or member who is DD is less than the threshold specified in R9-28-305, but is at least 38;
  3. An applicant or member scores below the threshold specified in R9-28-304, but the Administration has reasonable cause to believe that the applicant's or member's unique functional abilities or medical condition may place the applicant or member at immediate risk of institutionalization;
  4. An applicant or member scores below the threshold specified in R9-28-304 and has a documented diagnosis of autism, autistic-like behavior, or pervasive developmental disorder;

5. An applicant or member who is seriously mentally ill as defined in A.R.S. § 36-550 who scores at or above the threshold specified in R9-28-304, but may not meet the requirements of A.R.S. § 36-2936. When an applicant or member who is seriously mentally ill scores at or above the threshold, the physician consultant shall exercise professional judgment to determine whether the applicant or member meets the requirements of A.R.S. § 36-2936.
  6. An applicant is an AHCCCS acute care member and scores at or above the threshold specified in R9-28-304 but the Administration has reasonable cause to believe that the applicant's condition is convalescent and requires less than 90 days of institutional care;
  7. An applicant or member is a child who is physically disabled and is at least 6 but less than 12 years of age;
  8. An applicant or member is a child who is physically disabled and is under 6 years of age; and
  9. An applicant is under 6 months of age.
- H.** The physician consultant shall consider the following:
1. Activities of daily living dependence;
  2. Delay in development;
  3. Continence;
  4. Orientation;
  5. Behavior;
  6. Any medical condition, including stability and prognosis of the condition;
  7. Any medical nursing treatment provided to the applicant or member including skilled monitoring, medication, and therapeutic regimens;
  8. The degree to which the applicant or member must be supervised;
  9. The skill and training required of the applicant or member's caregiver; and
  10. Any other factor of significance to the individual case.
- I.** If the physician consultant is unable to make the determination from the PAS assessment and the available medical records, the physician consultant may conduct a face-to-face review with the applicant or member or contact others familiar with the applicant's or member's needs, including a primary care physician or other caregiver, to make the determination.
- J.** The physician consultant shall state the reasons for the determination in the physician review comment section of the PAS instrument.

#### Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective July 13, 1992 (Supp. 92-3). Amended under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1992, Ch. 301, § 61, effective July 1, 1993 (Supp. 93-3). Amended effective November 5, 1993 (Supp. 93-4). Section repealed by emergency action, new Section adopted by emergency action effective June 30, 1995, pursuant to A.R.S. § 41-1026, valid for 180 days (Supp. 95-2). Section repealed by emergency action, new Section adopted again by emergency action effective January 2, 1996, pursuant to A.R.S. § 41-1026, valid for 180 days (Supp. 96-1). Emergency expired June 1, 1996. Section in effect before emergency action restored. Section repealed; new Section adopted effective January 14, 1997 (Supp. 97-1). Former Section R9-28-303 renumbered to R9-28-304; new Section R9-28-303 made by final rulemaking at 7 A.A.R. 5824, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 12 A.A.R. 4007, effective October 5, 2006 (Supp. 06-4). Amended by final rulemaking at 17 A.A.R. 167, effective March 12, 2011 (Supp. 11-1).

#### R9-28-304. Preadmission Screening Criteria for an Applicant or Member who is Elderly and Physically Disabled (EPD)

- A.** The PAS instrument for an applicant or member who is EPD includes the following categories:
1. Intake information category. The assessor solicits intake information category information on an applicant's or member's demographic background. The components of the intake information category are not included in the calculated PAS score.
  2. Functional assessment category. The assessor solicits functional assessment category information on an applicant's or member's:
    - a. Need for assistance with activities of daily living, including:
      - i. Bathing,
      - ii. Dressing,
      - iii. Grooming,
      - iv. Eating,
      - v. Mobility,
      - vi. Transferring, and
      - vii. Toileting in the residential environment or other routine setting;
    - b. Communication and sensory skills, including hearing, expressive communication, and vision; and
    - c. Continence, including bowel and bladder functioning.
  3. Emotional and cognitive functioning category. The assessor solicits emotional and cognitive functioning category information on an applicant's or member's:
    - a. Orientation to person, place, and time. In soliciting this information, the assessor shall also take into account the caregiver's judgment; and
    - b. Behavior, including:
      - i. Wandering,
      - ii. Self-injurious behavior,
      - iii. Aggression,
      - iv. Resistiveness, and
      - v. Disruptive behavior.
  4. Medical assessment category. The assessor solicits medical assessment category information on an applicant's or member's:
    - a. Medical conditions that have an impact on the applicant's or member's functional ability in relation to activities of daily living, continence, and vision;
    - b. Medical condition that requires medical or nursing service and treatment;
    - c. Medication, treatment, and allergies;
    - d. Specific services and treatments that the applicant or member is currently receiving; and
    - e. Physical measurements, hospitalization history, and ventilator dependency.
- B.** The assessor shall use the PAS instrument to assess an applicant or member who is EPD as specified in this Section. A copy of the PAS instrument is available from the Administration. The Administration uses the assessor's PAS assessment to calculate three scores: a functional score, a medical score, and a total score.
1. Functional score.
    - a. The Administration calculates the functional score from responses to scored items in the functional assessment and emotional and cognitive functioning categories. For each response to a scored item, a number of points is assigned, which is multiplied by a weighted numerical value. The result is a weighted score for each response.

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- b. In the functional assessment matrix, all items in the following categories are scored according to subsection (C):
        - i. Activities of daily living,
        - ii. Continence,
        - iii. Sensory,
        - iv. Orientation, and
        - v. Behavior.
      - c. The sum of the weighted scores equals the functional score. The weighted score per item can range from 0 to 15. The maximum functional score attainable by an applicant or member is 166.
    2. Medical score.
      - a. In the medical assessment matrix, all items in the following categories are scored according to:
        - i. Medical conditions as specified in subsection (C), and
        - ii. Medical or nursing services and treatments in subsection (C).
      - b. The Administration calculates the medical score based on the applicant's or member's:
        - i. Diagnosis of Alzheimer's, dementia, or organic brain syndrome (OBS);
        - ii. Diagnosis of paralysis; and
        - iii. Current use of oxygen.
  - c. The maximum medical score attainable by an applicant or member is 31.5.
  3. Total score.
    - a. The sum of an applicant's or member's functional and medical scores equals the total score.
    - b. The total score is compared to the established threshold score as calculated under this Section. The threshold score is 60.
    - c. As defined in R9-28-303, an applicant or member is determined at immediate risk of institutionalization if the total score is equal to or greater than 60.
- C. The following matrices represent the number of points available and the respective weight for each scored item.
1. Functional assessment points. The lowest value in the range of points available per item in the functional assessment category, zero, indicates minimal to no impairment. Conversely, the highest value indicates severe impairment.
  2. Medical assessment points. The lowest value in the range of points available per item in the medical assessment category, zero, indicates that the applicant or member:
    - a. Does not have the scored medical condition,
    - b. Does not need the scored medical or nursing services, or
    - c. Does not receive the scored medical or nursing services.

FUNCTIONAL ASSESSMENT	# of Points Available Per Item (P)	Weight (W)	Range of Possible Weighted Score per Item (P)x(W)
<b>Activities of Daily Living Section</b>			
Mobility	0-3	5	0-15
Transfer	0-3	5	0-15
Bathing	0-3	5	0-15
Dressing	0-3	5	0-15
Grooming	0-3	5	0-15
Eating	0-3	5	0-15
Toileting	0-3	5	0-15
<b>Continence Section</b>			
Bowel	0-3	1	0-3
Bladder	0-3	1	0-3
<b>Sensory Section</b>			
Vision	0-3	2	0-6
<b>Orientation Section</b>			
Place	0-4	.5	0-2
Time	0-4	.5	0-2
<b>Emotional or Cognitive Behavior Section</b>			
Aggression-Frequency	0-3	1.5	0-4.5
Aggression-Intervention	0-3	1.5	0-4.5
Self-injurious-Frequency	0-3	1.5	0-4.5
Self-injurious-Intervention	0-3	1.5	0-4.5
Wandering-Frequency	0-3	1.5	0-4.5
Wandering-Intervention	0-3	1.5	0-4.5
Resistiveness-Frequency	0-3	1.5	0-4.5
Resistiveness-Intervention	0-3	1.5	0-4.5
Disruptive-Frequency	0-3	1.5	0-4.5
Disruptive-Intervention	0-3	1.5	0-4.5

MEDICAL ASSESSMENT	# of Points Available Per Item (P)	Weight (W)	Range of Possible Weighted Score Per Item (P)x(W)
<b>Medical Conditions Section</b>			
Paralysis	0-1	6.5	0 or 6.5
Alzheimer's, or OBS, or Dementia	0-1	20	0 or 20
<b>Services and Treatments Section</b>			
Oxygen	0-1	5	0 or 5

**Historical Note**

New Section adopted by emergency action, subsection (A) effective June 30, 1995, subsection (B) effective September 1, 1995, pursuant to A.R.S. § 41-1026, valid for 180 days; entire Section filed as an emergency rule with the Secretary of State's Office June 30, 1995 (Supp. 95-2). New Section adopted again by emergency action with changes effective January 2, 1996, pursuant to A.R.S. § 41-1026, valid for 180 days (Supp. 96-1). Emergency expired. New Section adopted effective January 14, 1997 (Supp. 97-1). Former Section R9-28-304 renumbered to R9-28-305; new Section R9-28-304 renumbered from R9-28-303 and amended by final rulemaking at 7 A.A.R. 5824, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 12 A.A.R. 4007, effective October 5, 2006 (Supp. 06-4).

**R9-28-305. Preadmission Screening Criteria for an Applicant or Member who is Developmentally Disabled (DD)**

- A. The Administration shall conduct a PAS assessment of an applicant or member who is DD using one of three PAS instruments specifically designed to assess an applicant or member in the following age groups:
  1. Twelve years of age and older,
  2. Six through 11 years of age, and
  3. Birth through 5 years of age.
- B. The PAS instruments for an applicant or member who is DD include three major categories:
  1. Intake information category. The assessor solicits intake information category information on an applicant's or member's demographic background. The components of this category are not included in the calculated PAS score.
  2. Functional assessment category. The functional assessment category differs by age group as indicated in subsections (B)(2)(a) through (e):
    - a. For an applicant or member 12 years of age and older, the assessor solicits the functional assessment category information on an applicant's or member's:
      - i. Need for assistance with independent living skills, including hand use, ambulation, wheelchair mobility, transfer, eating or drinking, dressing, personal hygiene, bathing or showering, food preparation, community mobility, and toileting;
      - ii. Communication skills and cognitive abilities, including expressive verbal communication, clarity of communication, associating time with an event and action, and remembering an instruction and a demonstration; and
      - iii. Behavior, including aggression, verbal or physical threatening, self-injurious behavior, and resistive or rebellious behavior.
    - b. For an applicant or member 6 through 11 years of age, the assessor solicits the functional assessment category information on an applicant's or member's:
      - i. Need for assistance with independent living skills, including rolling and sitting, crawling and standing, ambulation, climbing stairs or ramps, wheelchair mobility, dressing, personal hygiene, bathing or showering, toileting, level of bladder control, and orientation to familiar settings;
      - ii. Communication, including expressive verbal communication and clarity of communication; and
      - iii. Behavior, including aggression, verbal or physical threatening, self-injurious behavior, running or wandering away, and disruptive behavior.
  3. Medical assessment category. The assessor solicits medical assessment category information on an applicant's or member's:
    - a. Medical condition;
    - b. Specific services and treatments the applicant or member receives or needs and the frequency of those services and treatments;
    - c. Current medication;
    - d. Medical stability;
    - e. Sensory functioning;
    - f. Physical measurements; and
    - g. Current living arrangement, ventilator dependency and eligibility for DES Division of Developmental Disabilities program services.
- C. The assessor shall use the PAS instrument to assess an applicant or member who is DD. A copy of the PAS instrument is available from the Administration. The Administration uses the assessor's PAS instrument responses to calculate three scores: a functional score, a medical score, and a total score.
  1. Functional score.
    - a. The Administration calculates the functional score from responses to scored items in the functional assessment category. Each response is assigned a number of points which is multiplied by a weighted numerical value, resulting in a weighted score for each response.



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- b. The following items are scored as indicated in subsection (D), under the Functional Assessment matrix:

- i. For an applicant or member 12 years of age and older, all items in the behavior section are scored. Designated items in the independent living skills, communication skills, and cognitive abilities sections are also scored;
- ii. For an applicant or member 6 through 11 years of age, all items in the communication section are scored. Designated items in the independent living skills and behavior sections are scored;
- iii. For an applicant or member 6 months of age through 5 years of age, items in the developmental milestones section are scored based on the age of the applicant.

- c. The sum of the weighted scores equals the functional score. The range of weighted score per item and maximum functional score for each age group is presented below:

AGE GROUP	RANGE FOR WEIGHTED SCORE PER ITEM	MAXIMUM FUNCTIONAL SCORE ATTAINABLE
12+	0 - 11.2	124.1
6-11	0 - 24	112.5
0-5	0 - 5.0	106.02

- d. No minimum functional score is required.

2. Medical score.

- a. Subsections (C)(2)(a)(i) through (iii) are scored as indicated in subsection (D), under the Medical Assessment matrix:

- i. The assessor shall score designated items in the medical conditions for an applicant or member 12 years of age and older and 6 years of age through 11 years of age.
- ii. The assessor shall score designated items in the medical conditions and medical stability sections for an applicant or member 6 months of age through 5 years of age.
- iii. The assessor shall complete only the medical assessment section of the PAS for an applicant or member less than 6 months of age. There is no weighted or calculated score assigned. The assessor shall refer the applicant or member for physician consultant review.

- iv. The assessor shall complete only the medical assessment section of the PAS for an applicant or member less than 6 months of age. There is no weighted or calculated score assigned. The assessor shall refer the applicant or member for physician consultant review.

- b. The Administration calculates the medical score from information obtained in the medical assessment category. Each response to a scored item is assigned a number of points. The sum of the points equals the medical score. The range of points per item and the maximum medical score attainable by an applicant or member is presented below:

AGE GROUP	RANGE OF POINTS PER ITEM	MAXIMUM MEDICAL SCORE ATTAINABLE
12+	0 - 20.6	21.4
6-11	0 - 2.5	5
0-5	0 - 10	60

- c. No minimum medical score is required.

3. Total score.

- a. The sum of an applicant's or member's functional and medical scores equals the total score.
- b. The total score is compared to an established threshold score in R9-28-304. For an applicant or member who is DD, the threshold score is 40. Based upon the PAS instrument an applicant or member with a total score equal to or greater than 40 is at immediate risk of institutionalization.

- D. The following matrices represent the number of points available and the weight for each scored item.

1. Functional assessment points. An applicant or member age group 0 to 5: The value is received for each negative response. An applicant or member age groups 6 to 11 and 12+: the lowest value in the range of points available per item in the functional assessment category indicates minimal to no impairment. Conversely, the highest value indicates severe impairment.
2. Medical assessment points. The lowest value in the range of points available per item in the medical assessment category, zero, indicates that the applicant or member:
  - a. Does not have a medical condition specified in the following matrices,
  - b. Does not need medical or nursing service as specified in the following matrices, or
  - c. Does not receive any medical or nursing service as specified in the following matrices.

AGE GROUP 12 AND OLDER FUNCTIONAL ASSESSMENT	# of Points Available Per Item (P)	Weight (W)	Range of Possible Weighted Score Per Item (P) x (W)
Independent Living Skills Section			
Hand Use, Food Preparation	0-3	3.5	0-10.5
Ambulation, Toileting, Eating, Dressing, Personal Hygiene	0-4	2.8	0-11.2
Communicative Skills and Cognitive Abilities Section			
Associating Time, Remembering Instructions	0-3	0.5	0 - 1.5
Behavior Section			
Aggression, Threatening, Self Injurious	0-4	2.8	0-11.2
Resistive	0-3	3.5	0-10.5

<b>AGE GROUP 12 AND OLDER MEDICAL ASSESSMENT</b>	<b># of Points Available Per Item (P)</b>	<b>Weight (W)</b>	<b>Range of Possible Weighted Score Per Item (P) x (W)</b>
Medical Conditions Section			
Cerebral Palsy, Epilepsy	0-1	0.4	0-.4
Moderate, Severe, Profound Mental Retardation	0-1	20.6	0-20.6

<b>AGE GROUP 6-11 FUNCTIONAL ASSESSMENT</b>	<b># of Points Available Per Item (P)</b>	<b>Weight (W)</b>	<b>Range of Possible Weighted Score Per Item (P) x (W)</b>
Independent Living Skills Section			
Climbing Stairs, Wheelchair Mobility, Bladder Control	0-3	1.875	0-5.625
Ambulation, Dressing, Bathing, Toileting	0-4	1.5	0-6
Crawling or Standing	0-5	1.25	0-6.25
Rolling or Sitting	0-8	0.833	0-6.66
Communication Section			
Clarity	0-4	1.5	0-6
Expressive Communication	0-5	1.25	0-6.25
Behavior Section			
Wandering	0-4	6	0-24
Disruptive	0-3	7.5	0-22.5

<b>AGE GROUP 6 - 11 MEDICAL ASSESSMENT</b>	<b># of Points Available Per Item (P)</b>	<b>Weight (W)</b>	<b>Range of Possible Weighted Score Per Item (P) x (W)</b>
Medical Conditions Section			
Cerebral Palsy, Epilepsy	0-1	2.50	0-2.5

<b>AGE GROUP 0 – 5 FUNCTIONAL ASSESSMENT</b>	<b>Weight</b>
6 -9 Months	5.0
9-11 Months	4.1
12-17 Months	2.9
18-23 Months	2.125
24-29 Months	1.75
30-35 Months	1.55
36-47 Months	1.34
48-59 Months	1.14
60 Months+	1.03

<b>AGE GROUP 0 - 5 MEDICAL ASSESSMENT</b>	<b>Weight</b>
Cerebral Palsy	5.0
Epilepsy	5.0
Moderate, Severe, or Profound Mental Retardation (36 Months and older only)	15.0
Autism + M-CHAT (18 Months and older only) Fails at least six M-CHAT based questions	7.0
Autism + Behaviors (30-35 Months only) Exhibits at least 3 of 4 specific behaviors	5.0
Autism + Behaviors (36 Months and older only) Exhibits at least 6 of 8 specific behaviors	10.0
Drug Regulation + Administration (6 Months to 35 Months)	1.0
Drug Regulation + Administration (36 Months and older)	1.5
Non-Bowel/Bladder Ostomy Care (6 Months to 35 Months)	7.0
Non-Bowel/Bladder Ostomy Care (36 Months and older)	5.0
Tube Feeding (6 Months to 35 Months)	7.0
Tube Feeding (36 Months and older)	5.0
Physical Therapy or Occupational Therapy (6 Months to 35 Months)	1.0
Physical Therapy or Occupational Therapy (36 Months and older)	1.5

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Acute Hospital Admission (One)	1.0
Acute Hospital Admissions (Two or more)	2.0
Direct Care Staff Trained (6 Months to 11 Months)	0.5
Direct Care Staff Trained (12 Months and older)	1.0
Special Diet	2.0

**Historical Note**

Section adopted by emergency action effective June 30, 1995, pursuant to A.R.S. § 41-1026, valid for 180 days (Supp. 95-2). Section adopted again by emergency action effective January 2, 1996, pursuant to A.R.S. § 41-1026, valid for 180 days (Supp. 96-1). Emergency expired. New Section adopted effective January 14, 1997 (Supp. 97-1). Former Section R9-28-305 renumbered to R9-28-306; new Section R9-28-305 renumbered from R9-28-304 and amended by final rulemaking at 7 A.A.R. 5824, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 17 A.A.R. 167, effective March 12, 2011 (Supp. 11-1).

**R9-28-306. Reassessments**

- A. An assessor shall reassess an ALTCS member to determine continued eligibility:
  1. In connection with a routine audit of the PAS assessment by AHCCCS;
  2. In connection with a request by a provider, program contractor, case manager, or other party, if AHCCCS determines that continued eligibility is uncertain due to substantial evidence of a change in the member's circumstances or error in the PAS assessment; or
  3. Annually when part of a population group identified by the Director in a written report as having an increased likelihood of becoming ineligible.
- B. An assessor shall determine continued eligibility for ALTCS using the same criteria used for the initial PAS assessment as prescribed in R9-28-303.
- C. An assessor shall refer the reassessment to physician consultant review if the member is:
  1. Determined ineligible,
  2. In the ALTCS Transitional Program under R9-28-307 and resides in a NF or ICF-MR, or
  3. Seriously mentally ill and no longer has a non-psychiatric medical condition that impacts the member's ability to function.

**Historical Note**

Adopted effective September 1, 1995, under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1994, Ch. 322, § 21; filed with the Office of the Secretary of State June 29, 1995 (Supp. 95-3). Former Section R9-28-306 renumbered to R9-28-307; new Section R9-28-306 renumbered from R9-28-305 and amended by final rulemaking at 7 A.A.R. 5824, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 10 A.A.R. 1312, effective May 1, 2004 (Supp. 04-1).

**R9-28-307. The ALTCS Transitional Program for a Member who is Elderly and Physically Disabled (EPD) or Developmentally Disabled (DD)**

- A. The ALTCS transitional program serves members enrolled in the ALTCS program who, at the time of reassessment as described in R9-28-306, no longer meet the threshold specified in R9-28-304 for EPD or in R9-28-305 for DD but do meet all other ALTCS eligibility criteria. The Administration shall compare the member's PAS assessment to a scoring methodology for eligibility in the ALTCS transitional program as defined in subsections (B) and (C).
- B. The Administration shall transfer a member who is DD from the ALTCS program to the ALTCS transitional program if, at the time of a reassessment, the total PAS score is less than the threshold described in R9-28-305 but is at least 30, or the member is diagnosed with moderate, severe, or profound mental retardation.

- C. The Administration shall transfer a member who is EPD from the ALTCS program to the ALTCS transitional program if, at the time of a reassessment, the PAS score is less than the threshold described in R9-28-304 but is at least 40.
- D. For a member residing in a NF or ICF-MR, the program contractor or the Administration shall ensure that the member is moved to an approved home- and community-based setting within 90 continuous days from the enrollment date of the member's eligibility for the ALTCS transitional program.
- E. A member in the ALTCS transitional program shall continue to receive all medically necessary covered services as specified in Article 2.
- F. A member in the ALTCS transitional program is eligible to receive up to 90 continuous days per NF or ICF-MR admission when the member's condition worsens to the extent that an admission is medically necessary.
- G. For a member requiring medically necessary NF or ICF-MR services for longer than 90 days, the program contractor shall request the Administration to conduct a reassessment under R9-28-306.

**Historical Note**

New Section renumbered from R9-28-306 and amended by final rulemaking at 7 A.A.R. 5824, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 12 A.A.R. 4007, effective October 5, 2006 (Supp. 06-4).

**ARTICLE 4. ELIGIBILITY AND ENROLLMENT****R9-28-401. Eligibility and Enrollment-Related Definitions**

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

"ALTCS acute care services" means services under 9 A.A.C. 22, Articles 2 and 12, that are provided to a person who meets ALTCS eligibility requirements in 9 A.A.C. 28, Article 4 and who:

- Lives in an acute care living arrangement described in R9-28-406; or
- Is not eligible for long-term care benefits, described in R9-28-409, due to a transfer under R9-28-409 without receiving fair consideration, or
- Has refused institutionalized or HCBS services.

"Community spouse" means the husband or wife of an institutionalized person who has entered into a contract of marriage, recognized as valid by the state of Arizona, and who does not live in a medical institution.

"CSRSD" means Community Spouse Resource Deduction, the amount of a married couple's resources that is excluded in the

eligibility determination to prevent impoverishment of the community spouse as determined under R9-28-410.

“Fair consideration” means income, real or personal property, services, or support and maintenance equal to or exceeding the fair market value of the income or resources that were transferred.

“First continuous period of institutionalization” means the first period beginning on or after September 30, 1989 that the applicant was institutionalized for 30 consecutive days or more. To be considered institutionalized, the applicant must:

- Have resided in a medical institution;
- Have received paid formal Home and Community Based Services (HCBS);
- Have received a combination of medical institutionalization and HCBS, or
- Intend to receive HCBS and either:
  - Requests a Resource Assessment and is determined in need of institutional services by a Resource Assessment Medical Evaluation; or
  - Applies for ALTCS and is determined medically eligible by the Pre-Admission Screening (PAS).

“Institutionalized” means residing in a medical institution or receiving or expecting to receive HCBS that prevent the person from being placed in a medical institution as determined by the PAS.

“Medically eligible” means meeting the ALTCS medical eligibility criteria under Article 3 of this Chapter.

“MMMNA” means Minimum Monthly Maintenance Needs Allowance.

“Redetermination” means a periodic review of all eligibility factors for a recipient.

“Representative” means a person other than a spouse or a parent of a dependent child, who applies for ALTCS on behalf of another person.

“Share of costs” means the amount an ALTCS recipient is required to pay toward the cost of long term care services.

“Spouse” means a person legally married under Arizona law, a person eligible for Social Security benefits as the spouse of another person, or a person living with another person of the opposite sex and the couple represents themselves in the community as husband and wife.

#### Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 369, effective January 6, 1999 (Supp. 99-1). Amended by exempt rulemaking at 7 A.A.R. 4691, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 9 A.A.R. 5138, effective January 3, 2004 (Supp. 03-4). Section repealed; new Section made by final rulemaking at 14 A.A.R. 2090, effective July 5, 2008 (Supp. 08-2). Amended by final rulemaking at 20 A.A.R. 234, effective January 7, 2014 (Supp. 14-1).

#### R9-28-401.01. General

##### A. Application for ALTCS coverage.

1. The Administration shall provide a person the opportunity to apply for ALTCS as described under Chapter 22, Article 3, unless specified otherwise in this Section.
2. To apply for ALTCS, a person shall submit an application to an ALTCS eligibility office.

- a. The application shall contain the applicant's name and address.
- b. Before the application is approved, a person listed in A.A.C. R9-22-302(2) shall sign the application.
- c. A witness shall also sign the application if an applicant signs the application with a mark.
- d. The date of application is the date the application is received by the Administration or its designee as described in R9-22-302.

3. Except as provided in R9-22-306, the Administration shall determine eligibility within 45 days from the date of application.
4. An applicant or representative who files an ALTCS application may withdraw the application for ALTCS coverage either orally or in writing to the ALTCS eligibility office where the application was filed. The Administration shall provide the applicant with a denial notice under subsection (E).
5. If an applicant dies while an application is pending, the Administration shall complete an eligibility determination for the deceased applicant.
6. If a person dies before an application is filed, the Administration shall complete an eligibility determination on an application filed on behalf of the deceased applicant, if the application is filed in the month of the person's death.

##### B. Conditions of ALTCS eligibility. Except for persons identified in subsection (C), the Administration shall approve a person for ALTCS if all conditions of eligibility are met. The conditions of eligibility are:

1. Citizenship and alien status under Chapter 22, Article 3;
2. SSN under Chapter 22, Article 3;
3. Living arrangements under R9-28-406;
4. Resources under R9-28-407;
5. Income under R9-28-408;
6. Transfers under R9-28-409;
7. A legally authorized person shall assign rights to the Administration for medical support and for payment of medical care from any first- and third-parties as described under R9-22-311;
8. A person shall take all necessary steps to obtain annuity, pension, retirement, and disability benefits for which a person may be entitled;
9. State residency under R9-22-305;
10. Medical eligibility as specified in Chapter 28, Article 3; and
11. Providing information and verification as specified under Chapter 22, Article 3.

##### C. Persons eligible for Title IV-E or Title XVI are only required to meet the conditions under subsection (B)(6), (B)(10), (B)(11) and with respect to trusts, A.R.S. § 36-2934.01.

##### D. Eligibility effective date.

1. Eligibility is effective on the first day of the month that all eligibility requirements are met, including the period described under R9-22-303.
2. The effective date of eligibility for an applicant who moves into Arizona is no sooner than the date Arizona residency is established.
3. The effective date of eligibility for an inmate applying for medical coverage is the date the applicant no longer meets the definition of an inmate of a public institution.

##### E. Notice. The Administration shall send a person a notice of the decision regarding the person's application. The notice shall include a statement of the action and an explanation of the person's hearing rights as specified in 9 A.A.C. 34 and:

1. Approval. If the applicant meets all the eligibility requirements and conditions of eligibility of this Article, the

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Administration or its designee shall approve the application and provide the applicant with an approval notice. The approval notice shall contain:

- a. The name of each approved applicant,
  - b. The effective date of eligibility for each approved applicant,
  - c. The amount of share of cost, and
  - d. The applicant's right to appeal the decision.
2. Denial. If an applicant fails to meet the eligibility requirements or conditions of eligibility of this Article, the Administration or its designee shall deny the application and provide the applicant with a denial notice. The denial notice shall contain:
- a. The name of each ineligible applicant,
  - b. The specific reason why the applicant is ineligible,
  - c. The income and resource calculations for the applicant compared to the income or resource standards for eligibility when the reason for the denial is due to the applicant's income or resources exceeding the applicable standard,
  - d. The legal citations supporting the reason for the ineligibility,
  - e. The location where the applicant can review the legal citations, and
  - f. The applicant's right to appeal the decision and request a hearing.

- F. Confidentiality. The Administration shall maintain the confidentiality of a person's record under A.A.C. R9-22-512.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 2090, effective July 5, 2008 (Supp. 08-2). Amended by final rulemaking at 19 A.A.R. 3320, effective November 30, 2013 (Supp. 13-4). Amended by final rulemaking at 20 A.A.R. 234, effective January 7, 2014 (Supp. 14-1).

**R9-28-402. Repealed****Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Amended effective July 13, 1992 (Supp. 92-3). Amended effective November 5, 1993 (Supp. 93-4). Repealed effective November 4, 1998 (Supp. 98-4). New Section adopted by final rulemaking at 5 A.A.R. 369, effective January 6, 1999 (Supp. 99-1). Amended by exempt rulemaking at 7 A.A.R. 4691, effective October 1, 2001 (Supp. 01-3). Repealed by final rulemaking at 20 A.A.R. 234, effective January 7, 2014 (Supp. 14-1).

**R9-28-403. Repealed****Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective April 25, 1990 (Supp. 90-2). Amended effective July 13, 1992 (Supp. 92-3). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 369, effective January 6, 1999 (Supp. 99-1). Repealed by final rulemaking at 20 A.A.R. 234, effective January 7, 2014 (Supp. 14-1).

**R9-28-404. Repealed****Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective April 25, 1990 (Supp. 90-2). Amended effective July 13, 1992 (Supp. 92-3). Amended effective November 5, 1993 (Supp. 93-

4). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 369, effective January 6, 1999 (Supp. 99-1). Repealed by final rulemaking at 20 A.A.R. 234, effective January 7, 2014 (Supp. 14-1).

**R9-28-405. Repealed****Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 369, effective January 6, 1999 (Supp. 99-1). Repealed by final rulemaking at 20 A.A.R. 234, effective January 7, 2014 (Supp. 14-1).

**R9-28-406. ALTCS Living Arrangements**

- A. Long-term care living arrangements. A person may be eligible for ALTCS services, under Article 2, while living in one of the following settings:

1. Institutional settings:
  - a. A Nursing Facility (NF) defined in 42 U.S.C. 1396r(a),
  - b. An Institution for Mental Diseases (IMD) for a person who is either under age 21 or age 65 or older,
  - c. An Intermediate Care Facility for the Mentally Retarded (ICF-MR) for a person with developmental disabilities,
  - d. A hospice (free-standing, hospital, or nursing facility subcontracted beds) defined in A.R.S. § 36-401; or
2. Home and community-based services (HCBS) settings:
  - a. A person's home defined in R9-28-101(B), or
  - b. Alternative HCBS settings defined in R9-28-101(B).

- B. ALTCS acute care living arrangements.

1. A person applying for and otherwise entitled to receive ALTCS coverage shall receive only ALTCS acute care coverage if residing in one of the following living arrangements, settings, or locations:
  - a. A noncertified medical facility, or
  - b. A medical facility that is registered with AHCCCS but does not have a contract with an ALTCS program contractor, or
  - c. At home or in an alternative HCBS setting when the person refuses HCBS services, or
  - d. A licensed or certified HCBS facility that is not registered with AHCCCS.
2. Eligibility income limits.
  - a. For a person residing in a setting described in subsection (1)(a) or (1)(b), the gross income limit is 300 percent of the Federal Benefit Rate (FBR).
  - b. For a person residing in a setting described in subsection (1)(c) or (1)(d), the net income limit is 100 percent of the FBR.

- C. Inmate of a public institution. An inmate of a public institution is not eligible for the ALTCS program if federal financial participation (FFP) is not available as described under R9-22-310.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 369, effective January 6, 1999 (Supp. 99-1). Amended by exempt rulemaking at 7 A.A.R. 4691, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 20 A.A.R. 234, effective January 7, 2014 (Supp. 14-1).

**R9-28-407. Resource Criteria for Eligibility**

- A. The following Medicaid-eligible persons shall be deemed to meet the resource requirements for ALTCS eligibility unless ineligible due to federal and state laws regarding trusts.
1. A person receiving Supplemental Security Income (SSI);
  2. A person receiving Title IV-E Foster Care Maintenance payment; or
  3. A person receiving a Title IV-E Adoption Assistance.
- B. Except as provided in subsection (C), if a person's ALTCS eligibility is most closely related to SSI and is not included in subsection (A), the Administration shall determine eligibility using resource criteria in 42 U.S.C. 1382(a)(1)(B), 42 U.S.C. 1382b, and 20 CFR 416 Subpart L. The resource limit for an individual is \$2,000 or \$3,000 for a couple under 20 CFR 416.1205.
- C. The Administration permits the following exceptions to the resource criteria for a person identified in subsection (B):
1. Resources of the spouse or parent of a minor child are disregarded beginning the first day in the month the person is institutionalized.
  2. The value of household goods and personal effects is excluded.
  3. The value of oil, timber, and mineral rights is excluded.
  4. The value of all of the following shall be disregarded:
    - a. Term insurance;
    - b. Burial insurance;
    - c. Assets that a person has irrevocably assigned to fund the expense of a burial;
    - d. The cash value of all life insurance if the face value does not exceed \$1,500 total per insured person and the policy has not been assigned to fund a pre-need burial plan or has a legally binding designation as a burial fund;
    - e. The value of any burial space held for the purpose of providing a place for the burial of the person, a spouse, or any other member of the immediate family;
    - f. \$1,500 of the equity value of an asset that has a legally binding designation as a burial fund or a revocable burial arrangement if there is no irrevocable burial arrangement;
    - g. During the time a person remains continuously eligible, all appreciation in the value of the assets in subsection (C)(4)(f) will be disregarded; and
    - h. The amount of a payment refunded by a nursing facility after ALTCS approval is only excluded for six months beginning with the month the refund was received. The Administration shall evaluate the refund in accordance with R9-28-409 if transferred without receiving something of equal value.
- D. For an institutionalized spouse, a resource disregard is allowed under 42 U.S.C. 1396r-5(c).
- E. Trusts are evaluated in accordance with federal and state laws to determine eligibility.
- F. A person shall provide information and verification necessary to determine the countable value of resources.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 369, effective January 6, 1999 (Supp. 99-1). Amended by exempt rulemaking at 7 A.A.R. 4691, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 14 A.A.R. 2090, effective July 5, 2008 (Supp. 08-2). Amended by final

rulemaking at 20 A.A.R. 234, effective January 7, 2014 (Supp. 14-1).

**R9-28-408. Income Criteria for Eligibility**

- A. The following Medicaid-eligible persons shall be deemed to meet the income requirements for ALTCS eligibility unless ineligible due to federal and state laws regarding trusts.
1. A person receiving Supplemental Security Income (SSI);
  2. A person receiving Title IV-E Foster Care Maintenance Payments; or
  3. A person receiving Title IV-E Adoption Assistance.
- B. If the person is not included in subsection (A), the Administration shall count the income described in 42 U.S.C. 1382a and 20 CFR 416 Subpart K to determine eligibility with the following exceptions:
1. Income types excluded by 42 U.S.C. 1382a(b) for determining net income are also excluded in determining gross income to determine eligibility;
  2. Income of the parent or spouse of a minor child is counted as part of income under 42 CFR 435.602, except that the income of the parent or spouse is disregarded for the month beginning when the person is institutionalized;
  3. In-kind support and maintenance, under 42 U.S.C. 1382a(a)(2)(A), are excluded for both net and gross income tests;
  4. The income exceptions under A.A.C. R9-22-1503(B) apply to the net income test; and
  5. Income described in subsection (C) is excluded.
- C. The following are income exceptions:
1. Disbursements from a trust are considered in accordance with federal and state law; and
  2. For an institutionalized spouse, a person defined in 42 U.S.C. 1396r-5(h)(1), income is calculated in accordance with 42 U.S.C. 1396r-5(b).
- D. Income eligibility. Except as provided in R9-28-406(B)(2)(b), countable income shall not exceed 300 percent of the FBR.
- E. The Administration shall determine the amount a person shall pay for the cost of ALTCS services and the post-eligibility treatment of income (share-of-cost) under A.R.S. § 36-2932(L) and 42 CFR 435.725 or 42 CFR 435.726. The Administration shall consider the following in determining the share-of-cost:
1. Income types excluded by 42 U.S.C. 1382a(b) for determining net income are excluded in determining share-of-cost.
  2. SSI benefits paid under 42 U.S.C. 1382(e)(1)(E) and (G) to a person who receives care in a hospital or nursing facility are not included in calculating the share-of-cost.
  3. The share-of-cost of a person with a spouse is calculated as follows:
    - a. If an institutionalized person has a community spouse under 42 U.S.C. 1396r-5(h), share-of-cost is calculated under R9-28-410 and 42 U.S.C. 1396r-5(b) and (d); and
    - b. If an institutionalized person does not have a community spouse, share of cost is calculated solely on the income of the institutionalized person.
  4. Income assigned to a trust is considered in accordance with federal and state law.
  5. The following expenses are deducted from the share-of-cost of an eligible person to calculate the person's share-of-cost:
    - a. A personal-needs allowance equal to 15 percent of the FBR for a person residing in a medical institution for a full calendar month. A personal-needs allowance equal to 300 percent of the FBR for a person who receives or intends to receive HCBS or who

resides in a medical institution for less than the full calendar month;

- b. A spousal allowance, equal to the FBR minus the income of the spouse, if a spouse but no children remain at home;
  - c. A household allowance equal to the standard specified in Section 2 of the Aid for Families with Dependent Children (AFDC) State Plan as it existed on July 16, 1996 for the number of household members minus the income of the household members if a spouse and children remain at home;
  - d. Expenses for the medical and remedial care services listed in subsection (6) if the expenses have not been paid or are not subject to payment by a third-party, the person still has the obligation to pay the expense, and one of the following conditions is met:
    - i. The expense represents a payment made and reported to the Administration during the application period or a payment reported to the Administration no later than the end of the month following the month in which the payment occurred and the expense has not previously been allowed a share-of-cost deduction; or
    - ii. The expense represents the unpaid balance of an allowed, noncovered medical or remedial expense, and the expense has not been previously a share-of-cost deduction;
  - e. An amount determined by the Director for the maintenance of a single person's home for not longer than six months if a physician certifies that the person is likely to return home within that period; or
  - f. An amount for Medicare and other health insurance premiums, deductibles, or coinsurance not subject to third-party reimbursement; and
6. The deductible expense under subsection (5)(b) shall not include any amount for a service covered under the Title XIX State Plan. The deductible expense may include the TPL deductible, co-insurance, and co-payment charges for the following medically necessary services:
- a. Nonemergency dental services for a person who is age 21 or older;
  - b. Hearing aids and hearing aid batteries for a person who is age 21 or older;
  - c. Nonemergency eye care and prescriptive lenses for a person who is age 21 or older;
  - d. Chiropractic services, including treatment for subluxation of the spine, demonstrated by x-ray;
  - e. Orthognathic surgery for a person who is age 21 or older; or
  - f. Co-payments for Medicare Part D prescriptions, if not paid by the State.
  - g. On a case-by-case basis, other noncovered medically necessary services that a person petitions the Administration for and the Director approves.
- F. A person shall provide information and verification of income under A.R.S. § 36-2934(G) and 20 CFR 416.203.

#### Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 369, effective January 6, 1999 (Supp. 99-1). Amended by exempt rulemaking at 7 A.A.R. 4691, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 14 A.A.R. 2090, effective July 5, 2008 (Supp. 08-2). Amended by final rulemaking at 20 A.A.R. 234, effective January 7, 2014 (Supp. 14-1).

#### R9-28-409. Transfer of Assets

- A. The provisions in this Section apply to an institutionalized person who has, or whose spouse has, transferred assets and received less than the fair market value (uncompensated value) as specified in A.R.S. § 36-2934(B) and 42 U.S.C. 1396p(c)(1)(A), July 1, 2009, 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. A person shall report transfer of assets. The Administration shall evaluate all transfers made during or after the look-back period under 42 U.S.C. 1396p(c)(1)(B), July 1, 2009, 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. The person shall provide verification of any transfer.
- C. Certain transfers are permitted under 42 U.S.C. 1396p(c)(2), July 1, 2009, 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.
- D. If the Administration determines a disqualification period applies due to a transfer, and the person is otherwise eligible, the person may remain eligible for ALTCS acute care services but shall be disqualified for receiving ALTCS coverage under 42 U.S.C. 1396p(c)(1)(E), July 1, 2009, 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.
- E. Period of disqualification for transfers.
  - 1. Calculating a period of disqualification at application. The uncompensated value of all transfers shall be divided by the monthly private pay rate. The result of this calculation equals the number of months of ineligibility.
  - 2. Calculating a period of disqualification after approval:
    - a. For one or more transfers occurring in one calendar month or in consecutive months, the period of disqualification is determined under subsection (E)(1). The period of disqualification begins with the month that the first transfer was made.
    - b. For transfers occurring in nonconsecutive calendar months, the period of disqualification for each transfer of assets shall be determined separately under subsection (E)(1) to determine if the periods of disqualification overlap.
      - i. Periods of disqualification that overlap shall be added together and shall run consecutively, beginning with the month the first transfer was made.
      - ii. Periods of disqualification that do not overlap are each applied separately beginning the month that the transfer was made.
- F. Transfers of assets for less than fair market value are presumed to have been made to establish eligibility for ALTCS services.
- G. Rebuttal of disqualification.
  - 1. A person found ineligible for ALTCS services by reason of a transfer of assets for uncompensated value shall have the right to rebut the disqualification for reasons stated under 42 U.S.C. 1396p(c)(2)(C), July 1, 2009, which is incorporated by reference and on file with the Adminis-

tration, 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. The person shall have the burden of rebutting the presumption.
  3. If a person rebuts a transfer on the basis of debt repayment, the Administration shall determine the validity of the debt and payment amount under A.R.S. § 44-101.
- H. Undue hardship.** The transfer penalty period may be waived if denial of eligibility for long term care services creates an undue hardship.
1. The Administration shall consider whether the transfer penalty period can be waived when:
    - a. The individual is otherwise eligible for ALTCS benefits and application of the transfer of assets provision would deprive the individual of medical care such that the individual's life or health would be endangered, or
    - b. The individual is otherwise eligible for ALTCS benefits and is deprived of food, clothing, shelter or other necessities of life as evidenced by the fact that the individual's income is less than or equal to the Federal Poverty Level (FPL);
  2. The transfer penalty period shall be waived when:
    - a. The individual is incapacitated as established by the Court or by a physician; and
    - b. The individual who had the legal authority to handle the applicant's finances has violated the terms of that legal authority; and
    - c. An individual acting on the applicant's behalf has exhausted all legal remedies to regain the asset, such as but not limited to, filing a police report and seeking recovery through civil court.
  3. The transfer penalty period shall not be waived when:
    - a. The applicant was mentally competent and would have been aware of the consequences of the transfers at the time the transfers occurred; or
    - b. The applicant gave another person specific legal authority to make the transfers, such as a conservator, or a person granted the applicant's financial power of attorney when the applicant was competent to do so, and the person did not violate the limits of that authority in making the transfers.

#### Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 369, effective January 6, 1999 (Supp. 99-1). Amended by final rulemaking at 20 A.A.R. 234, effective January 7, 2014 (Supp. 14-1).

#### R9-28-410. Community Spouse

- A.** The methodology in this Section applies to an institutionalized person who has a community spouse.
- B.** If the institutionalized person's most current period of continuous institutionalization began on or after September 30, 1989, the Administration shall use the methodology for the treatment of resources under 42 U.S.C. 1396r-5(c).
  1. The following resource criteria shall be used in addition to the criteria specified in R9-28-407 to be eligible:
    - a. Resources owned by a couple at the beginning of the first continuous period of institutionalization from and after September 30, 1989, shall be computed from the first day of institutionalization. The total value of resources owned by the institutionalized spouse and the community spouse, and a spousal share equal to one-half of the total value, are computed under 42 U.S.C. 1396r-5(c)(1).
    - b. The Community Spouse Resource Deduction (CSRD) is calculated under 42 U.S.C. 1396r-5(f)(2).
    - c. The CSRD is subtracted from the total resources of the couple to determine the amount of the couple's resources considered available to the institutionalized spouse at the time of application under 42 U.S.C. 1396r-5(c)(2).
      - i. Resources in excess of the CSRD must be equal to or less than the standard for a person specified in R9-28-407.
      - ii. The CSRD is allowed as a deduction for 12 consecutive months beginning with the first month in which the institutionalized spouse is eligible for ALTCS benefits. Beginning with the 13th month, the separate property of the institutionalized spouse must be within the resource standard for a person specified in R9-28-407.
      - iii. If a person who was previously eligible for ALTCS as an institutionalized person with a community spouse reapplies for ALTCS after a break in institutionalization of more than 30 days, the CSRD will be allowed as a deduction from resources for a 12-month period in addition to the period in subsection (c)(ii).
  2. Resources are excluded as specified in R9-28-407, except that one vehicle is totally excluded regardless of its value, and any additional vehicles are included using equity value.
  3. The Director may grant eligibility if the Administration determines that a denial of eligibility would create an undue hardship for the institutionalized spouse.
- C.** This Section applies to the income eligibility and post-eligibility treatment of income beginning September 30, 1989, regardless of when the first period of institutionalization began.
  1. Income payments are attributed to the institutionalized person and the community spouse under 42 U.S.C. 1396r-5(b)(2).
  2. Income is excluded as specified in R9-28-408.
  3. The institutionalized spouse's income eligibility is determined by combining the income of the institutionalized person and the community spouse and dividing by two. If the institutionalized person is not eligible using this method, the income eligibility shall be based on the income received in the person's name.
  4. The following allowances described in 42 U.S.C. 1396r-5(d)(1) and (2) are allowed as deductions from the institutionalized spouse's income in determining share-of-cost:
    - a. A personal-needs allowance specified in R9-28-408(E)(5);
    - b. A community spouse monthly income allowance, but only to the extent that the institutionalized spouse's income is made available to or for the benefit of the community spouse;
    - c. A family allowance for each family member equal to one-third of the amount remaining after deducting the countable income of the household member from a Minimum Monthly Maintenance Needs Allowance (MMMNA);
    - d. An amount for medical or remedial services as specified in R9-28-408; and



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- e. An amount for Medicare and other health insurance premiums, deductibles, or coinsurance not subject to third-party reimbursement.
  - D. Transfers.**
    - 1. The institutionalized spouse may transfer to any of the following an amount of resources equal to the CSRD without affecting eligibility under 42 U.S.C. 1396r-5(f). The institutionalized spouse may transfer resources to:
      - a. The community spouse; or
      - b. Someone other than the community spouse if the resources are for the sole benefit of the community spouse.
    - 2. The institutionalized spouse is allowed a period of 12 consecutive months, beginning with the first month of eligibility, to transfer resources in excess of the resource standard in R9-28-407 to the persons listed in subsection (D)(1).
    - 3. All other transfers by the institutionalized person or transfers by the community spouse are treated under the provisions in R9-28-409.
  - E. Specific hearing rights as described under 9 A.A.C. 34 apply to a person whose eligibility is determined under this Section.**
    - 1. The institutionalized spouse or the community spouse is entitled to a fair hearing if dissatisfied with the determination of any of the following:
      - a. The community spouse monthly income allowance,
      - b. The amount of monthly income allocated to the community spouse,
      - c. The computation of the spousal share of resources,
      - d. The attribution of resources, or
      - e. The CSRD.
    - 2. The hearing officer may increase the amount of the MMMNA if either the community spouse or institutionalized spouse establishes that the community spouse needs income above the established MMMNA due to exceptional circumstances.
    - 3. The hearing officer may increase the amount of the CSRD to allow the community spouse to retain enough resources to generate income to meet the MMMNA. The hearing officer may allow the community spouse to retain an amount of resources necessary to purchase a single premium life annuity that would furnish monthly income sufficient to bring the community spouse's total monthly income up to the MMMNA.
- Historical Note**
- New Section adopted by final rulemaking at 5 A.A.R. 369, effective January 6, 1999 (Supp. 99-1). Amended by final rulemaking at 14 A.A.R. 2090, effective July 5, 2008 (Supp. 08-2). Amended by final rulemaking at 20 A.A.R. 234, effective January 7, 2014 (Supp. 14-1).
- R9-28-411. Changes, Redeterminations, and Notices**
- A. Reporting and verifying changes.**
    - 1. A person shall report to the ALTCS eligibility office the following changes for a person, a person's spouse, or a person's dependent children under 42 CFR 435.916:
      - a. A change of address;
      - b. An admission to or discharge from a medical facility, public institution, or private institution;
      - c. A change in the household's composition;
      - d. A change in income;
      - e. A change in resources;
      - f. A determination of eligibility for other benefits;
      - g. A death;
      - h. A change in marital status;
      - i. An improvement in the person's medical condition;
      - j. A change in school attendance;
      - k. A change in Arizona state residency;
      - l. A change in citizenship or alien status;
      - m. Receipt of an SSN under R9-22-305;
      - n. A transfer of assets under R9-28-409;
      - o. A change in trust income and disbursements in accordance with state and federal law;
      - p. A change in first- or third-party liability that may be responsible for payment of all or a portion of the person's medical costs;
      - q. A change in first-party medical insurance premiums;
      - r. A change in the household expenses used to calculate the community spouse monthly income allowance described in R9-28-410;
      - s. A change in the amount of the community spouse monthly income allowance that is provided to the community spouse by the institutionalized spouse under R9-28-410; and
      - t. Any other change that may affect the person's eligibility or share-of-cost.
    - 2. A change shall be reported either orally or in writing as described under R9-22-306.
  - B. Processing of changes and redeterminations.** A person's eligibility shall be redetermined at least one time every 12 months and when changes occur, under 42 CFR 435.916. A person's share-of-cost, specified in R9-28-408, shall be redetermined whenever a change occurs that may affect the post-eligibility computation of income.
  - C. Actions that may result from a redetermination or change.** Processing a redetermination or change shall result in one of the following findings:
    - 1. No change in eligibility or the post-eligibility computation of income;
    - 2. Discontinuance of eligibility if a condition of eligibility is no longer met;
    - 3. Suspension of eligibility if a condition of eligibility is temporarily not met;
    - 4. A change in the post-eligibility computation of income and the person's share-of-cost; or
    - 5. A change in service from ALTCS to ALTCS acute care services, or from ALTCS acute care services to ALTCS, caused by changes in a person's living arrangement, specified in R9-28-406, or a transfer of assets specified in R9-28-409.
  - D. Notices.**
    - 1. Contents of notice. The Administration shall issue a notice when an action is taken regarding a person's eligibility or computation of share-of-cost. The notice shall contain the following information:
      - a. A statement of the action being taken;
      - b. The effective date of the action;
      - c. The specific reason for the intended action;
      - d. The actual figures used in the eligibility determination and specify the amount by which the person exceeds income standards if eligibility is being discontinued because either a person's resources exceed the resource limit, or a person's income exceeds the income limit;
      - e. The specific law or regulation that supports the action, or a change in federal or state law that requires an action;
      - f. An explanation of a person's right to request an evidentiary hearing as described under 9 A.A.C. 34; and

- g. An explanation of the date by which a request for hearing must be received so that eligibility or the current share-of-cost may be continued.
- 2. Advance notice of changes in eligibility or share-of-cost. "Advance notice" means a notice that is issued to a person at least 10 days before the effective date of change. Except as specified in subsection (D)(3), advance notice shall be issued whenever the following adverse action is taken:
  - a. To discontinue or suspend eligibility if an eligible person no longer meets a condition of eligibility, either ongoing or temporarily;
  - b. To affect post-eligibility computation of income and increase a person's share-of-cost; or
  - c. To reduce benefits from ALTCS to ALTCS acute care services due to a change from a long-term care living arrangement to an acute care living arrangement, specified in R9-28-406(B), or due to a transfer with uncompensated value, specified in R9-28-409.
- 3. Adverse actions. An applicant or member may appeal, as described under 9 A.A.C. 34, by requesting a hearing from the Administration or its designee concerning any of the adverse actions if:
  - a. A person provides a clear, written statement, signed by the person, that a person no longer desires services;
  - b. A person provides information that requires termination of eligibility or an increase in the share-of-cost and the person signs a clear written statement waiving advance notice;
  - c. A person cannot be located and mail sent to that person has been returned as undeliverable;
  - d. A person has been admitted to a public institution where the person is ineligible for ALTCS under R9-28-406; or
  - e. A person has been approved for Medicaid in another state;
  - f. The Administration has information that confirms the death of the person;
  - g. The person's primary care provider has prescribed a change in the level of medical care; or
  - h. The notice involves an adverse determination regarding the PAS, specified in A.R.S. § 36-2936.
- E. Transitional. HCBS services may be provided to a person who is no longer at risk of institutionalization but who continues to require significant long-term care services under A.R.S. § 36-2936(D).

#### Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 369, effective January 6, 1999 (Supp. 99-1). Amended by final rulemaking at 20 A.A.R. 234, effective January 7, 2014 (Supp. 14-1).

#### R9-28-412. General Enrollment

- A. Program contractors. The Administration shall enroll each ALTCS member with:
  - 1. An elderly and physically disabled (EPD) program contractor,
  - 2. The developmentally disabled (DD) program contractor,
  - 3. A tribal program contractor, or
  - 4. The AHCCCS fee-for-service program.
- B. Enrollment choice. An ALTCS member may choose a program contractor:
  - 1. At the time of application, or
  - 2. If the ALTCS member establishes a home outside of the GSA.

- C. Annual enrollment. If an ALTCS member is elderly or physically disabled and lives in a GSA served by more than one program contractor, a member may change to an available program contractor during the annual enrollment choice period.
- D. A program contractor is responsible for the enrolled ALTCS member as described in R9-28-712, County-of-Fiscal Responsibility.

#### Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 369, effective January 6, 1999 (Supp. 99-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Amended by final rulemaking at 14 A.A.R. 2090, effective July 5, 2008 (Supp. 08-2).

#### R9-28-413. Enrollment with an Elderly and Physically Disabled (EPD) Program Contractor

- A. A member's enrollment with an EPD program contractor. The Administration shall enroll an ALTCS elderly or physically disabled member with an EPD program contractor assigned to that GSA.
- B. New member makes a choice of an EPD program contractor. The Administration shall provide a new member an opportunity to choose an EPD program contractor, if an ALTCS member is elderly or physically disabled, and lives in a GSA served by more than one EPD program contractor.
- C. New member who makes no choice of an EPD program contractor. The Administration shall enroll an elderly or physically disabled new member that lives in a GSA with more than one EPD program contractor and who makes no choice of an EPD program contractor under the following:
  - 1. Criteria. The Administration will prioritize enrollment based on continuity of care and enroll a member with an EPD program contractor chosen under the following criteria, including but not limited to:
    - a. A member's living arrangement, and
    - b. A member's primary care practitioner.
  - 2. Algorithm. The Administration shall enroll a member through an algorithm as specified in contract, when a member has a choice of more than one EPD program contractor and the criteria in subsection (C)(1) does not apply.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Amended by final rulemaking at 20 A.A.R. 234, effective January 7, 2014 (Supp. 14-1).

#### R9-28-414. Enrollment with the DD Program Contractor

A member's DD program contractor. The Administration shall enroll a member including an American Indian with the DES Division of Developmental Disabilities as specified in A.R.S. § 36-2940, if the ALTCS member is eligible for services for the developmentally disabled.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Amended by final rulemaking at 20 A.A.R. 234, effective January 7, 2014 (Supp. 14-1).

#### R9-28-415. Enrollment with a Tribal Program Contractor

- A. On-reservation. Notwithstanding R9-28-412, the Administration shall enroll an American Indian ALTCS member who is elderly or physically disabled with the ALTCS tribal program contractor as specified in A.R.S. § 36-2932 if the person:

1. Lives on-reservation of a tribe participating as an ALTCS tribal program contractor, or
  2. Lived on-reservation of a tribe participating as an ALTCS tribal program contractor immediately prior to placement in an off-reservation NF or alternative HCBS setting.
- B.** Off-reservation. The Administration shall enroll an American Indian ALTCS member who is elderly or physically disabled with an EPD program contractor under R9-28-413, if the member lives off-reservation, and does not have on-reservation status as specified in subsection (A)(2).

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Amended by final rulemaking at 14 A.A.R. 2090, effective July 5, 2008 (Supp. 08-2). Amended by final rulemaking at 20 A.A.R. 234, effective January 7, 2014 (Supp. 14-1).

#### R9-28-416. Enrollment with the Fee-for-Service (FFS) Program

- A.** No tribal or EPD program contractor in GSA. The Administration shall enroll an ALTCS elderly or physically disabled member who resides in an area with no ALTCS tribal program contractor or EPD program contractor in the AHCCCS FFS program under A.R.S. § 36-2945.
- B.** Prior period coverage. The Administration shall enroll a member in AHCCCS fee-for-service program if a member is eligible for ALTCS services only during prior period coverage.
- C.** The Administration shall enroll a member in the AHCCCS fee-for-service program if the member is eligible for ALTCS services during the prior quarter period.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Amended by exempt rulemaking at 7 A.A.R. 4691, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 20 A.A.R. 234, effective January 7, 2014 (Supp. 14-1).

#### R9-28-417. Notification Requirements

- A.** Administration responsibilities. The Administration shall notify a member's program contractor when a member is enrolled or disenrolled from the ALTCS program. The Administration shall include the following in the notification:
1. The member's name,
  2. The member's identification number,
  3. The member's effective date of enrollment or disenrollment, and
  4. The member's share-of-cost on a monthly enrollment roster.
- B.** Program contractor's responsibilities. The program contractor shall notify the Administration if an ALTCS member has any change that may affect eligibility including but not limited to:
1. A change in residential address,
  2. A change in medical or functional condition,
  3. A change in living arrangement including:
    - a. Alternative HCBS setting,
    - b. Home,
    - c. Nursing facility, or
    - d. Other living arrangement not specified in this subsection,
  4. Change in resource or income, or
  5. Death.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1).

#### R9-28-418. Disenrollment

The Administration shall disenroll an ALTCS member on the last day of the month following receipt of appropriate notification under R9-28-411 except:

1. The Administration shall disenroll an ALTCS member who dies. A member's last day of enrollment shall be the date of death.
2. The Administration shall disenroll a member immediately when the member voluntarily withdraws from the ALTCS program.
3. If ALTCS benefits have been continued pending an eligibility appeal decision and the discontinuance is upheld as specified in 9 A.A.C. 34, the Administration shall disenroll a member effective on the date of the hearing decision.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Amended by final rulemaking at 14 A.A.R. 2090, effective July 5, 2008 (Supp. 08-2). Amended by final rulemaking at 20 A.A.R. 234, effective January 7, 2014 (Supp. 14-1).

### ARTICLE 5. PROGRAM CONTRACTOR AND PROVIDER STANDARDS

#### R9-28-501. Program Contractor and Provider Standards – Related Definitions

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

“Certification” means a voluntary process by which a federal or state regulatory entity grants recognition to a person, facility, or organization that has met certain qualifications specified by the regulatory entity, allowing the person, facility, or organization to use the word “certified” in a title or designation.

“Therapeutic leave” means that a member leaves an institutional facility for a period that does not exceed nine days per contract year.

#### Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective December 8, 1997 (Supp. 97-4). Section repealed by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). New Section made by final rulemaking at 11 A.A.R. 4286, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 4406, effective January 3, 2009 (Supp. 08-4).

#### R9-28-501.01. Pre-Existing Conditions

A program contractor shall comply with the pre-existing condition requirements in A.A.C. R9-22-502.

#### Historical Note

New Section made by final rulemaking at 14 A.A.R. 4406, effective January 3, 2009 (Supp. 08-4).

#### R9-28-502. Long-term Care Provider Requirements

- A.** A provider shall obtain any necessary authorization from the program contractor or the Administration for services provided to a member.
- B.** A provider shall maintain and make available to a program contractor and to the Administration, financial, and medical records for not less than five years from the date of final payment, or for records relating to costs and expenses to which the Administration has taken exception, five years after the date of

final disposition or resolution of the exception. The provider shall maintain records that meet uniform accounting standards and generally accepted practices for maintenance of medical records, including detailed specification of all patient services delivered, the rationale for delivery, and the service date.

#### Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended subsection (E) effective June 6, 1989 (Supp. 89-2). Amended effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 11 A.A.R. 4286, effective December 5, 2005 (Supp. 05-4).

#### R9-28-503. Licensure and Certification for Long-term Care Institutional Facilities

- A. A nursing facility shall not provide services to a member unless the facility is licensed by Arizona Department of Health Services, Medicare- and Medicaid-certified, and meets the requirements in 42 CFR 442, as of October 1, 2004, and 42 CFR 483, as of October 1, 2004, incorporated by reference, on file with the Administration, and available from the U.S. Government Printing Office, 732 N. Capitol St., N.W., Washington, D.C. 20401. This incorporation by reference contains no future editions or amendments.
- B. An ICF-MR shall not provide services to a member unless the ICF-MR is Medicaid-certified and meets the requirements in A.R.S. § 36-2939(B)(1) and 42 CFR 442, Subpart C, as of October 1, 2004, and 42 CFR 483, as of October 1, 2004, incorporated by reference, on file with the Administration and available from the U.S. Government Printing Office, 732 N. Capitol St., N.W., Washington, D.C. 20401. This incorporation by reference contains no future editions or amendments.
- C. A nursing facility or ICF-MR that provides services to a member shall register as a provider with the Administration to receive reimbursement. The Administration shall not register a provider unless the provider meets the licensure and certification requirements of subsection (A) or (B).

#### Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Amended effective November 5, 1993 (Supp. 93-4). Amended effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 11 A.A.R. 4286, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 4406, effective January 3, 2009 (Supp. 08-4).

#### R9-28-504. Standards of Participation, Licensure, and Certification for HCBS Providers

- A. A noninstitutional long-term care provider shall not register with the Administration unless the provider meets the requirements of the Arizona Department of Health Services' rules for licensure, if applicable.
- B. Additional qualifications to provide services to a member:
  1. A community residential setting and a group home for a person with developmental disabilities shall be licensed by the appropriate regulatory agency of the state as described in A.A.C. R9-33-107 and A.A.C. R6-6-714;
  2. An adult foster care home shall be certified or licensed under 9 A.A.C. 10;
  3. A home health agency shall be Medicare-certified and licensed under 9 A.A.C. 10;
  4. A person providing a homemaker service shall meet the requirements specified in the contract between the person and the Administration;

5. A person providing a personal care service shall meet the requirements specified in the contract between the person and the Administration;
6. An adult day health care provider shall be licensed under 9 A.A.C. 10;
7. A therapy provider shall meet the following requirements:
  - a. A physical therapy provider shall meet the requirements in 4 A.A.C. 24;
  - b. A speech therapist provider shall meet the applicable requirements under 9 A.A.C. 16, Article 2.
  - c. An occupational therapy provider shall meet the requirements in 4 A.A.C. 43; and
  - d. A respiratory therapy provider shall meet the requirements in 4 A.A.C. 45;
8. A respite provider shall meet the requirements specified in contract;
9. A hospice provider shall be Medicare-certified and licensed under 9 A.A.C. 10;
10. A provider of home-delivered meal service shall comply with the requirements in 9 A.A.C. 8;
11. A provider of non-emergency transportation shall be licensed by the Arizona Department of Transportation, Motor Vehicle Division;
12. A provider of emergency transportation shall meet the licensure requirements in 9 A.A.C. 13;
13. A day care provider for the developmentally disabled under A.R.S. § 36-2939 shall meet the licensure requirements in 6 A.A.C. 6;
14. A habilitation provider shall meet the requirements in A.A.C. R6-6-1523 or the therapy requirements in this Section;
15. A service provider, other than a provider specified in subsections (B)(1) through (B)(14), approved by the Director shall meet the requirements specified in a program contractor's contract with the Administration;
16. A behavioral health provider shall have all applicable state licenses or certifications and meet the service specifications in A.A.C. R9-22-1205; and
17. An assisted living home or a residential unit shall meet the requirements as defined in A.R.S. § 36-401 and as authorized in A.R.S. § 36-2939.

#### Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Amended effective July 13, 1992 (Supp. 92-3). Amended effective November 5, 1993 (Supp. 93-4). Amended effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 5 A.A.R. 874, effective March 4, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 4286, effective December 5, 2005 (Supp. 05-4).

#### R9-28-505. Standards, Licensure, and Certification for Providers of Hospital and Medical Services

A provider shall not provide hospital services to a member unless the hospital is licensed by the Arizona Department of Health Services, and meets the requirements in 42 CFR 441 and 482, as of October 1, 2004, and 42 CFR 456, Subpart C, as of October 1, 2004, incorporated by reference, on file with the Administration and available from the U.S. Government Printing Office, 732 N. Capitol St., N.W., Washington, D.C. 20401. This incorporation contains no future editions or amendments. An Indian Health Service (IHS) hospital and a Veterans Administration hospital shall not provide services to a member unless accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO).

## Arizona Health Care Cost Containment System – Arizona Long-term Care System

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 11 A.A.R. 4286, effective December 5, 2005 (Supp. 05-4).

Amended by final rulemaking at 14 A.A.R. 4406, effective January 3, 2009 (Supp. 08-4).

**R9-28-506. Requirements for Spouse as Paid Caregiver**

- A.** For purposes of this Section, the following definitions apply:
1. "Extraordinary care" means care that exceeds the range of activities that a spouse would ordinarily perform in the household on behalf of the ALTCS member if the member did not have a disability or chronic illness, and that is necessary to ensure the health and welfare of the member and avoid institutionalization.
  2. "Personal care or similar services" means assistance provided to an ALTCS member with a disability or chronic illness to enable the member to perform Activities of Daily Living (ADL) or Instrumental Activities of Daily Living (IADL) that the member would normally perform for himself or herself if the member did not have a disability or chronic illness. Assistance may involve performing a personal care task for the member or cueing the member so that the member performs the task for himself or herself.
- B.** As authorized by the Section 1115 Waiver, a member may choose to have personal care or similar services provided by the member's spouse as a paid caregiver if the following conditions and limitations are met:
1. The member resides in his or her own home;
  2. The Administration or a Program Contractor offers the member the choice of a provider of personal care or similar services other than the member's spouse;
  3. The personal care or similar services is described in the member's plan of care prepared by the member's case manager;
  4. The case manager records at least annually in the member's plan of care the member's choice to have personal care or similar services provided by the member's spouse as a paid caregiver;
  5. The personal care or similar services provided by the spouse are extraordinary care;
  6. The spouse is one of the following:
    - a. Employed by a provider that subcontracts with the member's Program Contractor;
    - b. If the member is developmentally disabled, the spouse is either employed by a provider that subcontracts with the member's Program Contractor, or registered with AHCCCS as an independent provider; or
    - c. If the member is a Native American enrolled in FFS, the spouse is either employed by an AHCCCS registered provider or registered with AHCCCS as an independent provider;
  7. The spouse meets the training and other qualifications that apply to other providers of personal care or similar services registered with AHCCCS;
  8. The Program Contractor does not pay a spouse providing personal care or similar services at a rate that exceeds the rate that would be paid to a provider of personal care or similar services who is not a spouse and the Administration does not pay a spouse providing personal care or similar services at a rate that exceeds the capped fee-for-service payment for personal care or similar services; and

9. A spouse providing personal care or similar services as a paid caregiver is not paid for more than 40 hours of services in a seven-day period.

- C.** For a member who elects to have the member's spouse provide personal care or similar services as a paid caregiver, personal care or similar services in excess of 40 hours in a seven-day period are not covered. If a spouse elects to provide less than the hours authorized by the Administration or Program Contractor, the remaining hours of medically necessary personal care or similar services may be provided by another personal caregiver, but the total hours of care provided by the spouse and any other personal caregiver shall not exceed 40 hours in a seven-day period.
- D.** By electing to have the member's spouse provide personal care and similar services as a paid caregiver, the member is not precluded from receiving medically necessary, cost effective home and community based services other than personal care or similar services.

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 3587, effective October 2, 2007 (Supp. 07-4).

**R9-28-507. Program Contractor General Requirements**

- A.** To participate in the ALTCS program, through a program contractor or directly through the Administration, a provider of ALTCS-covered services shall be registered with the Administration.
- B.** An ALTCS program contractor shall ensure that providers of service meet the requirements of this Article.
- C.** Each ALTCS program contractor shall maintain member service records for five years, that include, at a minimum, a case management plan, medical records, encounter data, grievances, complaints, and service information for each ALTCS member.
- D.** An ALTCS program contractor shall produce and distribute informational materials that are approved by the Administration to each enrolled ALTCS member or designated representative within 12 business days after the program contractor receives notification of enrollment from the Administration. The program contractor shall ensure that the informational materials include:
1. A description of all covered services as specified in contract;
  2. An explanation of service limitations and exclusions;
  3. An explanation of the procedure for obtaining services, including a notice stating that the program contractor is liable only for those services authorized by an ALTCS member's case manager;
  4. An explanation of the procedure for obtaining emergency services;
  5. An explanation of the procedure for filing a grievance and appeal; and
  6. An explanation of when plan changes may occur as specified in contract.
- E.** A subcontractor shall collect the member's share of cost and report to the program contractor the amount collected as specified in the subcontractor contract. The program contractor shall report the share of cost collected to the Administration.
- F.** An ALTCS program contractor shall monitor a trust fund account for an institutionalized ALTCS member to verify that expenditures from the member's trust fund account are in compliance with federal regulations 42 U.S.C. 1396p(d)(4) and A.R.S. § 36-2934.01.
- G.** A program contractor shall ensure that an institutionalized ALTCS member transferred to an acute care facility to receive

services is, whenever possible, returned to the original institution upon completion of acute care.

- H. A program contractor shall ensure that an institutionalized ALTCS member granted therapeutic leave is, whenever medically appropriate, returned to the same bed in the original institution upon completion of the therapeutic leave.
- I. A program contractor shall ensure that services are paid under A.A.C. R9-22-705.
- J. A program contractor shall comply with the marketing provisions in A.A.C. R9-22-504.

#### Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Amended by final rulemaking at 11 A.A.R. 4286, effective December 5, 2005 (Supp. 05-4).

#### R9-28-508. Self-directed Attendant Care (SDAC)

- A. For purposes of this Article the following terms are defined:
  - “Competent member” means a person who is oriented, exhibits evidence of logical thought, and can provide directions.
  - “Fiscal and Employer Agent” or “FEA” is a company specified by the program contractor or the Administration in contract to serve as an employment/payroll processing center for attendant care workers employed by the member to provide SDAC services.
  - “Medically stable” means the member’s skilled-care medical needs are routine and not subject to frequent change because of health issues.
  - “Personal care” means activities of daily life such as dressing, bathing, eating and mobility.
- B. In lieu of receiving other attendant care services a competent member who meets the requirements of A.R.S. § 36-2951 or the member’s legal guardian may choose to employ through the FEA a person to provide Self-directed Attendant Care (SDAC) services. A paid caregiver described under R9-28-506 and a parent of a minor child shall not receive reimbursement for SDAC services.
- C. The attendant care worker chosen to provide SDAC services does not need to be a registered provider. The attendant care worker shall have, at a minimum, hands-on training in First Aid, CPR, Universal Precautions, and state and federal laws regarding privacy of health information or training of similar efficacy as approved by the Administration.
- D. The Administration or Program Contractor shall cover SDAC services only if the member resides in the member’s home, and shall not cover SDAC services if the member is institutionalized or residing in an alternative residential setting. If the member has a legal guardian, the legal guardian shall be present when SDAC services are provided.
- E. A member who chooses to receive SDAC services is not precluded from receiving medically necessary, cost-effective home health services from other agencies or providers if the services provided are not duplicative of the specific attendant care or skilled service already received through the program contractor.
- F. A competent member or legal guardian may employ an SDAC attendant care worker to provide personal care, homemaker and general supervision services.
- G. A competent member, who is medically stable, or the member’s legal guardian may employ an attendant care worker to also provide the following skilled services:

1. Bowel care, including suppositories, enemas, manual evacuation, and digital stimulation;
2. Bladder catheterizations (non-indwelling) that do not require a sterile procedure;
3. Wound care (non-sterile);
4. Glucose monitoring;
5. Glucagon as directed by the health care provider;
6. Insulin by subcutaneous injection only if the member is not able to self-inject;
7. Permanent gastrostomy tube feeding; and
8. Additional services requested in writing with the approval of the Director and the Arizona State Board of Nursing.

- H. The Administration or program contractor shall not cover services under subsection (G) unless:
  1. For each SDAC attendant care worker employed by a member or legal guardian, a registered nurse licensed under A.R.S. Title 32, Chapter 15 visits the member and SDAC attendant care worker before a skilled service is provided. The registered nurse will assess, educate, and train the member and SDAC attendant care worker regarding the specific skilled service that the member requires; and
  2. The registered nurse determines in writing that the attendant care worker understands how and demonstrates the skill to perform the processes or procedures required to provide the specific skilled service.

#### Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective April 25, 1990 (Supp. 90-2). Amended effective December 8, 1997 (Supp. 97-4). Section repealed by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). New Section made by final rulemaking at 16 A.A.R. 2386, effective January 16, 2011 (Supp. 10-4). Amended by final rulemaking at 18 A.A.R. 2344, effective November 11, 2012 (Supp. 12-3).

#### R9-28-509. Agency with Choice

- A. Definitions. The following words and phrases, in addition to definitions contained in A.R.S. §§ 36-2901 and 36-2931, and 9 A.A.C. 22, Article 1, have the following meanings specific to this Section:
  - “Agency” means a provider of home and community based services, other than an individual, that has a co-employment relationship with one or more members for purposes of this Section.
  - “Co-employment relationship” means a situation where the Agency serves as the legal employer of record and the ALTCS member or authorized representative assumes certain responsibilities related to directing and or managing care.
  - “Individual’s representative” means a parent, family member, guardian, advocate, or other person authorized by the member to serve as a representative in connection with the provision of services and supports. This authorization should be in writing, when feasible, or by another method that clearly indicates the individual’s free choice. An individual’s representative may not also be a paid caregiver of an individual receiving services and supports.
  - “Standardized training” means minimum training standards required of all paid caregivers by the Administration as specified in contract.

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- B. Purpose. The Agency with Choice program is an ALTCS member directed service model for the provision of home and community based services. Under this model, the ALTCS member or individual's representative and the agency enter into a co-employment relationship.
- C. In lieu of receiving HCBS services under a traditional service model, a member or the member's individual's representative may choose to participate in the Agency with Choice service model. Under the Agency with Choice service model, the agency shall maintain the authority to hire and fire paid caregivers and provide standardized training to the caregiver, and the member or individual representative may elect to recruit, select, dismiss, determine duties, schedule, specify training to meet the unique needs of the member, and supervise the paid caregivers on a day-to-day basis.
- D. Setting. This program is applicable to ALTCS members who reside in their own home.
- E. A member who chooses to receive services under the Agency with Choice service model is not precluded from receiving medically necessary, cost-effective services and supports from other agencies or providers if the services provided are not duplicative of the specific attendant care or skilled service already received through the contractor.

**Historical Note**

Section made by final rulemaking at 18 A.A.R. 3380, effective January 1, 2013 (Supp. 12-4).

**R9-28-510. Case Management**

- A. A program contractor shall assign to each member a case manager to identify, plan, coordinate, monitor, and reassess the need for and provision of long-term care services.
- B. A case manager shall:
  - 1. Ensure that appropriate ALTCS placement and services are provided for a member within 30 days of enrollment;
  - 2. Develop a service plan by:
    - a. Completing a case management plan when a member is enrolled in ALTCS and authorizing services for a member who continues to be financially and medically eligible for services;
    - b. Ensuring that a member participates in the preparation of the member's case management plan;
    - c. Specifying the paid and natural support services to be received by the member, including the duration, scope of services, units of service, frequency of service delivery, provider of services, and effective time period; and
    - d. Coordinating with the primary care provider in determining the necessary services for the member, including hospital and medical services;
  - 3. Submit a written justification to the case manager's supervisor to include HCBS in the case management plan if the services exceed 80 percent of the institutional cost;
  - 4. Manage a case management plan by:
    - a. Re-evaluating and revising the case management plan when the member transfers to another facility, transfers to a hospital, has a change in level of care; and
    - b. Monitoring receipt of services by a member;
  - 5. Assist the member to maintain or progress toward the highest level of functioning;
  - 6. Ensure that records are transferred when the member is transferred from a facility or provider to a new facility or provider;
  - 7. Perform additional monitoring of a member with rehabilitation potential and whose condition is fragile or unstable, whose case management plan is marginally cost

effective, or whose use of medical and hospital services is unusual;

- 8. Arrange behavioral health services, if necessary. The case manager shall have initial and quarterly consultation and collaboration with a behavioral health professional to review the treatment plan, unless the case manager meets the definition of a behavioral health professional under A.A.C. R9-20-101.
- C. A program contractor shall submit a service plan and other information related to the case management plan upon request to the Administration.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Amended effective July 13, 1992 (Supp. 92-3). Amended effective November 5, 1993 (Supp. 93-4). Amended effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 11 A.A.R. 4286, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 18 A.A.R. 3380, effective January 1, 2013 (Supp. 12-4).

**R9-28-511. Quality Management/Utilization Management (QM/UM) Requirements**

A program contractor shall:

- 1. Comply with all requirements specified in A.A.C. R9-22-522; and
- 2. Submit a quarterly utilization control report within time lines specified in contract, and meet the requirements in 42 CFR 456 Subparts C, D, and F, October 1, 2004, incorporated by reference in R9-28-505.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Amended under an exemption from the provisions of the Administrative Procedure Act effective March 1, 1993 (Supp. 93-1). Amended effective November 5, 1993 (Supp. 93-4). Amended effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 5 A.A.R. 874, effective March 4, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 4286, effective December 5, 2005 (Supp. 05-4).

**R9-28-512. Expired****Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective December 8, 1997 (Supp. 97-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4851, effective October 9, 2002 (Supp. 02-4).

**R9-28-513. Program Compliance Audits**

The Administration shall meet the requirements specified under A.A.C. R9-22-521 for a program contractor.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 11 A.A.R. 4286, effective December 5, 2005 (Supp. 05-4).

**R9-28-514. Release of Safeguarded Information by the Administration and Contractors**

The Administration, program contractors, providers, and noncontracting providers shall meet the requirements specified under A.A.C. R9-22-512 for an ALTCS applicant, or member.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 11 A.A.R. 4286, effective December 5, 2005 (Supp. 05-4).

**R9-28-515. Repealed****Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Section repealed by final rulemaking at 11 A.A.R. 4286, effective December 5, 2005 (Supp. 05-4).

**ARTICLE 6. RFP AND CONTRACT PROCESS**

*Article 6, consisting of Sections R9-28-601 through R9-28-610, repealed; new Article 6, consisting of Sections R9-28-601 through R9-28-608, adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1).*

**R9-28-601. General Provisions**

- A. The Director has full operational authority to adopt rules for the RFP process and the award of contract under A.R.S. § 36-2944.
- B. The Administration shall follow the provisions under 9 A.A.C. 22, Article 6 for members, subject to limitations and exclusions under that Article, unless otherwise specified in this Chapter.
- C. The Administration shall award contracts under A.R.S. § 36-2932 to provide services under A.R.S. § 36-2939.
- D. The Administration is exempt from the procurement code under A.R.S. § 41-2501.
- E. The Administration and contractors shall retain all records relating to contract compliance for five years under A.R.S. § 36-2932 and dispose of the records under A.R.S. § 41-2550.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective August 11, 1997 (Supp. 97-3). Amended by final rulemaking at 5 A.A.R. 874, effective March 4, 1999 (Supp. 99-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1).

**R9-28-602. RFP**

The ALTCS RFP for a program contractor serving members who are EPD shall meet the requirements of A.R.S. §§ 36-2944, A.R.S. § 36-2939, A.A.C. R9-22-602, and Articles 2 and 11 of this Chapter.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Amended effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1).

**R9-28-603. Contract Award**

The Administration shall award a contract under A.R.S. § 36-2944 and A.A.C. R9-22-603.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8,

2000 (Supp. 00-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1).

**R9-28-604. Contract or Proposal Protests; Appeals**

Contract or proposal protests or appeals shall be under A.A.C. R9-22-604 and 9 A.A.C. 34.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 18 A.A.R. 2502, effective November 13, 2012 (Supp. 12-3).

**R9-28-605. Waiver of Contractor's Subcontract with Hospitals**

A contractor's subcontract with hospitals may be waived under A.A.C. R9-22-605.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1).

**R9-28-606. Contract Compliance Sanction**

- A. The Administration shall follow sanction provisions under A.A.C. R9-22-606.
- B. The Administration shall apply remedies found in 42 CFR 488, Subpart F, effective January 1, 2012, incorporated by reference and on file with the Administration and the Office of the Secretary of State, for a nursing facility that does not meet requirements of participation under 42 U.S.C. 1396r. This incorporation by reference contains no future editions or amendments.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 18 A.A.R. 2502, effective November 13, 2012 (Supp. 12-3).

**R9-28-607. Repealed****Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective November 5, 1993 (Supp. 93-4). Amended effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Section repealed by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1).

**R9-28-608. Repealed****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Section



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repealed by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1).

**R9-28-609. Repealed****Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Section repealed by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1).

**R9-28-610. Repealed****Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended under an exemption from the provisions of the Administrative Procedure Act effective March 1, 1993 (Supp. 93-1). Section repealed by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1).

**ARTICLE 7. STANDARDS FOR PAYMENTS****R9-28-701. Standards for Payment Related Definitions**

Definitions. In this Article, in addition to definitions contained in A.R.S. §§ 36-2901 and 36-2931, and 9 A.A.C. 22, Article 1, the following phrase has the following meaning unless the context of the Article explicitly requires another meaning:

“County of fiscal responsibility” means the county that is financially responsible for the state’s share of ALTCS funding.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 3165, effective October 1, 2005 (Supp. 05-3).

**R9-28-701.10. General Requirements**

The following Sections of A.A.C. Chapter 22, Articles 2 and 7, are applicable to reimbursement for services provided under the ALTCS program, except that the term “program contractor” shall be substituted for “contractor.”

1. Scope of the Administration’s and Contractor’s Liability, R9-22-701.10;
2. Charges to Members, R9-22-702;
3. Payments by the Administration or by a program contractor, R9-22-703 and R9-22-705;
4. Contractor’s Liability to Hospitals for the Provision of Emergency and Post-stabilization Care, R9-22-709;
5. Payment for Non-hospital services, R9-22-710;
6. Specialty Contracts, R9-22-712(G)(3), R9-22-712.01 (10) and Article 2;
7. Payments by the Administration for Hospital Services Provided to an Eligible Person, R9-22-712; R9-22-712.01 and R9-22-712.10;
8. Overpayment and Recovery of Indebtedness, R9-22-713;
9. Payments to Providers, R9-22-714;
10. Hospital Rate Negotiations, R9-22-715; and
11. Reinsurance, R9-22-720.

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).

**R9-28-702. Nursing Facility Assessment**

A. For purposes of R9-28-702 and R9-28-703, in addition to the definitions under A.R.S. 36-2999.51, the following terms have the following meaning unless the context specifically requires another meaning:

“820 transaction” means the standard health care premium payments transaction required by 45 CFR 162.1702.

“Assessment year” means the 12 month period beginning October 1<sup>st</sup> each year

“Medicaid patient days” means patient days reported on the Nursing Care Institution Uniform Accounting Report (UAR) as attributable to AHCCCS and its contractors as the primary payor.

“Medicare patient days” means patient days reported on the Nursing Care Institution UAR as Skilled Medicare Patient Days or Part C/Advantage/Medicare Replacement Days.

“Nursing Care Institution UAR” means the Nursing Care Institution Uniform Accounting Report described by R9-11-204.

- B. Subject to Centers for Medicare and Medicaid Services (CMS) approval, effective October 1, 2012, nursing facilities shall be subject to a provider assessment payable on a quarterly basis.
- C. All nursing facilities licensed in the state of Arizona shall be subject to the provider assessment except for:
  1. A continuing care retirement community,
  2. A facility with 58 or fewer beds, according to the Arizona Department of Health Services, Division of Licensing Services, Provider & Facility Database,
  3. A facility designated by the Arizona Department of Health Services as an Intermediate Care Facility for the Intellectually Disabled,
  4. A tribally owned or operated facility located on a reservation, or
  5. Arizona Veteran’s Homes.
- D. The Administration shall calculate the prospective nursing facility provider assessment for qualifying nursing facilities as follows:
  1. In September of each year, the Administration shall obtain from the Arizona Department of Health Services the most recently published Nursing Care Institution UAR and the information required in subsection (C)(2). At the request of the Administration, a nursing facility shall provide the Administration with any additional information necessary to determine the assessment.
  2. The Administration shall use the information obtained under subsection (D)(1) to determine:
    - a. Each nursing facility’s total annual Medicaid patient days,
    - b. Each nursing facility’s total annual Medicare patient days,
    - c. Each nursing facility’s total annual patient days,
    - d. The aggregate net patient service revenue of all assessed providers, and
    - e. The slope described under 42 CFR 433.68(e)(2).
  3. For each nursing facility, other than a nursing facility exempted in subsection (C) or described in subsection (D)(4), the provider assessment is calculated by multiplying the nursing facility’s total annual patient days other than Medicare patient days by \$10.50.
  4. For a nursing facility, other than a nursing facility exempted in subsection (C), with a number of total annual Medicaid patient days greater than or equal to the number required to achieve a slope of at least 1 applying the uniformity tax waiver test described in 42 CFR 433.68(e)(2), the provider assessment is calculated by multiplying the nursing facility’s total annual patient days, other than Medicare patient days, by \$1.40.

5. For each assessment year the slope described under 42 CFR 433.68(e)(2) shall be recalculated.
6. The total annual assessment calculated under subsections (D)(3), (D)(4) and (D)(5), shall not exceed 3.5 percent of the aggregate net patient service revenue of all assessed providers as reported on the Nursing Care Institution UAR obtained under subsection (D)(1).
7. All calculations and determinations necessary for the provider assessment shall be based on information possessed by the Administration on or before November 1 of the assessment year.
8. The Administration shall forward the provider assessments for all assessed facilities to the Arizona Department of Revenue by no later than December 1 of the assessment year.
9. In the event a nursing facility closes during the assessment year, the nursing facility shall cease to be responsible for the portion of the assessment applied to the dates the nursing facility is not operating.
10. In the event a nursing facility begins operation during the assessment year, that facility will have no responsibility for the assessment until such time as the facility has submitted to the Arizona Department of Health Services the report required by R9-11-204(A) covering a full year of operation.
11. In the event a nursing facility has a change of ownership such that the facility remains open and the ownership of the facility changes, the assessment liability transfers with the change in ownership.

#### Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 3340, effective July 15, 2002 (Supp. 02-3). Amended by final rulemaking at 11 A.A.R. 3244, effective October 1, 2005 (Supp. 05-3). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1). New Section made by final rulemaking at 19 A.A.R. 137, effective January 8, 2013 (Supp. 13-1). Amended by final rulemaking at 19 A.A.R. 4168, effective February 1, 2014 (Supp. 13-4). Amended by final rulemaking at 20 A.A.R. 1989, effective September 6, 2014 (Supp. 14-3).

#### R9-28-703. Nursing Facility Supplemental Payments

##### A. Nursing Facility Supplemental Payments

1. Using Medicaid resident bed day information from the most recent and complete twelve months of adjudicated claims and encounter data, for every combination of contractor and every facility eligible for a supplemental payment, the Administration shall determine annually a ratio equal to the number of bed days for the facility paid by each contractor divided by the total number of bed days paid to all facilities by all contractors and the Administration.
2. Using the same information as used in (A)(1), for every facility eligible for a supplemental payment, the Administration shall determine annually a ratio equal to the number of bed days for the facility paid by the Administration divided by the total number of bed days paid to all facilities by all contractors and the Administration.
3. Quarterly, each contractor shall make payments to each facility in an amount equal to 98% of the amounts identified as Nursing Facility Enhanced Payments in the 820 transaction sent from AHCCCS to the contractor for the quarter multiplied by the percentage determined in sub-

section (A)(1) applicable to the contractor and to each facility.

4. Quarterly, the Administration shall make payments to each facility in an amount equal to 99% of the amounts collected during the preceding quarter under R9-28-702, less amounts collected and used to fund the Nursing Facility Enhanced Payments included in the capitation paid to contractors and the corresponding federal financial participation, multiplied by the percentage determined in subsection (A)(2) applicable to the Administration and to each facility. The Administration shall make the supplemental payments to the nursing facilities within 20 calendar days of the determination of the quarterly supplemental payment.
  5. Neither the Administration nor its contractors shall be required to make quarterly payments to facilities otherwise required by subsections (A)(3) or (A)(4) until the amount available in the nursing facility assessment fund established by A.R.S. § 36-2999.53, plus the corresponding federal financial participation, is equal to or greater than 101% of the amount necessary to make such payments in full.
  6. Contractors shall not be required to make quarterly payments to a facility otherwise required by subsection (A)(3) until the Administration has made a retroactive adjustment to the capitation rates paid to contractors to correct the Nursing Facility Enhanced Payments based on actual member months for the specified quarter.
- B.** Each contractor must pay each facility the amount computed within 20 calendar days of receiving the Nursing Facility Enhanced Payment from the Administration. The contractors must confirm each payment and payment date to the Administration within 20 calendar days from receipt of the funds.
- C.** After each assessment year, the Administration shall reconcile the payments made by contractors under subsections (A)(3) and (B) to the portion of the annual collections under R9-28-702 attributable to Medicaid resident bed days paid for by contractors for the same year, less one percent, plus available federal financial participation. The proportion of each nursing facility's Medicaid resident bed days as described in subsection (A)(1) shall be used to calculate the reconciliation amounts. Contractors shall make additional payments to or recoup payments from nursing facilities based on the reconciliation in compliance with the requirements of subsection (B).
- D.** General requirements for all payments.
1. A facility must be open on the date the supplemental payment is made in order to receive a payment. In the event a nursing facility closes during the assessment year, the nursing facility shall cease to be eligible for supplemental payments.
  2. In the event a nursing facility begins operation during the assessment year, that facility shall not receive a supplemental payment until such time as the facility has claims and encounter data that falls within the collection period for the payment calculation.
  3. In the event a nursing facility has a change of ownership, payments shall be made to the owner of the facility as of the date of the supplemental payment.
  4. Subsection (E)(3) shall not be interpreted to prohibit the current and prior owner from agreeing to a transfer of the payment from the current owner to the prior owner.
- E.** The Arizona Veterans' Homes are not eligible for supplemental payments.

#### Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective November 5, 1993

(Supp. 93-4). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 3340, effective July 15, 2002 (Supp. 02-3). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1). New Section made by final rulemaking at 19 A.A.R. 137, effective January 8, 2013 (Supp. 13-1). Amended by final rulemaking at 19 A.A.R. 4168, effective February 1, 2014 (Supp. 13-4). Amended by final rulemaking at 20 A.A.R. 1989, effective September 6, 2014 (Supp. 14-3).

**R9-28-704. Repealed****Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 3340, effective July 15, 2002 (Supp. 02-3). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).

**R9-28-705. Repealed****Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective April 25, 1990 (Supp. 90-2). Amended under an exemption from the provisions of the Administrative Procedure Act, effective March 1, 1993 (Supp. 93-1). Amended effective November 5, 1993 (Supp. 93-4). Amended by final rulemaking at 5 A.A.R. 874, effective March 4, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 3165, effective October 1, 2005 (Supp. 05-3). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).

**R9-28-706. Repealed****Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended subsections (A) and (B) effective June 6, 1989 (Supp. 89-2). Amended effective April 25, 1990 (Supp. 90-2). Amended effective November 5, 1993 (Supp. 93-4). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 10 A.A.R. 4658, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 3852, effective November 12, 2005 (Supp. 05-3). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).

**R9-28-707. Repealed****Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective March 1, 1993 (Supp. 93-1). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).

**Editor's Note:** *The following Section was amended under an exemption from the provisions of the Administrative Procedure Act which means that the amendment was not reviewed by the Governor's Regulatory Review Council; the agency did not submit a notice of proposed rulemaking for publication in the Arizona Administrative Register; the agency was not required to hold public hearings on the rulemaking; and the Attorney Gen-*

*eral has not certified the rule. This Section was subsequently amended through the regular rulemaking process.*

**R9-28-708. Repealed****Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective April 26, 1989 (Supp. 89-2). Amended under an exemption from the provisions of the Administrative Procedure Act, effective March 1, 1993 (Supp. 93-1). Amended effective November 5, 1993 (Supp. 93-4). Amended by final rulemaking at 11 A.A.R. 3852, effective November 12, 2005 (Supp. 05-3). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).

**R9-28-709. Repealed****Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended subsection (B) effective June 6, 1989 (Supp. 89-2). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 3340, effective July 15, 2002 (Supp. 02-3). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).

**R9-28-710. Repealed****Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended subsections (C) and (D) effective June 6, 1989 (Supp. 89-2). Amended effective September 22, 1997 (Supp. 97-3). Section repealed by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1).

**R9-28-711. Repealed****Historical Note**

Adopted effective November 5, 1993 (Supp. 93-4). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 3340, effective July 15, 2002 (Supp. 02-3). Amended by final rulemaking at 11 A.A.R. 3165, effective October 1, 2005 (Supp. 05-3). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).

**R9-28-712. County of Fiscal Responsibility****A. General requirements.**

1. The Administration shall determine the county of fiscal responsibility under A.R.S. § 36-2913 for an applicant or member who is elderly or physically disabled.
2. A program contractor shall cover services and provisions specified in 9 A.A.C. 22, Articles 2 and 7 and Article 11 of this Chapter.

**B. Criteria for determining county of fiscal responsibility for an applicant.**

1. If the applicant resides in the applicant's own home, the county of fiscal responsibility is the county where the applicant currently resides.
2. This applies only if subsection (B)(3) does not apply. If the applicant is residing in a NF or alternative HCBS setting, the county of fiscal responsibility is the county in which the applicant last resided in the applicant's own home.
3. If the applicant moves from another state directly into a NF or alternative HCBS setting in this state, the county of fiscal responsibility is the county in which the person currently resides.

4. If the applicant moves from the Arizona State Hospital (ASH) into a NF or alternative HCBS setting, or is an inmate of a public institution moving from the public institution into a NF or alternative HCBS setting, the county of fiscal responsibility is the county in which the applicant resided in the applicant's own home prior to admission to ASH or the public institution.
- C. Criteria for determining if there is a change in county of fiscal responsibility for a member moving from one county to another county.
  1. No change in the county of fiscal responsibility. There is no change in the county of fiscal responsibility for a member if:
    - a. The member moves from a NF to another NF in a different county,
    - b. The member moves from a NF to an alternative HCBS setting in a different county,
    - c. The member moves from an alternative HCBS setting to another alternative HCBS setting in a different county,
    - d. The member moves from an alternative HCBS setting to a NF in a different county,
    - e. The member moves from the member's own home to an alternative HCBS setting in a different county,
    - f. The member moves from the member's own home to a NF in a different county,
    - g. The member moves from a NF or alternative HCBS setting into ASH, or
    - h. The member moves from ASH to a NF or alternative HCBS setting.
  2. Change in the county of fiscal responsibility. If a member moves from one county to another, the county of fiscal of responsibility changes to the new county if the member moves from:
    - a. An alternative HCBS setting to the member's own home in a different county,
    - b. A NF to the member's own home in a different county,
    - c. The member's own home to the member's own home in a different county, or
    - d. ASH to the member's own home.
  3. Transfers between program contractors. The county of fiscal responsibility changes if the Administration transfers a member from one program contractor to a different program contractor and if:
    - a. Both program contractors agree, or
    - b. The Administration determines that it is in the best interest of the member.

**Historical Note**

Adopted effective November 4, 1998 (Supp. 98-4).  
Amended by final rulemaking at 8 A.A.R. 3340, effective July 15, 2002 (Supp. 02-3).

**R9-28-713. Repealed****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Amended by final rulemaking at 11 A.A.R. 3165, effective October 1, 2005 (Supp. 05-3). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).

**R9-28-714. Repealed****Historical Note**

New Section made by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1). Section repealed

by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).

**R9-28-715. Repealed****Historical Note**

New Section made by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).

**ARTICLE 8. TEFRA LIENS AND RECOVERIES****R9-28-801. Definitions Related to TEFRA Liens**

In addition to the definitions in A.R.S. §§ 36-2901 and 36-2931, 9 A.A.C. 22, Article 1, and 9 A.A.C. 28, Article 1, the following definitions apply to this Article:

"Consecutive days" means days following one after the other without an interruption resulting from a discharge.

"File" means the date that AHCCCS receives a request for a State Fair Hearing under R9-28-805, as established by a date stamp on the request or other record of receipt.

"Home" means property in which a member has an ownership interest and that serves as the member's principal place of residence. This property includes the shelter in which a member resides, the land on which the shelter is located, and related outbuildings.

"Recover" means that AHCCCS takes action to collect from a claim.

"TEFRA lien" means a lien under 42 U.S.C. 1396p of the Tax Equity and Fiscal Responsibility Act of 1982.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective November 5, 1993 (Supp. 93-4). Section repealed; new Section adopted effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3365, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 820, effective April 3, 2004 (Supp. 04-1). New Section made by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

**R9-28-801.01. TEFRA Liens – General**

Purpose. The purpose of TEFRA is to allow AHCCCS to file a lien on an AHCCCS member's interest in any real property before the member is deceased, including but not limited to life estates and beneficiary deeds.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

**R9-28-802. TEFRA Liens – Affected Members**

- A. Except for members under R9-28-803, AHCCCS shall file a TEFRA lien against the real property of all members who are:
  1. Receiving ALTCS services,
  2. 55 years of age or older, and
  3. Permanently institutionalized.
- B. A rebuttable presumption exists that a member is permanently institutionalized if the member has continually resided in a nursing facility, ICF/MR, or other medical institution defined in 42 CFR 435.1010 for 90 or more consecutive days. A member may rebut the presumption by providing a written opinion from a treating physician, rendered to a reasonable degree of medical certainty, that the member's condition is likely to improve to the point that the member will be discharged from

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the medical institution and will be capable of returning home by a date certain.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective November 5, 1993 (Supp. 93-4). Section repealed; new Section adopted effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3365, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 820, effective April 3, 2004 (Supp. 04-1). New Section made by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

**R9-28-803. TEFRA Liens – Prohibitions**

AHCCCS shall not file a TEFRA lien against a member's home if one of the following individuals is lawfully residing in the member's home:

1. Member's spouse;
2. Member's child who is under the age of 21;
3. Member's child who is blind or disabled under 42 U.S.C. 1382c; or
4. Member's sibling who has an equity interest in the home and who was residing in the member's home for at least one year immediately before the date the member was admitted to a nursing facility, ICF/MR, or other medical institution as defined under 42 CFR 435.1010.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Section repealed; new Section adopted effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3365, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 820, effective April 3, 2004 (Supp. 04-1). New Section made by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

**R9-28-804. TEFRA Liens – AHCCCS Notice of Intent**

- A. Time-frame. At least 30 days before filing a TEFRA lien, AHCCCS shall send the member or member's representative a Notice of Intent.
- B. Content of the Notice of Intent. The Notice of Intent shall include the following information:
  1. A description of a TEFRA lien and the action that AHCCCS intends to take,
  2. How a TEFRA lien affects a member's property,
  3. The legal authority for filing a TEFRA lien,
  4. The time-frames and procedures involved in filing a TEFRA lien, and
  5. The member's right to request an exemption.
- C. Request for exemption. A member or a member's representative may request an exemption. To request an exemption the member or the member's representative shall submit a written statement to AHCCCS within 30 days from the receipt of the Notice of Intent describing the factual basis for a claim that the property should be exempt from placement of a TEFRA lien or from recovery of lien based on R9-28-802, R9-28-803, or R9-28-806. AHCCCS shall respond to the member or member's representative in writing within 30 days of receiving a request for exemption, unless the parties mutually agree to a longer period of time.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective April 25, 1990 (Supp. 90-2). Section repealed effective August 11, 1997

(Supp. 97-3). New Section made by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

**R9-28-805. TEFRA Liens and Estate Recovery – Member's Request for a State Fair Hearing**

- A. If the member or member's representative does not request an exemption under R9-28-804(C), the Administration shall send the member or representative a Notice of TEFRA Lien. The member or representative may file a request for a State Fair Hearing within 30 days of the receipt of the Notice of TEFRA Lien.
- B. If the member requests an exemption and the request is denied, the Administration shall send the member or representative a Denial of a Request for Exemption. The member or representative may file a request for a State Fair Hearing within 30 days of the receipt of the Denial of Request for Exemption. After the 30-day time-frame to file a State Fair Hearing, the member or representative is sent a Notice of a TEFRA Lien.
- C. Hearings regarding TEFRA liens shall be conducted under 9 A.A.C. 34.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

**R9-28-806. TEFRA Liens – Recovery**

- A. AHCCCS shall seek to recover a TEFRA lien upon the sale or transfer of the real property subject to the lien. However, AHCCCS shall not seek to recover the TEFRA lien or attempt recovery against any real property subject to the TEFRA lien so long as the member is survived by the member's:
  1. Spouse;
  2. Child under the age of 21; or
  3. Child who receives benefits under either Title II or Title XVI of the Social Security Act as blind or disabled, as defined under 42 U.S.C. 1382c.
- B. AHCCCS shall not seek to recover a TEFRA lien on an individual's home if the member is survived by:
  1. A sibling of the member who currently resides in the deceased member's home and who was residing in the member's home for a period of at least one year immediately before the date of the member's admission to the nursing facility, ICF/MR, or other medical institution as defined under 42 CFR 435.1010; or
  2. A child of the member who resides in the deceased member's home and who:
    - a. Was residing in the member's home for a period of at least two years immediately before the date of the member's admission to the nursing facility, ICF/MR, or other medical institution as defined under 42 CFR 435.1010; and
    - b. Provided care to the member that allowed the member to reside at home rather than in an institution.
- C. To determine whether a child of the member provided care under subsection (B)(2), AHCCCS shall require the following information:
  1. A physician's written statement that describes the member's physical condition and service needs for the previous two years before the member's death;
  2. Verification that the child actually lived in the member's home;
  3. A written statement from the child providing the services that describes and attests to the services provided;
  4. A written statement, if any, made by the member prior to death regarding the services received; and
  5. A written statement from physician, friend, or relative as witness to the care provided.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

**R9-28-807. TEFRA Liens – Release**

AHCCCS shall issue a release of a TEFRA lien within 30 days of:

1. Satisfaction of the lien;
2. Notice that the member has been discharged from the nursing facility, ICF/MR, or other medical institution, defined under 42 CFR 435.1010, and the member has returned home and is physically residing in the home with the intention of remaining in the home. Discharge to an alternative HCBS setting defined at R9-28-101 does not constitute a return to the home; or
3. Notice of the member's death, if a lien has been filed on a life estate.

**Historical Note**

New Section made by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

**ARTICLE 9. FIRST- AND THIRD-PARTY LIABILITY AND RECOVERIES****R9-28-901. Definitions**

In addition to the definitions in A.R.S. §§ 36-2901 and 36-2931, 9 A.A.C. 22, Article 1, and 9 A.A.C. 28, Article 1, the following definitions apply to this Article:

"Estate" has the meaning in A.R.S. § 14-1201.

"Member" means a person eligible for AHCCCS-covered services under A.R.S. Title 36, Chapter 29, Article 2.

"Recover" means that AHCCCS takes action to collect from a claim.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective November 7, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 10 A.A.R. 1308, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 10 A.A.R. 3013, effective September 11, 2004 (Supp. 04-3). Amended by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

**R9-28-902. General Provisions**

The provisions in A.A.C. R9-22-1002 apply to this Section.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1992, Ch. 301, § 61, effective July 1, 1993 (Supp. 93-3). Amended effective November 7, 1997 (Supp. 97-4). Amended by final rulemaking at 10 A.A.R. 1308, effective May 1, 2004 (Supp. 04-1).

**R9-28-903. Cost Avoidance**

The provisions in A.A.C. R9-22-1003 apply to this Section.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1308, effective May 1, 2004 (Supp. 04-1).

**R9-28-904. Member Participation**

The provisions in A.A.C. R9-22-1004 apply to this Section.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1308, effective May 1, 2004 (Supp. 04-1).

**R9-28-905. Collections**

The provisions in A.A.C. R9-22-1005 apply to this Section.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1308, effective May 1, 2004 (Supp. 04-1).

**R9-28-906. AHCCCS Monitoring Responsibilities**

The provisions in A.A.C. R9-22-1006 apply to this Section.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective November 7, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 10 A.A.R. 1308, effective May 1, 2004 (Supp. 04-1).

**R9-28-907. Notification for Perfection, Recording, and Assignment of AHCCCS Liens**

The provisions in A.A.C. R9-22-1007 apply to this Section.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1308, effective May 1, 2004 (Supp. 04-1).

**R9-28-908. Notification Information for Liens**

The provisions in A.A.C. R9-22-1008 apply to this Section.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1308, effective May 1, 2004 (Supp. 04-1).

**R9-28-909. Notification of Health Insurance Information**

The provisions in A.A.C. R9-22-1009 apply to this Section.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1308, effective May 1, 2004 (Supp. 04-1).

**R9-28-910. Recoveries**

AHCCCS shall recover funds paid before or after the death of a member for ALTCS benefits including: capitation payments, Medicare Parts A and B premium payments, coinsurance and deductibles paid by AHCCCS, fee-for-service payments, and reinsurance payments from:

1. The estate of a member who was 55 years of age or older when the member received benefits; or
2. The estate or the property of a member under A.R.S. §§ 36-2935, 36-2956, and 42 U.S.C. 1396p.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1308, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

**R9-28-911. Estate Recovery and Undue Hardship**

A. Any recovery of a claim by AHCCCS against a member's estate shall be made only after the death of the member's surviving spouse and only at a time:

1. When there exists no surviving minor child under age 21; and
2. When there exists no surviving child who receives benefits under either Title II or Title XVI of the Social Security Act because the child is blind or disabled as defined in 42 U.S.C. 1382c.

B. Undue hardship exemption request. A member's representative may request an undue hardship exemption. If the member's representative wishes to request an undue hardship exemption, the member's representative shall submit the request within 30 days from the receipt of the notification of the AHCCCS claim against the estate. The member's repre-

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sentative shall submit a written statement to AHCCCS describing the factual basis for a claim that the property should be exempt from estate recovery as provided under this Section. AHCCCS shall respond to the member or member's representative in writing within 30 days of receiving an undue hardship exemption request, unless the parties mutually agree to a longer period of time.

**C.** AHCCCS shall waive a claim against a member's estate because of undue hardship if any of the following situations exist:

1. The estate consists only of real property that is listed as residential property by the Arizona Department of Revenue or County Assessor's Office, and the heir or devisee:
  - a. Owns a business that is located at the residential property and:
    - i. The business was in operation at the residential property for at least 12 months preceding the death of the member,
    - ii. The business provides more than 50 percent of the heir's or devisee's livelihood, and
    - iii. The recovery of the property would result in the heir or devisee losing the heir's or devisee's means of livelihood; or
  - b. Currently resides in the residence and:
    - i. Resided there at the time of the member's death,
    - ii. Made the residence his or her primary residence for the 12 months immediately before the death of the member, and
    - iii. Owns no other residence; or
2. The estate consists only of personal property and:
  - a. The heir's or devisee's gross annual income for the household size is less than 100 percent of the Federal Poverty Level (FPL). New sources of income such as employment or Social Security that may not have yet been received are included in determining the household's annual gross income; and
  - b. The heir or devisee does not own a home, land, or other real property.

**D.** When the estate consists of both personal property and real property that qualify for the undue hardship exemption criteria under subsections (B) and (C), AHCCCS shall not grant an undue hardship waiver; however, AHCCCS shall adjust its claim to the value of the personal property.

**E.** AHCCCS shall exempt the following income, resources, and property of Native Americans (NA) and Alaska Natives (AN) from estate recovery:

1. Income and resources from tribal land and other resources currently held in trust and judgment funds from the Indian Claims Commission or U.S. Claims Court;
2. Ownership interest in trust or non-trust property;
3. Ownership interests left as a remainder in an estate in rents, leases, royalties, or usage rights related to natural resources;
4. Any other ownership interests or rights in a property that has unique religious, spiritual, traditional, or cultural significance or rights that support subsistence or a traditional life style according to applicable Tribal law or custom; and
5. Income left as a remainder in an estate derived from any property listed in subsection (E)(1) through (4), that was either collected by a NA, or by a Tribe or Tribal organization and distributed to a NA.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1308, effective May 1, 2004 (Supp. 04-1). Amended by

final rulemaking at 10 A.A.R. 3013, effective September 11, 2004 (Supp. 04-3). Amended by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

**R9-28-912. Partial Recovery**

AHCCCS shall use the following factors in determining whether to seek a partial recovery of funds when an heir or devisee does not meet the requirements of R9-28-911 and requests a partial recovery:

1. Financial and medical hardship to the heir or devisee;
2. Income of the heir or devisee and whether the heir or devisee's household gross annual income is less than 100 percent of the FPL;
3. Resources of the heir or devisee;
4. Value and type of assets;
5. Amount of AHCCCS' claim against the estate; and
6. Whether other creditors have filed claims against the estate or have foreclosed on the property.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1308, effective May 1, 2004 (Supp. 04-1).

**R9-28-913. Repealed**

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 3013, effective September 11, 2004 (Supp. 04-3).  
Repealed by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

**R9-28-914. Repealed**

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 3013, effective September 11, 2004 (Supp. 04-3).  
Repealed by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

**R9-28-915. Repealed**

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 3013, effective September 11, 2004 (Supp. 04-3).  
Repealed by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

**R9-28-916. Repealed**

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 3013, effective September 11, 2004 (Supp. 04-3).  
Repealed by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

**R9-28-917. Repealed**

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 3013, effective September 11, 2004 (Supp. 04-3).  
Repealed by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

**R9-28-918. Repealed**

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 3013, effective September 11, 2004 (Supp. 04-3).  
Repealed by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

**R9-28-919. Repealed****Historical Note**

New Section made by final rulemaking at 10 A.A.R. 3013, effective September 11, 2004 (Supp. 04-3).

Repealed by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

**ARTICLE 10. CIVIL MONETARY PENALTIES AND ASSESSMENTS****R9-28-1001. Basis for Civil Monetary Penalties and Assessments for Fraudulent Claims**

AHCCCS shall use the provisions in 9 A.A.C. 22, Article 11 for the determination and collection of penalties, assessments, and penalties and assessments.

**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Amended effective June 9, 1998 (Supp. 98-2). Amended by final rulemaking at 10 A.A.R. 3065, effective September 11, 2004 (Supp. 04-3).

**R9-28-1002. Repealed****Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective November 5, 1993 (Supp. 93-4). Repealed effective June 9, 1998 (Supp. 98-2).

**R9-28-1003. Repealed****Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective November 5, 1993 (Supp. 93-4). Repealed effective June 9, 1998 (Supp. 98-2).

**R9-28-1004. Repealed****Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Repealed effective June 9, 1998 (Supp. 98-2).

**ARTICLE 11. BEHAVIORAL HEALTH SERVICES****R9-28-1101. General Requirements**

General requirements. The following general requirements apply to behavioral health services provided under this Article, subject to all exclusions and limitations.

1. Administration. The program shall be administered under A.R.S. § 36-2932.
2. Provision of services. Behavioral health services shall be provided under A.R.S. § 36-2939, this Chapter and 9 A.A.C. 22, Article 12, as applicable.
3. Definitions. The definitions in A.A.C. R9-22-1201 and R9-22-102 apply to this Article, in addition to the following definitions:

“Case management” means the activities described in R9-28-510.

“Cost avoid” means the same as in A.A.C. R9-22-1201.

“Intergovernmental agreement” or “IGA” means an agreement for services or joint or cooperative action between the Administration and a tribal contractor.

“Qualified behavioral health service provider” means a behavioral health service provider that meets the requirements of R9-28-1106.

“Tribal contractor” means a tribal organization (The Tribe) or urban Indian organization defined in 25 U.S.C.

1603 and recognized by CMS as meeting the requirements of 42 U.S.C. 1396d(b), that provides or is accountable for providing the services or delivering the items described in the intergovernmental agreement.

4. Enrollment of Native American member. The Administration shall enroll an EPD Native American member with a tribal contractor on a FFS basis if:
  - a. The member lives on-reservation of a Native American tribal organization that is an ALTCS tribal contractor, or
  - b. The member lived on-reservation of a Native American tribal organization that is an ALTCS tribal contractor immediately before placement in an off-reservation Nursing Facility or an alternative HCBS setting.
5. Case management. A tribal contractor shall provide case management services to FFS Native American members living on or off-reservation as delineated in the IGA.
6. Services. A tribal contractor or the Administration may authorize behavioral health services for FFS Native American members enrolled with a tribal contractor as delineated in the intergovernmental agreement.
7. Enrollment of Native American members off-reservation. Except as provided in R9-28-1101(4)(b), an EPD Native American who resides on or off-reservation shall be enrolled with an ALTCS program contractor to receive behavioral health services, including case management, under R9-28-415.
8. Enrollment of developmentally disabled Native American member. A developmentally disabled Native American member who resides on or off-reservation shall be enrolled with the Department of Economic Security’s Division of Developmental Disabilities under R9-28-414 and shall receive behavioral health services from the Department of Economic Security’s Division of Developmental Disabilities.
9. Reimbursement. For FFS Native Americans, the Administration is exclusively responsible for providing reimbursement for covered behavioral health services that are authorized by a tribal contractor or the Administration under the intergovernmental agreement as specified in this Article. A program contractor is exclusively responsible for providing reimbursement for covered behavioral health services that are authorized by a program contractor as specified in this Article.

**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1992, Ch. 301, § 61, effective November 1, 1992; received in the Office of the Secretary of State November 25, 1992 (Supp. 92-4). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 200, effective December 13, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4691, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 1090, effective May 5, 2007 (Supp. 07-1).

**R9-28-1102. Program or Tribal Contractor Responsibilities**

- A. Program contractor. A program contractor shall provide behavioral health services to all enrolled members, including Native American members who are not enrolled with a tribal contractor under R9-28-1101.
- B. Tribal contractor. A tribal contractor shall provide behavioral health services to a Native American member who is enrolled with a tribal contractor as prescribed in R9-28-1101. When a tribal contractor determines that an EPD Native American



member residing on a reservation needs behavioral health services under R9-28-415, the member shall receive services as authorized by the Administration or a tribal contractor under A.A.C. R9-22-1205 from any AHCCCS-registered provider.

- C. A program or tribal contractor shall cooperate when a transition of care occurs and ensure that medical records are transferred in accordance with A.R.S. §§ 36-2932, 36-509, and R9-28-514 when a member transitions from:
  1. A behavioral health provider to another behavioral health provider,
  2. A RBHA or TRBHA to a program contractor,
  3. A program or tribal contractor to a RBHA or TRBHA, or
  4. A program contractor to a tribal contractor or vice versa.
- D. The Administration, a tribal contractor, or a program contractor, as appropriate, shall authorize behavioral health services for Native American members.

#### Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1992, Ch. 301, § 61, effective November 1, 1992; received in the Office of the Secretary of State November 25, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1992, Ch. 301, § 61, effective July 1, 1993 (Supp. 93-3). Amended under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Ch. 204, § 11, effective October 1, 1995; filed with the Office of the Secretary of State September 29, 1995 (Supp. 95-4). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 200, effective December 13, 1999 (Supp. 99-4). Amended by final rulemaking at 13 A.A.R. 1090, effective May 5, 2007 (Supp. 07-1).

#### R9-28-1103. Eligibility for Covered Services

- A. Eligibility for covered services. A member determined eligible under A.R.S. § 36-2934 shall receive medically necessary covered services specified in A.A.C. R9-22-1205 and R9-28-202.
- B. Limitations. Behavioral health services are covered as specified in A.A.C. R9-22-201 and R9-22-1205.

#### Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1992, Ch. 301, § 61, effective November 1, 1992; received in the Office of the Secretary of State November 25, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1992, Ch. 301, § 61, effective July 1, 1993 (Supp. 93-3). Amended under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Ch. 204, § 11, effective October 1, 1995; filed with the Office of the Secretary of State September 29, 1995 (Supp. 95-4). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 200, effective December 13, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4691, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 1090, effective May 5, 2007 (Supp. 07-1).

#### R9-28-1104. General Service Requirements

- A. Services. Behavioral health services include both mental health and substance abuse services.
- B. Prior authorization for emergency behavioral health services. A provider is not required to obtain prior authorization for emergency behavioral health services.
- C. Prohibition against denial of payment. A program contractor, tribal contractor, or the Administration shall not limit or deny payment to an emergency behavioral health provider for emer-

gency behavioral health services to a member for the following reasons:

1. On the basis of lists of diagnoses or symptoms,
  2. Prior authorization was not obtained, or
  3. The provider does not have a contract.
- D. A program contractor or the Administration shall not limit or deny payment to an emergency behavioral health provider for emergency behavioral health services provided to a member if the member received those services as directed by an employee of the program contractor or the Administration.
  - E. Grounds for denial for persons enrolled with a program or tribal contractor. A program contractor or the Administration may deny payment to an emergency behavioral health provider for emergency behavioral health services for reasons including but not limited to the following:
    1. The claim was not a clean claim,
    2. The claim was not submitted timely, or
    3. The provider failed to provide timely notification to the Administration or the program contractor, as applicable.
  - F. Notification to program contractor for persons enrolled with a program contractor. A hospital, emergency room provider, or fiscal agent shall notify a program contractor no later than the 11th day from presentation of the member enrolled with a program contractor for emergency inpatient behavioral health services.
  - G. Notification to Administration for Native Americans enrolled with a tribal contractor. A provider shall notify the Administration no later than 72 hours after a Native American member enrolled with a tribal contractor presents to a hospital for inpatient emergency behavioral health services.
  - H. Behavioral health evaluation. Subject to A.R.S. § 36-545.06 and R9-28-903, an emergency behavioral health evaluation is covered as an emergency service for a member under this Section if:
    1. Required to evaluate or stabilize an acute episode of mental disorder or substance abuse; and
    2. Provided by a qualified provider who is a behavioral health medical practitioner as defined in A.A.C. R9-22-1201, including a licensed psychologist, a licensed clinical social worker, a licensed professional counselor, or a licensed marriage and family therapist.
  - I. Post-stabilization requirements for members enrolled with a program contractor.
    1. A program contractor is financially responsible for behavioral health post-stabilization services obtained within or outside the network that have received prior authorization from the program contractor.
    2. The program contractor is financially responsible for behavioral health post-stabilization services obtained within or outside the network that have not received prior authorization from the program contractor, but are administered to maintain the member's stabilized condition within one hour of a request to the program contractor for prior authorization of further post-stabilization services;
    3. The program contractor is financially responsible for behavioral health post-stabilization services obtained within or outside the network that have not received prior authorization from the program contractor, but are administered to maintain, improve, or resolve the member's stabilized condition if:
      - a. The program contractor does not respond to a request for prior authorization within one hour;
      - b. The program contractor authorized to give the prior authorization cannot be contacted; or
      - c. The representative of the program contractor and the treating physician cannot reach an agreement con-

cerning the member's care and the program contractor's physician is not available for consultation. The treating physician may continue with care of the member until the program contractor's physician is reached, or:

- i. A program contractor's physician with privileges at the treating hospital assumes responsibility for the member's care;
  - ii. A program contractor's physician assumes responsibility for the member's care through transfer;
  - iii. A representative of the program contractor and the treating physician reach agreement concerning the member's care; or
  - iv. The member is discharged.
4. Transfer or discharge. The attending physician or the provider actually treating the member for the emergency behavioral health condition shall determine when the member is sufficiently stabilized for transfer or discharge and that decision shall be binding on the program contractor.
- J.** Prior authorization for non-emergency behavioral health services. When a member's behavioral health condition is determined by the provider not to require emergency behavioral health services, the provider shall follow the program contractor's or the Administration's prior authorization requirements.
- K.** E.P.S.D.T. services. For Title XIX members under age 21, E.P.S.D.T. services shall include all medically necessary Title XIX-covered behavioral health services to a member.
- L.** Experimental services. Experimental services and services that are provided primarily for the purpose of research are not covered.
- M.** Gratuities. A service or an item, if furnished gratuitously to a member by a provider, is not covered and payment to a provider shall be denied.
- N.** GSA. Behavioral health services rendered to a member enrolled with a program contractor shall be provided within the program contractor's GSA except when:
1. A primary care provider refers a member to another area for medical specialty care;
  2. A member's medically necessary covered service is not available within the GSA;
  3. A net savings in behavioral health service delivery costs can be documented by the program contractor for a member. Undue travel time or hardship shall be considered for a member or a member's family; or
  4. A member is placed by the program contractor in a NF or an Alternative HCBS setting located out of the program contractor's GSA, but remains enrolled with that program contractor.
- O.** Travel. If a member travels or temporarily resides outside of a program contractor's GSA, covered services are restricted to emergency behavioral health care, unless authorized by the member's program contractor.
- P.** Non-covered services. If a member requests a behavioral health service that is not covered or is not authorized by a program contractor, the tribal contractor, or the Administration, the behavioral health service may be provided by an AHC-CCS-registered behavioral health service provider according to A.A.C. R9-22-702.
- Q.** Restrictions and limitations.
1. The restrictions, limitations, and exclusions in this Article do not apply to a program contractor that elects to provide a noncovered service.
  2. Room and board is not a covered service unless provided by the Administration or a program contractor in a Level

1, inpatient, sub-acute, or residential center under A.A.C. R9-22-1205.

#### Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1992, Ch. 301, § 61, effective November 1, 1992; received in the Office of the Secretary of State November 25, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1992, Ch. 301, § 61, effective July 1, 1993; amended under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Ch. 204, § 11, effective October 1, 1995; filed with the Secretary of State September 29, 1995 (Supp. 95-4). Amended under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Ch. 204, § 11, effective January 1, 1996; filed with the Office of the Secretary of State December 22, 1995 (Supp. 95-4). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 200, effective December 13, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4691, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 1090, effective May 5, 2007 (Supp. 07-1).

#### R9-28-1105. Scope of Behavioral Health Services

- A.** Scope of Services. The provisions of A.A.C. R9-22-1205 are the scope of behavioral health services for a member under this Article. A member in an institutional or Alternative HCBS setting as defined in R9-28-101 may receive covered behavioral health therapeutic home care services from a program contractor.
- B.** Applicability. References in A.A.C. R9-22-1205 to ADHS/DBHS apply to a program contractor.

#### Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1992, Ch. 301, § 61, effective November 1, 1992; received in the Office of the Secretary of State November 25, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1992, Ch. 301, § 61, effective July 1, 1993 (Supp. 93-3). Amended under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Ch. 204, § 11, effective October 1, 1995; filed with the Office of the Secretary of State September 29, 1995 (Supp. 95-4). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 200, effective December 13, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4691, effective October 1, 2001 (Supp. 01-3). Amended by exempt rulemaking at 8 A.A.R. 933, effective February 12, 2002 (Supp. 02-1). Amended by final rulemaking at 13 A.A.R. 1090, effective May 5, 2007 (Supp. 07-1).

#### R9-28-1106. General Provisions and Standards for Service Providers

- A.** Applicability. The provisions of A.A.C. R9-22-1206 are the general provisions and standards for service providers. References in A.A.C. R9-22-1206 to ADHS/DBHS or to a RBHA apply to a program contractor.
- B.** Qualified service provider. A qualified behavioral health service provider shall:
1. Have all applicable state licenses or certifications, or comply with alternative requirements established by the Administration;

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2. Register with the Administration as a behavioral health service provider; and
3. Comply with all requirements under Article 5 and this Article.

**C. Quality and utilization management.**

1. Service providers shall cooperate with the program contractor's quality and utilization management programs and the Administration as under R9-28-511 and in contract.
2. Service providers shall comply with applicable procedures under 42 CFR 456, incorporated by reference in A.A.C. R9-22-1206.

**Historical Note**

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1992, Ch. 301, § 61, effective November 1, 1992; received in the Office of the Secretary of State November 25, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1992, Ch. 301, § 61, effective July 1, 1993 (Supp. 93-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 200, effective December 13, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4691, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 1090, effective May 5, 2007 (Supp. 07-1).

**R9-28-1107. General Provisions for Payment**

- A. Prior authorization. For ALTCS members enrolled with a program contractor, payment to a provider for behavioral health services that require prior authorization may be denied as specified in R9-22-705. References in A.A.C. R9-22-705 to a contractor apply to a program contractor.
- B. For ALTCS FFS members, payment to a provider for behavioral health services that require prior authorization may be denied if a provider does not obtain prior authorization from a tribal contractor or the Administration, as applicable.
- C. The Administration or a program contractor shall cost avoid any behavioral health service claims if the Administration or the program contractor establishes the probable existence of first-party liability or third-party liability.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 200, effective December 13, 1999 (Supp. 99-4). Amended by final rulemaking at 13 A.A.R. 1090, effective May 5, 2007 (Supp. 07-1).

**R9-28-1108. Repealed****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 200, effective December 13, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 3365, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 13 A.A.R. 1090, effective May 5, 2007 (Supp. 07-1).

**ARTICLE 12. REPEALED**

*Article 12, consisting of Section R9-28-1201, repealed by final rulemaking at 10 A.A.R. 820, effective April 3, 2004. The subject matter of Article 12 is now in 9 A.A.C. 34 (Supp. 04-1).*

**R9-28-1201. Repealed****Historical Note**

Adopted effective September 9, 1998 (Supp. 98-3). Amended by final rulemaking at 6 A.A.R. 3365, effective August 7, 2000 (Supp. 00-3). Section repealed by final

rulemaking at 10 A.A.R. 820, effective April 3, 2004 (Supp. 04-1).

**ARTICLE 13. FREEDOM TO WORK**

*Article 13, consisting of Sections R9-28-1301 through R9-28-1324, made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4).*

**R9-28-1301. General Freedom to Work Requirements**

The Administration shall determine eligibility for AHCCCS medical services under Article 2 of this Chapter and A.A.C. R9-22-1901.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section amended by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

**R9-28-1302. General Administration Requirements**

The Administration shall comply with the confidentiality rule under A.A.C. R9-22-512(C).

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section amended by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

**R9-28-1303. Application for Coverage**

- A. A person may apply by submitting an application to an Administration office.
- B. The application date is the date the application is received at an Administration office.
- C. The provisions of A.A.C. R9-22-1406(B) and (D) apply to this Section.
- D. An applicant or representative who files an application may withdraw the application either orally or in writing. The Administration shall send an applicant withdrawing an application a denial notice under R9-28-1304.
- E. Except as provided in 42 CFR 435.911, the Administration shall determine eligibility within 45 days.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Amended by final rulemaking at 9 A.A.R. 5138, effective January 3, 2004 (Supp. 03-4). Section amended by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

**R9-28-1304. Notice of Approval or Denial**

The Administration shall send an applicant a written notice of the decision regarding the application. This notice shall include a statement of the action and:

1. If approved:
  - a. The effective date of eligibility,
  - b. The amount the person shall pay, and
  - c. An explanation of the person's hearing rights specified in 9 A.A.C. 34; or
2. If denied, the information required by R9-28-401.01(G)(2).

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section amended by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

**R9-28-1305. Reporting and Verifying Changes**

An applicant or member shall report and verify changes as described under R9-28-411(A), to the Administration, including

any changes in the spouse's income that may affect the share of cost.

#### Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section amended by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

#### R9-28-1306. Actions that Result from a Redetermination or Change

The processing of a redetermination or change shall result in one of the following actions:

1. No change in eligibility, share-of-cost, or premium,
2. Discontinuance of eligibility if a condition of eligibility is no longer met,
3. A change in the person's share-of-cost,
4. A change in premium amount, or
5. A change in the coverage group under which a person receives AHCCCS medical coverage.

#### Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4).

#### R9-28-1307. Notice of Adverse Action

- A. The requirements under R9-28-411(D)(1) apply.
- B. Advance notice of a change in eligibility, share of cost, or premium amount. Advance notice means a notice of proposed action that is issued to the member at least 10 days before the effective date of the proposed action. Except under subsection (C), advance notice shall be issued whenever an adverse action is taken to:
  1. Discontinue eligibility,
  2. Increase a person's share-of-cost,
  3. Increase the premium amount, or
  4. Reduce benefits from ALTCS to acute care services.
- C. Exceptions from advance notice. A notice shall be issued to the member to discontinue eligibility no later than the effective date of action if:
  1. A member provides a clearly written statement, signed by that member, that services are no longer wanted;
  2. A member provides information that requires termination of eligibility or reduction of services, indicates that the member understands that termination of eligibility or reduction of services will be the result of supplying the information and signs a written statement waiving advance notice;
  3. A member cannot be located and mail sent to the member's last known address has been returned as undeliverable. A member whose eligibility is discontinued under this subsection is subject to reinstatement of discontinued services under 42 CFR 431.231(d);
  4. A member has been admitted to a public institution where a person is ineligible for coverage;
  5. A member has been approved for Medicaid in another state; or
  6. The Administration receives information confirming the death of a member.

#### Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section amended by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

#### R9-28-1308. Request for Hearing

An applicant or member may request a hearing under 9 A.A.C. 34.

#### Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section amended by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

#### R9-28-1309. Conditions of Eligibility

An applicant or member shall meet the following conditions to qualify for the Freedom to Work program:

1. Furnish a valid Social Security Number (SSN);
2. Be a resident of Arizona;
3. Be a citizen of the United States, or meet requirements for a qualified alien under A.R.S. § 36-2903.03(B);
4. Be at least 16 years of age, but less than 65 years of age;
5. Have countable income that does not exceed 250 percent of FPL. The Administration shall count income under 42 U.S.C. 1382a and 20 CFR 416 Subpart K with the following exceptions:
  - a. The unearned income of the applicant or member shall be disregarded,
  - b. The income of a spouse or other family members shall be disregarded, and
  - c. The deduction for a minor child shall not apply;
6. Reside in a living arrangement specified under R9-28-406(A);
7. Be determined as physically disabled by meeting the medical criteria under Article 3 of this Chapter; and
8. Comply with the member responsibility provisions under A.A.C. R9-22-1502(D) and (F).

#### Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section repealed; new Section made by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

#### R9-28-1310. Repealed

#### Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

#### R9-28-1311. Repealed

#### Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

#### R9-28-1312. Repealed

#### Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

#### R9-28-1313. Premium Requirements

- A. As a condition of eligibility, an applicant or member shall:
  1. Pay the premium required under subsection (B).
  2. Not have any unpaid premiums that exceed the premium amount for one month.
- B. The Administration shall process premiums under 9 A.A.C. 31, Article 14 with the following exceptions:
  1. A member who has countable income:
    - a. Under \$500, the monthly premium payment shall be \$0.

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- b. Over \$500 but not greater than \$750, the monthly premium payment shall be \$10.
2. The premium for a member shall be increased by \$5 for each \$250 increase in countable income above \$750.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section amended by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

**R9-28-1314. Repealed****Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

**R9-28-1315. Repealed****Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

**R9-28-1316. Institutionalized Person**

A person is not eligible for AHCCCS medical coverage if the person is:

1. An inmate of a public institution and federal financial participation (FFP) is not available, or
2. Older than age 20 but younger than age 65 and is residing in an Institution for Mental Disease under 42 CFR 435.1009 except when allowed under the Administration's Section 1115 IMD waiver or allowed under a managed care contract approved by CMS.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section amended by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

**R9-28-1317. Repealed****Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

**R9-28-1318. Repealed****Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

**R9-28-1319. Repealed****Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section repealed

by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

**R9-28-1320. Additional Eligibility Criteria for the Basic Coverage Group**

As a condition of eligibility, an applicant or member shall be employed. Employed means that an applicant or member is paid for working and Social Security or Medicare taxes are paid on the applicant's or member's income.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section amended by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

**R9-28-1321. Share of Cost**

The Director shall determine the amount a person shall pay for the cost of ALTCS services (share-of-cost) under A.R.S. § 36-2932(L) and 42 CFR 435.725 or 42 CFR 435.726. Share of cost shall be calculated for people who reside in a medical institution for an entire calendar month under R9-28-408(G) and R9-28-410(C) except that the personal-needs allowance shall be increased by 50 percent of the member's earned income.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4).

**R9-28-1322. Repealed****Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4). Section repealed by final rulemaking at 15 A.A.R. 269, effective March 7, 2009 (Supp. 09-1).

**R9-28-1323. Enrollment**

The Administration shall enroll members under R9-28-412 through R9-28-418.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4).

**R9-28-1324. Redetermination of Eligibility**

- A. Redetermination. Except as provided in subsection (B), the Administration shall complete a redetermination of eligibility at least once a year.
- B. Change in circumstance. The Administration may complete a redetermination of eligibility if there is a change in the member's circumstances, including a change in disability or employment that may affect eligibility.
- C. Medical Improvement. If a member is no longer disabled under Article 3 of this Chapter, the Administration shall determine if the member is eligible under other coverage groups.

**Historical Note**

New Section made by exempt rulemaking at 9 A.A.R. 99, effective January 1, 2003 (Supp. 02-4).

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**Supplement to the**

**Arizona Administrative Code**

The official compilation of Arizona Rules

**Arizona Secretary of State's Office**

Public Services Division

1700 W. Washington Street, Fl 7.

Phoenix, AZ 85007

***Replacement Check List***

For rules filed within the

Third

July 1, 2014 - September 30, 2014

**Code Release Number: Supp. 14-3**

Within the stated calendar quarter, this Title contains all rules made, amended, repealed, renumbered, and recodified; or rules that have expired or were terminated due to an agency being eliminated under sunset law. These rules were either certified by the Governor's Regulatory Review Council or the Attorney General's Office; or exempt from the rulemaking process, and filed with the Office of the Secretary of State. Refer to the historical notes for more information. Please note that some rules you are about to remove may still be in effect after the publication date of this Supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

**Follow the instructions to replace the updated Chapters.**

**TITLE 12. Natural Resources**

**Chapter 15. Department of Water Resources**

Sections, Parts, Exhibits, Tables or Appendices modified

R12-15-725.01 and R12-15-725.02

REMOVE Supp. 13-4

Pages: 1 - 84

REPLACE with Supp. 14-3

Pages: 1 - 84

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**TITLE 12. NATURAL RESOURCES****CHAPTER 15. DEPARTMENT OF WATER RESOURCES**

(Authority: A.R.S. § 45-101 et seq.)

**ARTICLE 1. FEES**

## Section

- R12-15-101. Definitions
- R12-15-102. Fees for Applications and Filings
- R12-15-103. Applications Subject to Hourly Fee; Amount of Fee; Initial Fee; Billing and Payment; Request for Reconsideration of Fee; Past Due Fee
- R12-15-104. Applications and Filings Subject to Fixed Fee; Fixed Fee Schedule; Mileage Expenses; Costs for Legal Notices
- R12-15-105. Fee for Dam Safety Inspection; Fee for Review of Dam Safety Inspection Report
- R12-15-106. Fee for Well Capping
- R12-15-107. Municipality Fee
- R12-15-108. Reserved through
- R12-15-150. Reserved
- R12-15-151. Repealed
- R12-15-152. Expired

**ARTICLE 2. PROCEDURAL RULES**

*Article 2, consisting of Sections R12-15-201 through R12-15-224, adopted effective June 13, 1984.*

## Section

- R12-15-201. Expired
- R12-15-202. Expired
- R12-15-203. Expired
- R12-15-204. Expired
- R12-15-205. Expired
- R12-15-206. Expired
- R12-15-207. Correction of Clerical Mistakes
- R12-15-208. Expired
- R12-15-209. Expired
- R12-15-210. Expired
- R12-15-211. Expired
- R12-15-212. Expired
- R12-15-213. Expired
- R12-15-214. Expired
- R12-15-215. Expired
- R12-15-216. Expired
- R12-15-217. Expired
- R12-15-218. Expired
- R12-15-219. Expired
- R12-15-220. Expired
- R12-15-221. Expired
- R12-15-222. Expired
- R12-15-223. Expired
- R12-15-224. Ex Parte Communications

**ARTICLE 3. STOCKPOND AND OTHER SURFACE WATER RULES**

## Section

- R12-15-301. Expired
- R12-15-302. Expired
- R12-15-303. Multiple Applications for Water Rights
- R12-15-304. Reserved
- R12-15-305. Reserved
- R12-15-306. Reserved
- R12-15-307. Reserved
- R12-15-308. Reserved
- R12-15-309. Reserved

- R12-15-310. Renumbered

**ARTICLE 4. LICENSING TIME-FRAMES**

*Article 4, consisting of Sections R12-15-401 and Table A, adopted effective December 31, 1998; filed in the Office of the Secretary of State July 28, 1998 (Supp. 98-3).*

## Section

- R12-15-401. Licensing Time-frames
- Table A. Licensing Time-frames

**ARTICLE 5. RESERVED****ARTICLE 6. RESERVED****ARTICLE 7. ASSURED AND ADEQUATE WATER SUPPLY**

*Article 7, consisting of Sections R12-15-701 through R12-15-725, adopted effective February 7, 1995.*

## Section

- R12-15-701. Definitions - Assured and Adequate Water Supply Programs
- R12-15-702. Physical Availability Determination
- R12-15-703. Analysis of Assured Water Supply
- R12-15-703.01. Repealed
- R12-15-704. Certificate of Assured Water Supply
- R12-15-705. Assignment of Type A Certificate of Assured Water Supply
- R12-15-706. Assignment of Type B Certificate of Assured Water Supply
- R12-15-707. Application for Classification of a Type A Certificate
- R12-15-708. Material Plat Change; Application for Review
- R12-15-709. Certificate of Assured Water Supply; Revocation
- R12-15-710. Designation of Assured Water Supply
- R12-15-711. Designation of Assured Water Supply; Annual Report Requirements, Review, Modification, Revocation
- R12-15-712. Analysis of Adequate Water Supply
- R12-15-713. Water Report
- R12-15-714. Designation of Adequate Water Supply
- R12-15-715. Designation of Adequate Water Supply; Annual Report Requirements, Review, Modification, Revocation
- R12-15-716. Physical Availability
- R12-15-717. Continuous Availability
- R12-15-718. Legal Availability
- R12-15-719. Water Quality
- R12-15-720. Financial Capability
- R12-15-721. Consistency with Management Plan
- R12-15-722. Consistency with Management Goal
- R12-15-723. Extinguishment Credits
- R12-15-724. Phoenix AMA Calculation of Groundwater Allowance and Extinguishment Credits
- R12-15-725. Pinal AMA – Groundwater Allowance
- R12-15-725.01. Pinal AMA – Extinguishment Credits Calculation
- R12-15-725.02. Repealed
- R12-15-726. Prescott AMA Calculation of Groundwater Allowance and Extinguishment Credits
- R12-15-727. Tucson AMA Calculation of Groundwater Allowance and Extinguishment Credits
- R12-15-728. Reserved
- R12-15-729. Remedial Groundwater; Consistency with Management Goal

R12-15-730. Repealed

## **ARTICLE 8. WELL CONSTRUCTION AND LICENSING OF WELL DRILLERS**

*Article 8, consisting of Sections R12-15-801 through R12-15-821, adopted effective March 5, 1984.*

### **Section**

- R12-15-801. Definitions
- R12-15-802. Scope of Article
- R12-15-803. Well Drilling and Abandonment Requirements; Licensing and Supervision Requirements
- R12-15-804. Application for well drilling license
- R12-15-805. Examination for Well Drilling License
- R12-15-806. License Fee; Issuance and Term of Licenses; Renewal; Display of License
- R12-15-807. Single Well License
- R12-15-808. Revocation of License
- R12-15-809. Notice of Intention to Drill
- R12-15-810. Authorization to Drill
- R12-15-811. Minimum Well Construction Requirements
- R12-15-812. Special Aquifer Conditions
- R12-15-813. Unattended Wells
- R12-15-814. Disinfection of Wells
- R12-15-815. Removal of Drill Rig from Well Site
- R12-15-816. Abandonment
- R12-15-817. Exploration Wells
- R12-15-818. Well Location
- R12-15-819. Use of Well as Disposal Site
- R12-15-820. Request for Variance
- R12-15-821. Special Requirements
- R12-15-822. Capping of Open Wells
- R12-15-823. Reserved
- R12-15-849. Reserved
- R12-15-850. Evaluation of Notices of Intention to Drill; Notification of Registered Site Locations; Vertical Cross-Contamination Evaluation
- R12-15-851. Notification of Well Drilling Commencement
- R12-15-852. Notice of Well Inspection; Opportunity to Comment

## **ARTICLE 9. WATER MEASUREMENT**

*Article 9, consisting of Sections R12-15-901 through R12-15-905, adopted effective December 27, 1982.*

### **Section**

- R12-15-901. Definitions
- R12-15-902. Installation of Approved Measuring Devices
- R12-15-903. Approved Water Measuring Devices and Methods
- R12-15-904. Water Measuring Method Reporting Requirements
- R12-15-905. Accuracy of Approved Measuring Devices
- R12-15-906. Repair and Replacement of Approved Measuring Devices
- R12-15-907. Calculation of Irrigation Water Deliveries
- R12-15-908. Measurement of Water by One Person on Behalf of Another
- R12-15-909. Alternative Water Measurement Devices, Methods, and Reporting

## **ARTICLE 10. REPORTING REQUIREMENTS FOR ANNUAL REPORTS, ANNUAL ACCOUNTS, OPERATING FLEXIBILITY ACCOUNTS, AND CONVEYANCES OF GROUNDWATER RIGHTS**

### **Section**

- R12-15-1001. Definitions
- R12-15-1002. Form of Annual Account or Annual Report
- R12-15-1003. Accuracy of Annual Reports

R12-15-1004. Annual Reports Filed on Behalf of a Responsible Party

R12-15-1005. Management Plan Monitoring and Reporting Requirements

R12-15-1006. Reporting Requirements for Holders of Recovery Well Permits

R12-15-1007. Reporting Requirements for Annual Account

R12-15-1008. Information Required to Maintain an Operating Flexibility Account

R12-15-1009. Credits to Operating Flexibility Account

R12-15-1010. Operating Flexibility Account; Tailwater

R12-15-1011. Statement of Operating Flexibility Account

R12-15-1012. Rule of Construction

R12-15-1013. Retention of Records for Annual Accounts and Annual Reports

R12-15-1014. Late Filing or Payment of Fees; Extension Penalties

R12-15-1015. Reporting Requirements for Conveyances of Grandfathered Rights and Groundwater Withdrawal Permits

R12-15-1016. Spillwater Reporting by Water Deliverers

R12-15-1017. Maintenance and Filing of Annual Reports Required by A.R.S. § 45-343

## **ARTICLE 11. INSPECTIONS AND AUDITS**

*Article 11, consisting of Sections R12-15-1101 and R12-15-1102, adopted effective August 31, 1992 (Supp. 92-3).*

### **Section**

- R12-15-1101. Inspections
- R12-15-1102. Audits

## **ARTICLE 12. DAM SAFETY PROCEDURES**

*Article 12, consisting of Sections R12-15-1201 through R12-15-1206, repealed; new Article 12, consisting of Sections R12-15-1201 through R12-15-1226 et seq., adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).*

### **Section**

- R12-15-1201. Applicability
- R12-15-1202. Definitions
- R12-15-1203. Exempt Structures
  - Table 1. Exempt Structures
- R12-15-1204. Provision for Guidelines
- R12-15-1205. General Responsibilities
- R12-15-1206. Classification of Dams
  - Exhibit A. Repealed
  - Table 2. Size Classification
  - Table 3. Downstream Hazard Potential Classification
- R12-15-1207. Application Process
- R12-15-1208. Application to Construct, Reconstruct, Repair, Enlarge, or Alter a High or Significant Hazard Potential Dam
- R12-15-1209. Application to Breach or Remove a High or Significant Hazard Potential Dam
- R12-15-1210. Application to Construct, Reconstruct, Repair, Enlarge, Alter, Breach, or Remove a Low Hazard Potential Dam
- R12-15-1211. Application to Construct, Reconstruct, Repair, Enlarge, Alter, Breach, or Remove a Very Low Hazard Potential Dam
- R12-15-1212. Construction of a High, Significant, or Low Hazard Potential Dam
- R12-15-1213. Completion Documents for a Significant or High Hazard Potential Dam
- R12-15-1214. Licensing

- R12-15-1215. Construction Drawings, Construction Specifications, and Engineering Design Report for a High, Significant, or Low Hazard Potential Dam
- R12-15-1216. Design of a High, Significant, or Low Hazard Potential Dam
- Table 4. Inflow Design Flood
- Table 5. Minimum Factors of Safety for Stability
- R12-15-1217. Maintenance and Repair; Emergency Actions
- R12-15-1218. Safe Storage Level
- R12-15-1219. Safety Inspections; Fees
- R12-15-1220. Existing Dams
- R12-15-1221. Emergency Action Plans
- R12-15-1222. Right of Review
- R12-15-1223. Enforcement Authority
- R12-15-1224. Emergency Procedures
- R12-15-1225. Emergency Repairs
- R12-15-1226. Non-Emergency Repairs; Loans and Grants

### **ARTICLE 13. WELL SPACING REQUIREMENTS; REPLACEMENT WELLS IN APPROXIMATELY THE SAME LOCATION**

*Article 13, consisting of Sections R12-15-1301 through R12-15-1308, made by final rulemaking at 12 A.A.R. 2193, effective August 7, 2006 (Supp. 06-2).*

- R12-15-1301. Definitions
- R12-15-1302. Well Spacing Requirements - Applications to Construct New Wells or Replacement Wells in New Locations Under A.R.S. § 45-599
- R12-15-1303. Well Spacing Requirements - Applications for Recovery Well Permits Under A.R.S. § 45-834.01
- R12-15-1304. Well Spacing Requirements - Wells Withdrawing Groundwater From the Little Colorado River Plateau Groundwater Basin for Transportation to Another Groundwater Basin Under A.R.S. § 45-544(B)(1)
- R12-15-1305. Well Spacing Requirements - Applications to Use a Well to Withdraw Groundwater for Transportation to an Active Management Area Under A.R.S. § 45-559
- R12-15-1306. Well Spacing Requirements - Applications for Water Exchange Permits Under A.R.S. § 45-1041
- R12-15-1307. Well Spacing Requirements - Notices of Water Exchange Under A.R.S. § 45-1051
- R12-15-1308. Replacement Wells in Approximately the Same Location

### **ARTICLE 1. FEES**

#### **R12-15-101. Definitions**

In addition to the definitions in A.R.S. §§ 45-101, 45-271, 45-402, 45-511, 45-561, 45-802.01, 45-1001, 45-1201 and R12-15-701, the following definitions apply to this Article:

1. "Application" means a written request submitted by an applicant to the Department for the purpose of obtaining a permit, license or other legal authorization issued by the Department.
2. "Fiscal year" means the year beginning July 1 and ending June 30.
3. "Mileage expenses" means the Department's mileage expenses for travelling to and from a site inspection calculated at the rate set by the Arizona Department of Administration for state travel by motor vehicle.
4. "Municipality" means an incorporated city or town.
5. "Pre-decision administrative hearing" means an administrative hearing held on an application before the Department makes any decision on the application.
6. "Population" means the population according to the most recent United States decennial census.

7. "Review hours" means the hours or portions of hours spent by Department employees in reviewing an application and making a decision thereon, including pre-application consultation time in excess of 60 minutes and site inspection time. Only time spent by the program staff members and technical review team members responsible for processing the application shall be included as review hours. Review hours do not include the first 60 minutes of pre-application consultation time, the time spent traveling to and from a site inspection, any time spent on a pre-decision administrative hearing and any time spent on the application after a party appeals the Director's decision on the application pursuant to A.R.S. § 41-1092.03(B).
8. "Site inspection" means an inspection conducted by the Department before issuing a decision on an application or before issuing a decision on whether water may be stored at an underground storage facility.
9. "Site inspection time" means time spent on a site inspection. Site inspection time includes the time spent conducting the inspection and the time spent preparing an inspection report following the inspection, but does not include the time spent traveling to and from the inspection.
10. "Water resources fund" means the water resources fund established by A.R.S. § 45-117.

#### **Historical Note**

New Section made by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by exempt rulemaking at 17 A.A.R. 776, effective April 15, 2011 with an automatic repeal date effective June 4, 2011; new Section made by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2). Amended by final rulemaking at 18 A.A.R. 203, effective July 1, 2012 (Supp. 12-1).

#### **R12-15-102. Fees for Applications and Filings**

- A. A person submitting an application or filing to the Department on or after the effective date of this Section shall pay an hourly application fee as provided in R12-15-103 or a fixed application or filing fee as provided in R12-15-104, whichever applies. Fees for applications and filings shall be paid in U.S. dollars by cash, check, cashier's check, money order, or any other method acceptable to the Department.
- B. A person with an application or filing pending before the Department prior to the effective date of this Section shall pay the application or filing fees and costs in effect when the application or filing was submitted to the Department.

#### **Historical Note**

New Section made by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by exempt rulemaking at 17 A.A.R. 776, effective April 15, 2011 with an automatic repeal date effective June 4, 2011; new Section made by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

#### **R12-15-103. Applications Subject to Hourly Fee; Amount of Fee; Initial Fee; Billing and Payment; Request for Reconsideration of Fee; Past Due Fee**

- A. The Department shall calculate the fee for an application listed in subsection (B) of this Section by multiplying the number of review hours for the application by an hourly rate of \$118.00,

plus any mileage expenses and the actual cost of mailing or publishing any legal notice of the application.

- B.** A person submitting an application listed below shall pay an hourly fee for the application, not to exceed the maximum fee shown for the application:

1. Wells:

Type of Application	Maximum Fee
Variance from well construction requirements that has not been pre-approved by the Department	\$10,000.00

2. Groundwater:

Type of Application	Maximum Fee
a. Issuance, renewal or modification of groundwater withdrawal permit	\$10,000.00
b. Issuance of notice of authority to irrigate in an irrigation non-expansion area	\$10,000.00
c. Approval of contract by a city, town or private water company to supply groundwater to another city, town or private water company pursuant to A.R.S. § 45-492(C)	\$10,000.00
d. Notice of intent to establish new service area right by a city, town or private water company	\$10,000.00
e. Final petition to establish new service area right by a city, town or private water company	\$10,000.00
f. Extension of the service area of a city, town or private water company to furnish disproportionately large amounts of water to an industrial or other large water user pursuant to A.R.S. § 45-493(A)(2)	\$10,000.00
g. Addition and exclusion of area by an irrigation district pursuant to A.R.S. § 45-494.01	\$10,000.00
h. Delivery of groundwater by an irrigation district to an industrial user with a general industrial use permit pursuant to A.R.S. § 45-497(B)	\$10,000.00
i. Determination of historically irrigated acres or annual transportation allotment for lands in McMullen valley groundwater basin pursuant to A.R.S. § 45-552	\$10,000.00
j. Determination of volume of groundwater that can be transported from lands in Harquahala irrigation non-expansion area to an initial active management area pursuant to A.R.S. § 45-554	\$10,000.00
k. Determination of historically irrigated acres or annual transportation allotment for lands in the Big Chino sub-basin of the Verde River groundwater basin pursuant to A.R.S. § 45-555	\$10,000.00

l. Permit to transport groundwater away from the Yuma groundwater basin pursuant to A.R.S. § 45-547	\$10,000.00
m. Drought emergency groundwater transfer away from a groundwater basin outside of an active management area	\$10,000.00

3. Grandfathered Rights:

Type of Application	Maximum Fee
a. Type 1 non-irrigation grandfathered right for land retired from irrigation after date of designation of active management area pursuant to A.R.S. § 45-469 or 45-472	\$10,000.00
b. Restoration of retired irrigation grandfathered right pursuant to A.R.S. § 45-469(O)	\$10,000.00

4. Substitution of Acres:

Type of Application	Maximum Fee
a. Substitution of flood damaged acres in an active management area or an irrigation non-expansion area	\$10,000.00
b. Substitution of acres to eliminate limiting condition impeding efficient irrigation in an active management area or an irrigation non-expansion area	\$10,000.00
c. Substitution of acres to allow irrigation with Central Arizona Project water in an active management area	\$10,000.00

5. Lakes:

Type of Application	Maximum Fee
a. Permit to fill body of water with poor quality water pursuant to A.R.S. § 45-132(C)	\$10,000.00
b. Permit for interim water use in a body of water	\$10,000.00
c. Temporary emergency permit for use of surface water or groundwater in a body of water	\$10,000.00

6. Water Exchange:

Type of Application	Maximum Fee
a. Issuance, renewal or modification of water exchange permit	\$10,000.00
b. Notice of water exchange for which approval is required pursuant to A.R.S. § 45-1052(6)(b)	\$10,000.00

7. Water Exportation:

Type of Application	Maximum Fee
Permit to transport water from this state	\$25,000.00

8. Underground Water Storage, Savings and Replenishment:

Type of Application	Maximum Fee
a. Issuance, renewal or modification of an underground storage facility permit	\$25,000.00
b. Issuance, renewal or modification of a groundwater savings facility permit	\$10,000.00
c. Issuance, renewal or modification of a water storage permit	\$10,000.00
d. Recovery well permit, including an emergency temporary recovery well permit	\$10,000.00

9. Assured and Adequate Water Supply:

Type of Application	Maximum Fee
a. Physical availability determination	\$10,000.00
b. Analysis of assured or adequate water supply	\$10,000.00
c. Renewal of analysis of assured or adequate water supply	\$10,000.00
d. Certificate of assured water supply	\$10,000.00
e. Issuance or modification of designation of assured water supply	\$35,000.00
f. Issuance or modification of designation of adequate water supply	\$25,000.00
g. Water report (outside an AMA)	\$10,000.00
h. Assignment of Type A certificate of assured water supply	\$5,000.00
i. Assignment of Type B certificate of assured water supply	\$5,000.00
j. Classification of Type A certificate of assured water supply pursuant to R12-15-707	\$10,000.00
k. Review of revised plat to determine whether changes are material	\$10,000.00
l. New certificate of assured water supply pursuant to R12-15-704(G)	\$10,000.00
m. Letter stating that owner is not required to obtain a certificate of assured water supply pursuant to R12-15-704(M)	\$10,000.00

10. Surface Water:

Type of Application	Maximum Fee
a. Permit to appropriate public water	\$10,000.00
b. Certificate of water right	\$10,000.00
c. Primary reservoir permit or secondary reservoir permit	\$10,000.00
d. Change in use of water	\$10,000.00
e. Severance and transfer of water right to land that is not within the same parcel or farm unit as the current use, or that includes a change in water source, use or ownership	\$25,000.00

f. Severance and transfer of water right to land that is within the same parcel or farm unit as the current use and that does not include a change in water source, use or ownership	\$2,500.00
g. Request for extension of time to complete construction	\$10,000.00

- C. A person filing an application that is subject to an hourly fee shall submit an initial fee at the time the application is submitted to the Department. The initial fee for applications described in subsections (B)(7), (B)(8)(a), (B)(9)(e), (f) and (B)(10)(e) of this Section shall be \$2,000.00. The initial fee for all other applications shall be \$1,000.00. If requested by the applicant, the Department may set a lower initial fee if the Department estimates that the total application fee will be less than the initial fee specified in this subsection. The Department shall not accept an application for which an initial fee is required under this subsection unless the initial fee is included with the application.
- D. The Department shall bill the applicant for processing the application no more than monthly, but at least quarterly. Each bill shall contain the following information for the billing period:
1. The number of review hours accrued by activity and sub-activity code during the billing period, the date of each activity, a description of each activity and the effective hourly rate for all activities;
  2. A description and amount of any mileage expenses charged for the application;
  3. A description and amount of the cost of mailing or publishing any legal notice of the application or notice of a pre-decision administrative hearing on the application; and
  4. The total fees paid to date, the total fees due for the billing period, the date when the fees are payable, which shall be at least 60 days after the date of the bill, and the maximum fee for the application.
- E. A bill for hourly fees becomes past due if the applicant does not pay the bill in full by the due date specified in the bill, unless the applicant submits a timely request for reconsideration of the bill pursuant to subsection (G) of this Section. If the applicant submits a timely request for reconsideration of the bill, the bill becomes past due if the applicant does not pay the amount due under the Director's decision on the request by the date specified in the decision. If a bill for hourly fees becomes past due, the following shall apply:
1. The applicable review time-frame shall be suspended from the date the bill became past due until the applicant pays the bill in full or the application is denied under subsection (E)(2) of this Section, whichever applies.
  2. The Department shall suspend its review of the application and send a written notice to the applicant that the bill is past due. If the applicant does not pay the outstanding bill by the date specified in the notice, which shall be at least 35 days from the date of the notice, the application shall be denied.
- F. After the Department makes a determination whether to grant or deny the application, or when an applicant withdraws the application, the Department shall prepare and send to the applicant a final itemized billing statement for the application fee.
1. If the total fee exceeds the amount of the initial fee paid plus all other payments made to date, the applicant shall pay the balance, up to the maximum fee for the application, plus any mileage expenses and the actual cost of mailing or publishing any legal notice of the application

or notice of a pre-decision administrative hearing on the application, by the date specified in the statement, unless the applicant submits a timely request for reconsideration of the bill pursuant to subsection (G) of this Section. The statement shall specify a date, at least 60 days from the date of the statement, by which the applicant must pay the bill. If the applicant submits a timely request for reconsideration of the bill, the applicant shall pay the amount due under the Director's decision on the request by the date specified in the decision. The Department shall not release the final permit or approval until the final bill is paid in full.

2. If the total fee is less than the initial fee plus all other payments made to date, the Department shall refund the difference to the applicant within 35 days of the date of the statement.

**G.** An applicant may seek reconsideration of a bill for hourly fees by filing a written request for reconsideration with the Director. The request shall specify, in detail, why the bill is in dispute and shall include any supporting documentation. The written request for reconsideration shall be delivered to the Director in person, by mail, or by facsimile on or before the payment due date. The Director shall make a final decision on the request for reconsideration of the bill and mail a final written decision to the person within 20 business days after the date the Director receives the written request. The decision shall specify a date, at least 35 days from the date of the decision, by which the applicant must pay the bill. The Director may reduce the amount of any fees billed under this Section if the Director determines that the number of review hours or mileage expenses billed to the applicant was incorrect or that time spent by the Department to review the application and make a decision thereon was not necessary or advisable.

**H.** If a person receives a bill under this Section and the bill becomes past due under subsection (E) or (F) of this Section, the Department shall not accept for filing any other application by that person until the person pays the past due amount in full.

#### Historical Note

New Section made by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by exempt rulemaking at 17 A.A.R. 776, effective April 15, 2011 with an automatic repeal date effective June 4, 2011; new Section made by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

#### **R12-15-104. Applications and Filings Subject to Fixed Fee; Fixed Fee Schedule; Mileage Expenses; Costs for Legal Notices**

**A.** The Department shall not accept or take action on the following applications and filings unless the fee shown for the application or filing is paid at the time the application or filing is submitted:

1. Wells:

Type of Application or Filing	Fee
a. Late registration of well	\$60.00
b. Well driller's license	\$50.00
c. Re-issuance, renewal, or amendment of well driller's license	\$50.00
d. Re-activation of expired well driller's license	\$50.00
e. Well assignment	\$30.00 per well

f. Notice of intention to abandon a well	\$150.00
g. Notice of intention to drill a well other than a well described in subsection (A)(1)(h) of this Section	\$150.00
h. Notice of intention to drill a well that will not be located in an active management area or irrigation non-expansion area, that will be used solely for domestic purposes and that will have a pump with a maximum capacity of not more than 35 gallons per minute	\$100.00
i. Re-issuance of drill card	\$120.00
j. Permit to drill non-exempt well in an active management area	\$150.00 application fee plus \$30.00 permit fee

2. Groundwater:

Type of Application or Filing	Fee
a. Conveyance of farm's flexibility account balance	\$250.00
b. Conveyance of notice of authority to irrigate in an irrigation non-expansion area	\$500.00
c. Conveyance of groundwater withdrawal permit	\$500.00

3. Grandfathered rights:

Type of Application	Fee
a. Late application for certificate of grandfathered right	\$100.00
b. Conveyance of certificate of grandfathered right	\$500.00
c. Issuance of revised certificate of grandfathered right following partial extinguishment of grandfathered right for assured water supply extinguishment credits	\$120.00
d. Revised certificate of Type 2 non-irrigation grandfathered right to reflect new or additional points of withdrawal or the deletion of a point of withdrawal	\$250.00
e. Approval of development plan to retire irrigation grandfathered right for a Type 1 non-irrigation grandfathered right	\$500.00
f. Re-issuance of certificate of grandfathered right to reflect a change in family circumstances or a transfer of the right from the rightholder to a trust in which the rightholder is a beneficiary or from a trust to a beneficiary of the trust	\$120.00

4. Underground water storage, savings and replenishment:

Type of Application or Filing	Fee
a. Conveyance of storage facility permit	\$500.00
b. Conveyance of water storage permit	\$500.00
c. Assignment of long-term storage credits	\$250.00

## 5. Assured water supply:

Type of Application or Filing	Fee
a. Extinguishment of grandfathered right for extinguishment credits	\$250.00
b. Conveyance of extinguishment credits	\$250.00

## 6. Surface water:

Type of Application or Filing	Fee
a. Re-issuance of a surface water permit or certificate (not associated with an assignment of the permit or certificate)	\$120.00
b. Claim of water right for a stockpond pursuant to A.R.S. § 45-273	\$10.00
c. Statement of claim for a water right pursuant to A.R.S. § 45-183	\$5.00
d. Assignment of application, permit, certificate or statement of claim	\$75.00
e. Certification of water right for a stockpond pursuant to A.R.S. § 45-275	\$120.00

## 7. Dams:

Type of Application	Fee
Approval of plans for construction, enlargement, repair, alteration or removal of dam	2 percent of the total project cost

## 8. Water Exchange:

Type of Filing	Fee
Notice of water exchange that does not require approval pursuant to A.R.S. § 45-1052(6)(b)	\$500.00

## 9. Weather modification:

Type of Application	Fee
a. License for weather control or cloud modification	\$100.00
b. Equipment license for weather control or cloud modification	\$10.00

- B.** In addition to the application or filing fee listed in subsection (A) of this Section, an applicant shall pay any mileage expenses and the actual cost of mailing or publishing any legal notice of the application.

**Historical Note**

New Section made by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by exempt rulemaking at 17 A.A.R. 776, effective April 15, 2011 with an automatic repeal date effective June 4, 2011; new Section made by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

**R12-15-105. Fee for Dam Safety Inspection; Fee for Review of Dam Safety Inspection Report**

- A.** The owner of a high or significant hazard potential dam shall pay a fee for the Department's dam safety inspection pursuant to R12-15-1219(A). The fee shall be based on the total crest length of the dam plus appurtenant embankments and saddle dikes, as follows:

Length (feet)	Fee
0 up to and including 500	\$2,000.00
More than 500 up to and including 1,000	\$2,200.00
More than 1,000 up to and including 2,000	\$2,400.00
More than 2,000 up to and including 4,000	\$2,600.00
More than 4,000 up to and including 8,000	\$3,000.00
More than 8,000 up to and including 16,000	\$3,400.00
More than 16,000 up to and including 32,000	\$3,800.00
More than 32,000	\$4,200.00

- B.** The owner of a low or very low hazard potential dam shall pay a fee for the Department's dam safety inspection pursuant to R12-15-1219(A). The fee shall be \$1,000.00.
- C.** After conducting a dam safety inspection pursuant to R12-15-1219(A), the Director shall send to the dam owner a bill for the fee required by subsection (A) or (B) of this Section. The dam owner shall pay the fee by the date specified in the bill, which shall be at least 35 days from the date of the bill. Failure by a dam owner to pay a fee required by subsection (A) or (B) of this Section shall be considered a violation of R12-15-1219.
- D.** The owner of a dam who submits a dam safety inspection report pursuant to R12-15-1219(E) shall pay a fee of \$750.00. The Department shall not accept a dam safety inspection report unless the fee is submitted with the report.

**Historical Note**

New Section made by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by exempt rulemaking at 17 A.A.R. 776, effective April 15, 2011 with an automatic repeal date effective June 4, 2011; new Section made by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

**R12-15-106. Fee for Well Capping**

The owner of a well that is capped by the Department pursuant to A.R.S. § 45-594(C) shall pay to the Department a fee of \$300.00, plus actual expenses over \$300.00. After capping an open well, the Department shall send the owner of the well a bill for the fee under this Section. The owner of the well shall pay the fee by the date specified in the bill, which shall be at least 35 days after the date of the bill.

**Historical Note**

New Section made by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by exempt rulemaking at 17 A.A.R. 776, effective April 15, 2011 with an automatic repeal date effective June 4, 2011; new Section made by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

**R12-15-107. Municipality Fee**

- A.** Each municipality in this state shall pay a fee to the Department each fiscal year in the amount calculated by the Director pursuant to subsection (B). The fee shall be paid by the dates specified in subsection (E).
- B.** The Director shall calculate a municipality's fee for a fiscal year as follows:
- Determine the total amount of fees the Director will assess and collect from all municipalities during the fiscal year as follows:

- a. Determine the maximum total amount of fees the Director may assess and collect from all municipalities during the fiscal year pursuant to A.R.S. § 45-118 consistent with legislative intent. Unless the legislature expresses its intent otherwise in statute or session law, this amount shall be \$7,000,000.
- b. Reduce the amount determined in subsection (B)(1)(a) by the amount of unobligated monies in the water resources fund at the beginning of the fiscal year, except that:
  - i. If the Director determines that such a reduction likely would prevent the Department from using all the monies appropriated to it from the water resources fund for the fiscal year, the Director may decrease the amount of the reduction or make no reduction, as appropriate, to allow the Department to use all the monies appropriated to it from the fund.
  - ii. If the Director determines such a reduction likely would result in an excessive accumulation of unobligated monies in the water resources fund at the end of the fiscal year, the Director may increase the amount of the reduction.
2. Determine the ratio, expressed as a percentage, that the municipality's population bears to the total population of all municipalities in the state by dividing the municipality's population by the total population of all municipalities in the state.
3. Multiply the amount from subsection (B)(1) by the percentage calculated in subsection (B)(2). The result is the municipality's fee for the fiscal year.
- C. By July 15 of each fiscal year, the Director shall mail to each municipality a notice of the municipality's fee for that fiscal year as calculated pursuant to subsection (B), including the manner in which the fee was calculated. The notice shall be mailed to the municipality's city or town manager or city or town attorney.
- D. A municipality may seek review of the calculation of its fee by filing a written request for review with the Director within 15 calendar days after receipt of the initial notice of the fee given by the Director under subsection (C). Review shall be limited to whether the Director's calculation of the fee contains a mathematical, clerical or typographical error. The Director shall make a final decision on a request for review and mail a final written decision to the municipality requesting the review within 10 calendar days after the date the Director receives the written request. The Director's final written decision shall state the municipality's fee following review.
- E. A municipality shall pay at least one-half of its fee for a fiscal year by August 15 of that fiscal year and any remaining portion of the fee by January 15 of the fiscal year. If the due date for a payment falls on a weekend, the payment is due on the next business day.

**Historical Note**

New Section made by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by exempt rulemaking at 17 A.A.R. 776, effective April 15, 2011 with an automatic repeal date effective June 4, 2011 (Supp. 11-2). New Section made by exempt rulemaking at 17 A.A.R. 1769, effective August 10, 2011 with an automatic repeal date effective July 1, 2012 (Supp. 11-3). New Section made by final rulemaking at 18 A.A.R. 203, effective

July 1, 2012 (Supp. 12-1).

**R12-15-108. Reserved through**  
**R12-15-150. Reserved**  
**R12-15-151. Repealed**

**Historical Note**

Adopted effective October 8, 1982 (Supp. 82-5). Amended effective June 29, 1994 (Supp. 94-2). Amended effective March 3, 1995 (Supp. 95-1). Amended by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 13 A.A.R. 3022, effective October 6, 2007 (Supp. 07-3). Section repealed by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). New Section made by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Section repealed by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

**R12-15-152. Expired**

**Historical Note**

Adopted effective October 8, 1982 (Supp. 82-5). Section expired under A.R.S. § 41-1056(E) at 13 A.A.R. 1647, effective May 31, 2006 (Supp. 07-2).

**ARTICLE 2. PROCEDURAL RULES**

**R12-15-201. Expired**

**Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). The reference to R12-14-223 in subsection (C) corrected to read R12-15-223 (Supp. 93-1). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

**R12-15-202. Expired**

**Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

**R12-15-203. Expired**

**Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

**R12-15-204. Expired**

**Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

**R12-15-205. Expired**

**Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

**R12-15-206. Expired**

**Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).



**R12-15-207. Correction of Clerical Mistakes**

Upon a motion or on the initiative of the Director, the Director may correct clerical mistakes in decisions, orders, rulings, any process issued by the Department, or other parts of the record, and errors in the record arising from oversight or omission. The Director shall give all parties and the Chief Counsel notice of any corrections made pursuant to this Section.

**Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Amended by final rulemaking at 13 A.A.R. 3022, effective October 6, 2007 (Supp. 07-3).

**R12-15-208. Expired****Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

**R12-15-209. Expired****Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

**R12-15-210. Expired****Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

**R12-15-211. Expired****Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

**R12-15-212. Expired****Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

**R12-15-213. Expired****Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

**R12-15-214. Expired****Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

**R12-15-215. Expired****Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section number corrected (Supp. 93-1). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

**R12-15-216. Expired****Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

**R12-15-217. Expired****Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

**R12-15-218. Expired****Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

**R12-15-219. Expired****Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

**R12-15-220. Expired****Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

**R12-15-221. Expired****Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

**R12-15-222. Expired****Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

**R12-15-223. Expired****Historical Note**

Adopted effective June 13, 1984 (Supp. 84-3). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2159, effective February 28, 2001 (Supp. 01-2).

**R12-15-224. Ex Parte Communications**

- A. During the course of a contested case or appealable agency action, a party shall not make an ex parte communication or knowingly cause an ex parte communication to be made to the Director or other Department employee or consultant who is or may reasonably be expected to be involved in the decision-making process of the contested case or appealable agency action.
- B. During the course of a contested case or appealable agency action, the Department personnel listed in subsection (A) shall not make an ex parte communication or knowingly cause an ex parte communication to be made to a party or a person who will be materially and directly affected by the outcome of the contested case or appealable agency action.
- C. Any of the Department personnel listed in subsection (A) of this Section who receives a written communication prohibited by this Section shall file a copy of the communication in the public docket and serve a copy on the Director, the Chief Counsel, and all parties to the contested case or appealable agency action. Any of the Department personnel listed in subsection (A) of this Section who receives an oral communication prohibited by this Section shall file a summary, stating the substance of the communication, in the public docket and

serve a copy on the Director, the Chief Counsel, and all parties to the contested case or appealable agency action.

- D. Upon receipt of an ex parte communication or a copy or summary of an ex parte communication made or knowingly caused to be made by a party in violation of this Section, the Director, to the extent consistent with the interests of justice and the policy of the underlying statutes and rules, may require the party to show cause why the party's claim or interest in the contested case or appealable agency action should not be dismissed, denied or disregarded because of the violation.
- E. For purposes of this Section, "ex parte communication" means any written or oral communication relating to the merits of a contested case or appealable agency action, except:
  1. Communications made in the course of official proceedings in the contested case or appealable agency action;
  2. Communications made in writing, if a copy of the communication is promptly served on the Director, the Chief Counsel, and all parties to the contested case or appealable agency action;
  3. Oral communications made after adequate notice, stating the substance of each communication, to all parties and the Chief Counsel;
  4. Communications relating solely to procedural matters; and
  5. As otherwise authorized by law.

#### Historical Note

Adopted effective June, 1984 (Supp. 84-3). Amended by final rulemaking at 13 A.A.R. 3022, effective October 6, 2007 (Supp. 07-3).

### ARTICLE 3. STOCKPOND AND OTHER SURFACE WATER RULES

#### R12-15-301. Expired

##### Historical Note

Adopted effective October 8, 1982 (Supp. 82-5). Amended effective April 3, 1987 (Supp. 87-2). Amended effective May 7, 1990 (Supp. 90-2). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2012, effective February 28, 2001 (Supp. 01-2).

#### R12-15-302. Expired

##### Historical Note

Adopted effective October 8, 1982 (Supp. 82-5). Amended effective May 7, 1990 (Supp. 90-2). Section expired under A.R.S. § 41-1056(E) at 7 A.A.R. 2012, effective February 28, 2001 (Supp. 01-2).

#### R12-15-303. Multiple Applications for Water Rights

- A. If two or more applications are filed with the Director pursuant to A.R.S. §§ 45-152 or 45-273 or both by or for the same applicant and for a right to use the same water, the Director shall consolidate the applications. If the applicant is otherwise entitled to both a permit to appropriate and a certificate of stockpond water right, the Director shall issue to the applicant either the permit to appropriate or the certificate of stockpond water right, whichever would give the applicant the higher priority.
- B. If one or more applications are filed with the Director pursuant to A.R.S. §§ 45-152 or 45-273 or both by or for the same applicant and for a right to use the same water for which the applicant holds a permit to appropriate, a certificate of water right or a certificate of stockpond water right, the Director shall deny the application or applications unless the applicant relinquishes every permit to appropriate, certificate of water right and certificate of stockpond water right which the applicant holds for that same water. The applicant may relinquish

every permit to appropriate, certificate of water right and certificate of stockpond water right on the condition that the Director issues a permit to appropriate or certificate of stockpond water right to the applicant for the same water. In that case, the relinquishment shall be effective when the Director issues the permit to appropriate or certificate of stockpond water right.

- C. For purposes of this rule, "same water" means the same quantity of water from the same source for use at the same place for the same purpose. Water for which a right is applied or held pursuant to an application or permit to appropriate, certificate of water right or certificate of stockpond water right may be the same water in whole or in part as water for which a right is applied or held pursuant to a separate application or permit to appropriate, certificate of water right or certificate of stockpond water right.

#### Historical Note

Adopted effective April 3, 1987 (Supp. 87-2). Section R12-15-310 renumbered to R12-15-303 and amended effective May 7, 1990 (Supp. 90-2).

#### R12-15-304. Reserved

#### R12-15-305. Reserved

#### R12-15-306. Reserved

#### R12-15-307. Reserved

#### R12-15-308. Reserved

#### R12-15-309. Reserved

#### R12-15-310. Renumbered

#### Historical Note

Adopted effective April 3, 1987 (Supp. 87-2). Section R12-15-310 renumbered to R12-15-303 effective May 7, 1990 (Supp. 90-2).

### ARTICLE 4. LICENSING TIME-FRAMES

#### R12-15-401. Licensing Time-frames

The following time-frames apply to licenses issued by the Department. In this Article, "license" has the meaning prescribed in A.R.S. § 41-1001. The licensing time-frames consist of an administrative completeness review time-frame, a substantive review time-frame, and an overall time-frame.

1. Within the administrative completeness review time-frames set forth in subsection (7), the Department shall notify the applicant in writing whether the application is complete or incomplete. If the application is incomplete, the notice shall specify what information or component is required to make the application complete.
2. An applicant with an incomplete application shall supply the missing information within 60 days from the date of the notice, or within such further time as the Director may specify, unless another time limit is specified by statute or applicable rule. If the applicant fails to complete the application within the specified time period, the Director may deny the application. Denial of an application under this provision does not preclude the applicant from filing a new application.
3. Within the overall time-frames set forth in subsection (7), unless extended by mutual agreement under A.R.S. § 41-1075, the Department shall notify the applicant in writing that the application is granted or denied. If the application is denied, the Department shall provide written justification for the denial and a written explanation of the applicant's right to a hearing or the applicant's right to appeal.

4. In computing any period of time prescribed by this rule, the day of the filing, notice or event from which the designated period of time begins to run shall not be included. The last day of the computed period shall be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. When the prescribed administrative completeness review time-frame or substantive review time-frame is less than 11 days, intermediate Saturdays, Sundays and legal holidays shall be excluded from the computation. The overall time-frame is the sum of the administrative completeness review time-frame and the substantive review time-frame calculated as prescribed by this Section.
5. Except as otherwise noted, the licensing time-frames do not include time for hearings. Time-frames in cases where a hearing is held are increased by 120 days.
6. The licensing time-frame rules are effective after December 31, 1998, as prescribed by A.R.S. § 41-1073(A), and apply to all applications filed after that date.
7. The licensing time-frames are set forth in Table A.

**Historical Note**

Adopted effective December 31, 1998; filed with the Office of the Secretary of State July 28, 1998 (Supp. 98-3). Amended by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4).

**Table A. Licensing Time-frames**

No.	License	Legal Authority	Completeness Review (Days)*	Substantive Review (Days)*	Overall Time-frame (Days)*
1	Filling a body of water with poor quality water	A.R.S. § 45-132(C)	30	60	90
2	Interim water use in body of water	A.R.S. § 45-133	30	60	90
3	Temporary emergency permit for use of surface water or groundwater in body of water	A.R.S. § 45-134	10	20	30
4	Permit to appropriate water (non-instream flow)	A.R.S. §§ 45-151 and 45-153	30	420	450
5	Permit to appropriate water (instream flow)	A.R.S. §§ 45-151 and 45-153	50	530	580
6	Change in use of water	A.R.S. § 45-156(B)	30	375	405
7	Exception to limitation on time of completion of construction	A.R.S. § 45-160	5	15	20
8	Primary reservoir permit	A.R.S. § 45-161	30	420	450
9	Secondary reservoir permit	A.R.S. § 45-161	30	420	450
10	Certificate of water right (non-instream flow)	A.R.S. § 45-162	20	100	120
11	Certificate of water right (instream flow)	A.R.S. § 45-162	20	190	210
12	Reissuance of permit or certificate held by the United States or State of Arizona	A.R.S. § 45-164(C)	10	80	90
13	Severance and transfer	A.R.S. § 45-172 (excluding 172.6)	30	390	420
14	Stockpond certificate	A.R.S. § 45-273	30	190	220
15	Transporting water from this state **	A.R.S. § 45-292	120	300	420
16	Waiver of water conserving plumbing fixture requirement	A.R.S. § 45-315	10	3	13
17	Irrigated acreage in an irrigation non-expansion area	A.R.S. § 45-437	30	90	120

No.	License	Legal Authority	Completeness Review (Days)*	Substantive Review (Days)*	Overall Time-frame (Days)*
18	Substitution of acres in an irrigation non-expansion area/flood damage	A.R.S. § 45-437.02	30	90	120
19	Substitution of acres in an irrigation non-expansion area/impediments to efficient irrigation	A.R.S. § 45-437.03	30	90	120
20	Reversal of substitution of acres irrigated with Central Arizona Project water	A.R.S. § 45-452(G)	30	90	120
21	Type 1 non-irrigation grandfathered right associated with irrigation land retired 1965-1980	A.R.S. §§ 45-463, 45-476.01, and 45-476	30	90	120
22	Type 2 non-irrigation grandfathered right	A.R.S. §§ 45-464, 45-476.01, and 45-476	30	90	120
23	Irrigation grandfathered right	A.R.S. §§ 45-465, 45-476.01, and 45-476	30	90	120
24	Substitution of acres in an active management area/flood damaged acres	A.R.S. § 45-465.01	30	90	120
25	Substitution of acres in an active management area/impediments to efficient irrigation	A.R.S. § 45-465.02	30	90	120
26	Type 1 non-irrigation right retired after 6/12/80	A.R.S. § 45-469	30	90	120
27	Restoration of retired irrigation grandfathered right	A.R.S. § 45-469(O)	30	90	120
28	Revised certificate for new or additional points of withdrawal for a Type 2 right	A.R.S. § 45-471(C)	45	135	180
29	Conveyance of irrigation grandfathered right for electrical energy generation	A.R.S. § 45-472(B)(2)	30	90	120
30	Conveyance of irrigation grandfathered right for non-irrigation use within service area	A.R.S. § 45-472(C)	30	90	120
31	Contract to supply groundwater	A.R.S. § 45-492(C)	15	90	105
32	Extension of service area to provide disproportionately large amount of water to large user	A.R.S. § 45-493(A)(2)	15	90	105
33	Addition/exclusion of acres by irrigation district	A.R.S. § 45-494.01(A)	30	90	120

## Department of Water Resources

No.	License	Legal Authority	Completeness Review (Days)*	Substantive Review (Days)*	Overall Time-frame (Days)*
34	Delivery of groundwater from an irrigation district to a general industrial use permit holder	A.R.S. § 45-497(B)	15	60	75
35	Issuance/renewal/modification of dewatering permit	A.R.S. §§ 45-513 and 45-527	30	70	100
36	Issuance/renewal/modification of mineral extraction and metallurgical processing permit	A.R.S. §§ 45-514 and 45-527	30	70	100
37	Issuance/renewal/modification of general industrial use permit	A.R.S. §§ 45-515, 45-521, 45-522, 45-523, 45-524, and 45-527	30	70	100
38	Issuance/renewal/modification of poor quality groundwater withdrawal permit	A.R.S. §§ 45-516 and 45-527	30	70	100
39	Issuance/renewal/modification of temporary permit for electrical energy generation	A.R.S. §§ 45-517 and 45-527	30	70	100
40	Issuance/extension/modification of temporary dewatering permit	A.R.S. §§ 45-518 and 45-527	30	70	100
41	Emergency temporary dewatering permit	A.R.S. § 45-518(D)	3	7	10
42	Issuance/renewal/modification of drainage water withdrawal permit	A.R.S. §§ 45-519 and 45-527	30	70	100
43	Issuance/renewal/modification of hydrologic testing permit	A.R.S. §§ 45-519.01, 45-521, 45-522, 45-524, and 45-527	30	30	60
44	Change of location of use	A.R.S. §§ 45-520(A), 45-521, and 45-527	30	30	60
45	Conveyance of a groundwater withdrawal permit	A.R.S. § 45-520(B)	30	30	60
46	Transportation of groundwater withdrawn in McMullen Valley Basin to an active management area	A.R.S. § 45-552(B)	45	105	150
47	Transportation of groundwater withdrawn in Harquahala irrigation non-expansion area to an initial active management area	A.R.S. § 45-554(B)	45	105	150
48	Transportation of groundwater withdrawn in Big Chino subbasin to an initial active management area	A.R.S. § 45-555(B)	45	105	150

No.	License	Legal Authority	Completeness Review (Days)*	Substantive Review (Days)*	Overall Time-frame (Days)*
49	Well spacing requirements for withdrawing groundwater for transportation to an active management area	A.R.S. § 45-559	45	105	150
50	Groundwater replenishment district's preliminary or long-term replenishment plan **	A.R.S. § 45-576.03	As prescribed by A.R.S. § 45-576.03(A)	As prescribed by A.R.S. § 45-576.03 (B), (C), (D), and (E)	As prescribed by A.R.S. § 45-576.03
51	Conservation district or water district long-term replenishment plan **	A.R.S. §§ 45-576.03, 45-576.02(C), and 45-576.02(E)	As prescribed by A.R.S. § 45-576.03(I)	As prescribed by A.R.S. § 45-576.03(J), (K), (L), and (M)	As prescribed by A.R.S. § 45-576.03
52	Notice of intent to abandon a well	A.R.S. § 45-594 and A.A.C. R12-15-816	15	15	30
53	Well construction request for variance	A.R.S. §§ 45-594, 45-596(D), and A.A.C. R12-15-820	15	35	50
54	Well driller license	A.R.S. § 45-595(C)	25	105	130
55	Single well license	A.R.S. § 45-595(D)	25	105	130
56	Renewal or reactivation of well drilling license	A.R.S. § 45-595(C) A.A.C. R12-15-806	25	15	40
57	Notice of intent to drill	A.R.S. § 45-596, and A.A.C. R12-15-810	15	0	15
58	Well construction permit	A.R.S. § 45-599	30	60	90
59	Alternative water measuring devices	A.R.S. § 45-604 and A.A.C. R12-15-909	15	60	75
60	Underground storage facility permit	A.R.S. §§ 45-811.01 and 45-871.01	As prescribed by A.R.S. § 45-871.01(B)	As prescribed by A.R.S. § 45-871.01(D), (G), and (H)	As prescribed by A.R.S. § 45-871.01
61	Groundwater savings facility permit	A.R.S. §§ 45-812.01 and 45-871.01	As prescribed by A.R.S. § 45-871.01(B)	As prescribed by A.R.S. § 45-871.01(D), (G), and (H)	As prescribed by A.R.S. § 45-871.01
62	Storage facility permit renewal/conveyance/modification	A.R.S. §§ 45-814.01 and 45-871.01	As prescribed by A.R.S. § 45-871.01(B)	As prescribed by A.R.S. § 45-871.01(D), (G), and (H)	As prescribed by A.R.S. § 45-871.01
63	Water storage permit modification/conveyance	A.R.S. §§ 45-831.01 and 45-871.01	As prescribed by A.R.S. §§ 45-831.01(G) and 45-871.01(B) and (E)	As prescribed by A.R.S. §§ 45-831.01(G) and 45-871.01(D), (E), (G), and (H)	As prescribed by A.R.S. §§ 45-831.01(G) and 45-871.01
64	Recovery well permit	A.R.S. §§ 45-834.01 and 45-871.01	As prescribed by A.R.S. § 45-871.01(B)	As prescribed by A.R.S. § 45-871.01(F), (G), and (H)	As prescribed by A.R.S. § 45-871.01
65	Emergency temporary recovery well permit	A.R.S. § 45-834.01(D)	5	10	15
66	Issuance/renewal/modification of water exchange permit	A.R.S. §§ 45-1041, 45-1042, and 45-1045	As prescribed by A.R.S. § 45-1042(A)	As prescribed by A.R.S. § 45-1042(B), (C), and (D)	As prescribed by A.R.S. § 45-1042
67	Modification of previously enrolled or permitted water exchange/non-Colorado River	A.R.S. § 45-1041(B)	60	90	150

No.	License	Legal Authority	Completeness Review (Days)*	Substantive Review (Days)*	Overall Time-frame (Days)*
68	Construction, enlargement, repair, alteration, or removal of a dam	A.R.S. §§ 45-1203, 45-1206, and 45-1207	120	60	180
69	Weather modification license	A.R.S. § 45-1601	15	60	75
70	Certificate of Assured Water Supply	A.A.C. R12-15-702, A.R.S. §§ 45-576 and 45-578	150	60	210
71	Designation or Modification of Designation of Assured Water Supply	A.A.C. R12-15-702 and R12-15-714; A.R.S. § 45-576	150	60	210
72	Analysis of Assured Water Supply/unplatted development plan	A.A.C. R12-15-712, A.R.S. § 45-576(H)	150	30	180
73	Assured Water Supply for State lands	A.A.C. R12-15-713, A.R.S. § 37-334(F)	30	60	90
74	Water adequacy report	A.A.C. R12-15-716, A.R.S. § 45-108	60	60	120
75	Designation or Modification of Designation of Adequate Water Supply	A.A.C. R12-15-716, A.A.C. R12-15-725 A.R.S. § 45-108	150	60	210
76	Analysis of water adequacy/unplatted	A.R.S. § 45-108 A.A.C. R12-15-723	60	60	120
77	Adequate Water Supply for State lands	A.R.S. § 45-108 A.A.C. R12-15-724	30	60	90

\* The computation of days is prescribed by subsection (4).

\*\* Hearing is required.

#### Historical Note

Adopted effective December 31, 1998; filed with the Office of the Secretary of State July 28, 1998 (Supp. 98-3).

#### ARTICLE 5. RESERVED

#### ARTICLE 6. RESERVED

#### ARTICLE 7. ASSURED AND ADEQUATE WATER SUPPLY

##### R12-15-701. Definitions - Assured and Adequate Water Supply Programs

In addition to any other definitions in A.R.S. Title 45 and the management plans in effect at the time of application, the following words and phrases in this Article shall have the following meanings, unless the context otherwise requires:

1. "Abandoned plat" means a plat for which a certificate or water report has been issued and that will not be developed because of one of the following:
  - a. The land has been developed for another use; or
  - b. Legal restrictions will preclude approval of the plat.
2. "ADEQ" means the Arizona Department of Environmental Quality.
3. "Adequate delivery, storage, and treatment works" means:
  - a. A water delivery system with sufficient capacity to deliver enough water to meet the needs of the proposed use;
  - b. Any necessary storage facilities with sufficient capacity to store enough water to meet the needs of the proposed use; and

- c. Any necessary treatment facilities with sufficient capacity to treat enough water to meet the needs of the proposed use.
4. "Adequate storage facilities" means facilities that can store enough water to meet the needs of the proposed use.
5. "Affiliate" means a person who, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the person specified.
6. "AMA" means an active management area as defined in A.R.S. § 45-402.
7. "Analysis" means an analysis of assured water supply or an analysis of adequate water supply.
8. "Analysis holder" means a person to whom an analysis of assured water supply or an analysis of adequate water supply is issued and any current owner of land included in the analysis.
9. "Analysis of adequate water supply" means a determination issued by the Director stating that one or more criteria required for a water report pursuant to R12-15-713 have been demonstrated for a development.
10. "Analysis of assured water supply" means a determination issued by the Director stating that one or more criteria required for a certificate of assured water supply pursuant to R12-15-704 have been demonstrated for a development.

11. "Annual authorized volume" means, for an approved remedial action project, the annual authorized volume specified in a consent decree or other document approved by ADEQ or the EPA, except that:
  - a. If no annual authorized amount is specified in a consent decree or other document approved by ADEQ or the EPA, the annual authorized volume is the largest volume of groundwater withdrawn pursuant to the approved remedial action project in any year prior to January 1, 1999.
  - b. If the Director increases the annual authorized volume pursuant to R12-15-729(C), the annual authorized volume is the amount approved by the Director.
12. "Annual estimated water demand" means the estimated water demand divided by 100.
13. "Approved remedial action project" means a remedial action project approved by ADEQ under A.R.S. Title 49, or by the EPA under CERCLA.
14. "Authorized remedial groundwater use" means, for any year, the amount of remedial groundwater withdrawn pursuant to an approved remedial action project and used by a municipal provider during the year, not to exceed the annual authorized volume of the project.
15. "Build-out" means a condition in which all water delivery mains are in place and active water service connections exist for all lots.
16. "CAP water" means:
  - a. All water from the Colorado River or from the Central Arizona Project works authorized in P.L. 90-537, excluding enlarged Roosevelt reservoir, which is made available pursuant to a subcontract with a multi-county water conservation district.
  - b. Any additional water not included in subsection 16(a) of this Section that is delivered by the United States Secretary of the Interior pursuant to an Indian water rights settlement through the Central Arizona Project.
17. "Central Arizona Groundwater Replenishment District" or "CAGRDR" means a multi-county water conservation district acting in its capacity as the entity established pursuant to A.R.S. § 48-3771, et seq., and responsible for replenishing excess groundwater.
18. "Central distribution system" means a water system that qualifies as a public water system pursuant to A.R.S. § 49-352.
19. "CERCLA" or "Comprehensive Environmental Response, Compensation, and Liability Act of 1980" has the same meaning as prescribed in A.R.S. § 49-201.
20. "Certificate" means a certificate of assured water supply issued by the Director for a subdivision pursuant to A.R.S. § 45-576 et seq. and this Article.
21. "Certificate holder" means any person included on a certificate, except the following:
  - a. Any person who no longer owns any portion of the property included in the certificate, and
  - b. Any potential purchaser for whom the purchase contract has been terminated or has expired.
22. "Certificate of convenience and necessity" means a certificate required by the Arizona Corporation Commission, pursuant to A.R.S. § 40-281, which allows a private water company to serve water to customers within its certificated area.
23. "Colorado River water" means water from the main stream of the Colorado River. For purposes of this Article, Colorado River water does not include CAP water.
24. "Committed demand" means the 100-year water demand at build-out of all recorded lots that are not yet served water within the service area of a designation applicant or a designated provider.
25. "County water augmentation authority" means an authority formed pursuant to A.R.S. Title 45, Chapter 11.
26. "Current demand" means the 100-year water demand for existing uses within the service area of a designation applicant or designated provider, based on the annual report for the previous calendar year.
27. "Depth-to-static water level" means the level at which water stands in a well when no water is withdrawn by pumping or by free flow.
28. "Designated provider" means:
  - a. A municipal provider that has obtained a designation of assured or adequate water supply; or
  - b. A city or town that has obtained a designation of adequate water supply pursuant to A.R.S. § 45-108(D).
29. "Designation" means a decision and order issued by the director designating a municipal provider as having an assured water supply or an adequate water supply.
30. "Determination of adequate water supply" means a water report, a designation of adequate water supply, or an analysis of adequate water supply.
31. "Determination of assured water supply" means a certificate, a designation of assured water supply, or an analysis of assured water supply.
32. "Development" means either a subdivision or an unplatted development plan.
33. "Diversion works" means a structure or well that allows or enhances diversion of surface water from its natural course for other uses.
34. "Drought response plan" means a plan describing a variety of conservation and augmentation measures, especially the use of backup water supplies, that a municipal provider will utilize in operating its water supply system in times of a water supply shortage. The plan may include the following:
  - a. An identification of priority water uses consistent with applicable public policies.
  - b. A description of sources of emergency water supplies.
  - c. An analysis of the potential use of water pressure reduction.
  - d. Plans for public education and voluntary water use reduction.
  - e. Plans for water use bans, restrictions, and rationing.
  - f. Plans for water pricing and penalties for excess water use.
  - g. Plans for coordination with other cities, towns, and private water companies.
35. "Drought volume" means 80% of the volume of a surface water supply, determined by the director under R12-15-716 to be physically available on an annual basis to a certificate holder or a designated provider.
36. "Dry lot development" means a development or subdivision without a central water distribution system.
37. "EPA" means the United States Environmental Protection Agency.
38. "Estimated water demand" means:
  - a. For a certificate or water report, the Director's determination of the 100-year water demand for all uses included in the subdivision;
  - b. For a designation, the sum of the following:



- i. The Director's determination of the current demand;
    - ii. The Director's determination of the committed demand; and
    - iii. The Director's determination of the projected demand during the term of the designation; or
  - c. For an analysis, the Director's determination of the water demand for all uses included in the development.
39. "Existing municipal provider" means a municipal provider that was in operation and serving water for non-irrigation use on or before January 1, 1990.
  40. "Extinguish" means to cause a grandfathered right to cease to exist through a process established by the director pursuant to R12-15-723.
  41. "Extinguishment credit" means a credit that is issued by the Director in exchange for the extinguishment of a grandfathered right and that may be used to make groundwater use consistent with the management goal of an AMA.
  42. "Firm yield" means the minimum annual diversion for the period of record which may include runoff releases from storage reservoirs, and surface water withdrawn from a well.
  43. "Management plan" means a water management plan adopted by the director pursuant to A.R.S. § 45-561 et seq.
  44. "Master-planned community" has the same meaning as provided in A.R.S. § 32-2101.
  45. "Median flow" means the flow which is represented by the middle value of a set of flow data that are ranked in order of magnitude.
  46. "Member land" has the same meaning as provided in A.R.S. § 48-3701.
  47. "Member service area" has the same meaning as provided in A.R.S. § 48-3701.
  48. "Multi-county water conservation district" means a district established pursuant to A.R.S. Title 48, Chapter 22.
  49. "Municipal provider" has the same meaning as provided in A.R.S. § 45-561.
  50. "New municipal provider" means a municipal provider that began serving water for non-irrigation use after January 1, 1990.
  51. "Owner" means:
    - a. For an analysis, certificate, or water report applicant, a person who holds fee title to the land described in the application; or
    - b. For a designation applicant, the person who will be providing water service pursuant to the designation.
  52. "Perennial" means a stream that flows continuously.
  53. "Persons per household" means a measure obtained by dividing the number of persons residing in housing units by the number of housing units.
  54. "Physical availability determination" means a letter issued by the Director stating that an applicant has demonstrated all of the criteria in R12-15-702(C).
  55. "Plat" means a preliminary or final map of a subdivision in a format typically acceptable to a platting entity.
  56. "Potential purchaser" means a person who has entered into a purchase agreement for land that is the subject of an application for a certificate or an assignment of a certificate.
  57. "Projected demand" means the 100-year water demand at build-out, not including committed or current demand, of customers reasonably projected to be added and plats reasonably projected to be approved within the designated provider's service area and reasonably anticipated expansions of the designated provider's service area.
  58. "Proposed municipal provider" means a municipal provider that has agreed to serve a proposed subdivision.
  59. "Purchase agreement" means a contract to purchase or acquire an interest in real property, such as a contract for purchase and sale, an option agreement, a deed of trust, or a subdivision trust agreement.
  60. "Remedial groundwater" means groundwater withdrawn pursuant to an approved remedial action project, but does not include groundwater withdrawn to provide an alternative water supply pursuant to A.R.S. § 49-282.03.
  61. "Service area" means:
    - a. For an application for an analysis of adequate water supply, a water report, or a designation of adequate water supply, the area of land actually being served water for a non-irrigation use by the municipal provider and additions to the area that contain the municipal provider's operating distribution system for the delivery of water for a non-irrigation use;
    - b. For an application for a designation of adequate water supply pursuant to A.R.S. § 45-108(D), the area of land actually being served water for a non-irrigation use by each municipal provider that serves water within the city or town, and additions to the area that contain each municipal provider's operating distribution system for the delivery of water for a non-irrigation use; or
    - c. For an application for a certificate or designation of assured water supply, "service area" has the same meaning as prescribed in A.R.S. § 45-402.
  62. "Subdivision" has the same meaning as prescribed in A.R.S. § 32-2101.
  63. "Superfund site" means the site of a remedial action undertaken pursuant to CERCLA.
  64. "Surface water" means any surface water as defined in A.R.S. § 45-101, including CAP water and Colorado River water.
  65. "Water Quality Assurance Revolving Fund site" or "WQARF site" means a site of a remedial action undertaken pursuant to A.R.S. Title 49, Chapter 2, Article 5.
  66. "Water report" means a letter issued to the Arizona Department of Real Estate by the Director for a subdivision stating whether an adequate water supply exists pursuant to A.R.S. § 45-108 and this Article.

#### Historical Note

Adopted effective February 7, 1995 (Supp. 95-1).  
 Amended by emergency rulemaking at 11 A.A.R. 2706, effective June 29, 2005 for 180 days (Supp. 05-2). Emergency renewed for 180 days at 12 A.A.R. 144, effective December 23, 2005 (Supp. 05-4). Emergency expired.  
 Amended by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

#### R12-15-702. Physical Availability Determination

- A. A person may apply for a physical availability determination by submitting an application on a form prescribed by the Director with the initial fee required by R12-15-103(C), and providing the following information with the application:
  1. The proposed source of water for which the applicant is seeking a determination of physical availability,
  2. Evidence that the applicant has complied with subsection (C) of this Section, and
  3. Any other information that the Director reasonably deems necessary to determine whether water is physically available in the area that is the subject of the application.

- B. Each applicant shall sign an application for a physical availability determination. If an applicant is not a natural person, the applicant's authorized officer, managing member, partner, trust officer, trustee or other person who performs similar decision-making functions for the applicant shall sign the application. If the applicant submits a letter, signed by the applicant and dated within 90 days of the date the application is submitted, authorizing a representative to submit applications for permits regarding the land to be included in the determination, the authorized representative may sign the application on the applicant's behalf.
- C. An applicant for a physical availability determination shall demonstrate the following:
  - 1. The volume of water that is physically available for 100 years in the area that is the subject of the application, according to the criteria in R12-15-716.
  - 2. That the proposed sources of water will be of adequate quality, according to the criteria in R12-15-719.
- D. After a complete application is submitted, the Director shall review the application and associated evidence to determine whether the applicant has demonstrated all of the criteria in subsection (C) of this Section. If the Director determines that the applicant has demonstrated all of the criteria in subsection (C) of this Section, the Director shall issue a physical availability determination.
- E. Any person applying for a determination of assured water supply or a determination of adequate water supply may use an existing physical availability determination for purposes of R12-15-716. The Director shall consider any changes in hydrologic conditions for purposes of R12-15-716.
- F. The issuance of a physical availability determination does not reserve any water for purposes of this Article.

#### Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

#### R12-15-703. Analysis of Assured Water Supply

- A. A person proposing to develop land that will not be served by a designated provider may apply for an analysis of assured water supply before applying for a certificate. An applicant for an analysis must be the owner of the land that is the subject of the application or have the written consent of the owner. The commissioner of the Arizona State Land Department may apply for an analysis for land owned by the state of Arizona or may consent to the inclusion of such land in an application.
- B. An applicant for an analysis shall submit an application on a form prescribed by the Director with the initial fee required by R12-15-103(C), and attach the following:
  - 1. A title report, condition of title report, limited search title report, or recorded deed, dated within 90 days of the date the application is submitted, demonstrating the ownership of the land that is the subject of the application;
  - 2. A description of the development, including:
    - a. A map of the land uses included in the development,
    - b. A list of water supplies proposed to be used by the development,
    - c. A summary of land use types included in the development, and
    - d. An estimate of the water demand for the land uses included in the development; and
- 3. Evidence that the applicant has complied with subsection (E) of this Section.
- C. An applicant shall sign the application for an analysis. If an applicant is not a natural person, the applicant's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant shall sign the application. If the applicant submits a letter, signed by the applicant and dated within 90 days of the date the application is submitted, authorizing a representative to submit applications for permits regarding the land to be included in the analysis, the authorized representative may sign the application on the applicant's behalf.
- D. After a complete application is submitted, the Director shall determine the estimated water demand of the development.
- E. The Director shall issue an analysis if an applicant demonstrates one or more of the following:
  - 1. Sufficient supplies of water are physically available to meet all or part of the estimated water demand of the development for 100 years, according to the criteria in R12-15-716.
  - 2. Sufficient supplies of water are continuously available to meet the estimated water demand of the development for 100 years, according to the criteria in R12-15-717.
  - 3. Sufficient supplies of water are legally available to meet the estimated water demand of the development for 100 years, according to the criteria in R12-15-718.
  - 4. The proposed sources of water are of adequate quality, according to the criteria in R12-15-719.
  - 5. Any proposed groundwater use is consistent with the management plan in effect at the time of the application, according to the criteria in R12-15-721.
  - 6. Any proposed groundwater use is consistent with the management goal, according to the criteria in R12-15-722.
- F. For 10 years after the Director issues an analysis, or a longer period allowed under subsections (H) or (I) of this Section:
  - 1. If groundwater is a source of supply in the analysis and the applicant demonstrates that groundwater is physically available under subsection (E)(1) of this Section, the Director shall consider that supply of groundwater reserved for the use of the proposed development in subsequent determinations of physical availability pursuant to R12-15-716(B).
  - 2. If an analysis holder applies for a certificate for a subdivision located on land included in the analysis, the Director shall presume that a criterion demonstrated in the analysis remains satisfied with respect to the subdivision, unless the Director has received new evidence demonstrating that the criterion is not satisfied. If the Director issues the certificate, the Director shall reduce the volume of groundwater reserved pursuant to subsection (F)(1) of this Section by the amount of the estimated water demand for the certificate that will be met with groundwater.
- G. The Director shall reduce the amount of groundwater considered reserved for use of the development upon request by the analysis holder. If the analysis holder requesting a reduction is not the person to whom the analysis was issued, the Director shall reduce the amount of reserved groundwater only if the person to whom the analysis was issued or that person's designee consents to the request for reduction. The person to whom the analysis was issued shall notify the Director in writing of the name of the person's designee for purposes of this subsection.
- H. The analysis holder may apply to the Director for a five-year extension of the time period in subsection (F) of this Section by submitting an application on a form prescribed by the

Director no earlier than 36 months before the end of the time period and no later than 30 days before the end of the time period. If an extension is granted, the analysis holder may apply to the Director for an additional five-year extension by submitting an application on a form prescribed by the Director no earlier than 36 months before the end of the extended time period and no later than 30 days before the end of the extended time period. The Director shall extend the time period for no more than two successive five-year periods under this subsection if the analysis holder demonstrates one of the following:

1. The analysis holder has made a substantial capital investment in developing the land included in the analysis.
2. The analysis holder has made material progress in developing the land included in the analysis.
3. Progress in developing the land included in the analysis has been delayed for reasons outside the control of the analysis holder.

- I. After the Director grants two five-year extensions pursuant to subsection (H) of this Section, the Director may extend the time period for additional five-year periods if the analysis holder files a timely application pursuant to subsection (H) of this Section and demonstrates one of the criteria in subsections (H)(1), (2), or (3) of this Section.
- J. The Director shall review an application for an analysis or an application for an extension pursuant to subsections (H) or (I) of this Section pursuant to the licensing time-frame provisions in R12-15-401.

#### Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Amended by emergency rulemaking at 11 A.A.R. 2706, effective June 29, 2005 for 180 days (Supp. 05-2). Emergency renewed for 180 days at 12 A.A.R. 144, effective December 23, 2005 (Supp. 05-4). Emergency expired. Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

#### R12-15-703.01. Repealed

#### Historical Note

New Section made by final rulemaking at 7 A.A.R. 3038, effective June 18, 2001 (Supp. 01-2). Section repealed by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

#### R12-15-704. Certificate of Assured Water Supply

- A. An application for a certificate shall be filed by the current owner of the land that is the subject of the application. Potential purchasers and affiliates may also be included as applicants.
- B. An applicant for a certificate shall submit an application on a form prescribed by the Director with the initial fee required by R12-15-103(C), and provide the following:
  1. One of the following forms of proof of ownership for each applicant to be listed on the certificate:
    - a. For an applicant that is the current owner, one of the following:
      - i. A title report, condition of title report, limited search title report, or recorded deed, dated within 90 days of the date the application is filed, demonstrating that the applicant is the owner of the land that is the subject of the application; or

- ii. Evidence that the CAGRD has reviewed and approved evidence that the applicant is the owner of the land that is the subject of the application;
- b. For an applicant that is a potential purchaser, evidence of a purchase agreement; or
- c. For an applicant that is an affiliate of another applicant, a certification by the other applicant of the affiliate status;
2. A plat of the subdivision;
3. An estimate of the 100-year water demand for the subdivision;
4. A list of all proposed sources of water that will be used by the subdivision;
5. Evidence that the criteria in subsections (F) or (G) of this Section are met; and
6. Any other information that the Director reasonably determines is necessary to decide whether an assured water supply exists for the subdivision.
- C. Each applicant shall sign the application for a certificate. If an applicant is not a natural person, the applicant's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant shall sign the application. If an applicant submits a letter, signed by the applicant and dated within 90 days of the date the application is submitted, authorizing a representative to submit applications for permits regarding the land to be included in the certificate, the authorized representative may sign the application on the applicant's behalf.
- D. The Director shall give public notice of an application for a certificate as provided in A.R.S. § 45-578.
- E. After a complete application is submitted, the Director shall review the application and associated evidence to determine:
  1. The estimated water demand of the subdivision;
  2. The amount of the groundwater allowance for the subdivision, as provided in R12-15-724 through R12-15-727; and
  3. Whether the applicant has demonstrated all of the requirements in subsection (F) or subsection (G) of this Section.
- F. Except as provided in subsection (G) of this Section, the Director shall issue a certificate if the applicant demonstrates all of the following:
  1. Sufficient supplies of water are physically available to meet the estimated water demand of the subdivision, according to the criteria in R12-15-716;
  2. Sufficient supplies of water are continuously available to meet the estimated water demand of the subdivision, according to the criteria in R12-15-717;
  3. Sufficient supplies of water are legally available to meet the estimated water demand of the subdivision, according to the criteria in R12-15-718;
  4. The sources of water are of adequate quality, according to the criteria in R12-15-719;
  5. The applicant has the financial capability to construct adequate delivery, storage, and treatment works for the subdivision, according to the criteria in R12-15-720;
  6. The proposed use of groundwater withdrawn within an AMA is consistent with the management plan in effect at the time of the application, according to the criteria in R12-15-721; and
  7. The proposed use of groundwater withdrawn within an AMA is consistent with the achievement of the management goal, according to the criteria in R12-15-722.
- G. If the Director previously issued a certificate for the subdivision, the Director shall issue a new certificate to the applicant

if the applicant demonstrates that all of the requirements in subsection (F) are met or that all of the following apply:

1. Any changes to the plat for which the previous certificate was issued are not material, according to the criteria in R12-15-708;
  2. If groundwater is a proposed source of supply for the subdivision, the proposed groundwater withdrawals satisfied the physical availability requirements in effect at the time the complete and correct application for the previous certificate was submitted;
  3. Any proposed sources of water, other than groundwater, are physically available to satisfy the estimated water demand that will not be satisfied with groundwater, according to the criteria in R12-15-716;
  4. Any proposed sources of water other than groundwater are continuously available to satisfy the estimated water demand that will not be satisfied with groundwater, according to the criteria in R12-15-717;
  5. The proposed uses of groundwater withdrawn within an AMA were consistent with the achievement of the management goal according to the criteria in effect at the time the complete and correct application for the previous certificate was submitted; and
  6. The applicant demonstrates that the requirements in subsections (F)(3) through (6) of this Section are met.
- H.** Before issuing a certificate, the Director shall classify the certificate for the purposes of R12-15-705 and R12-15-706 as follows:
1. Type A certificate. The Director shall classify the certificate as a Type A certificate if the applicant meets the criteria in R12-15-720(A)(1) and all of the subdivision's estimated water demand will be met with one or more of the following:
    - a. Groundwater served by a proposed municipal provider pursuant to an existing service area right;
    - b. Groundwater served by a proposed municipal provider pursuant to a pending service area right, if the proposed municipal provider currently holds or will hold the well permit;
    - c. CAP water served by a municipal provider pursuant to the proposed municipal provider's non-declining, long-term municipal and industrial subcontract;
    - d. Surface water served by a proposed municipal provider pursuant to the proposed municipal provider's surface water right or claim;
    - e. Effluent owned and served by a proposed municipal provider; or
    - f. A Type 1 grandfathered right appurtenant to the land on which the groundwater will be used and held by a proposed municipal provider.
  2. Type B certificate. The Director shall classify all certificates that do not meet the requirements of subsection (H)(1) of this Section as Type B certificates.
- I.** The Director shall review an application for a certificate pursuant to the licensing time-frame provisions in R12-15-401.
- J.** An owner of six or more lots is not required to obtain a certificate if all of the following apply:
1. The lots comprise a subset of a subdivision for which:
    - a. A plat was recorded before 1980; or
    - b. A certificate was issued before February 7, 1995;
  2. No changes were made to the plat since February 7, 1995; and
  3. Water service is currently available to each lot.
- K.** A new owner of all or a portion of a subdivision for which a plat has been recorded is not required to obtain a certificate if all of the following apply:
1. The Director previously issued a Type A certificate for the subdivision pursuant to subsection (H)(1) of this Section or R12-15-707;
  2. Water service is currently available to each lot; and
  3. There are no material changes to the plat for which the certificate was issued, according to the criteria in R12-15-708.
- L.** An owner of six or more lots in the Pinal AMA is not required to obtain a certificate if all of the following apply:
1. A plat for the subdivision was recorded before October 1, 2007;
  2. There have been no material changes to the plat according to the criteria in R12-15-708, since October 1, 2007;
  3. The proposed municipal provider was designated as having an assured water supply when the plat was recorded, but is no longer designated as having an assured water supply; and
  4. Water service is currently available to each lot.
- M.** A person may request a letter stating that the owner is not required to obtain a certificate pursuant to subsection (J), (K), or (L) of this Section by submitting an application on a form prescribed by the Director and attaching evidence that the criteria of subsection (J), (K), or (L) are met. Upon receiving an application pursuant to this subsection, the Director shall:
1. Review the application pursuant to the licensing time-frame provisions in R12-15-401.
  2. Determine whether the criteria of subsection (J), (K), or (L) of this Section are met.
  3. If the Director determines that the criteria of subsection (J) of this Section are met, issue a letter to the applicant and the Arizona Department of Real Estate stating that the current owner is not required to obtain a certificate.
  4. If the Director determines that the criteria of subsection (K) or (L) of this Section are met, issue a letter to the applicant and the Arizona Department of Real Estate stating that the current owner and any future owners are not required to obtain a certificate.

#### Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by final rulemaking at 13 A.A.R. 1394, effective October 1, 2007 (Supp. 07-2). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

#### R12-15-705. Assignment of Type A Certificate of Assured Water Supply

- A.** The certificate holder of a Type A certificate and the assignee may apply for approval of an assignment of the Type A certificate within the time allowed by A.R.S. § 45-579(A). The assignee may file the application if there is no certificate holder. The application shall be submitted on a form prescribed by the Director with the initial fee required by R12-15-103(C), and the applicant shall provide the following:
1. One of the following forms of proof of ownership for each assignee:
    - a. A title report, condition of title report, limited search title report, or recorded deed, dated within 90 days of the date the application is submitted to the Director and demonstrating that the assignee is the owner of the land that is the subject of the proposed assignment; or

- b. If the assignee is a potential purchaser, evidence of a purchase agreement;
  - 2. A current plat of the subdivision;
  - 3. An estimate of the 100-year water demand for the subdivision, based on the current plat;
  - 4. Certification by each applicant that:
    - a. The proposed municipal provider has not changed and has agreed to continue to serve the subdivision after the assignment; and
    - b. All water supplies listed on the current certificate are physically, continuously, and legally available to meet the estimated water demand of the subdivision after the assignment.
  - B.** Each applicant shall sign the application for an assignment of a Type A certificate. If an applicant is not a natural person, the entity's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant shall sign the application. If an applicant submits a letter, signed by the applicant and dated within 90 days of the date the application is submitted, authorizing a representative to submit applications for permits regarding the land included in the certificate, the authorized representative may sign the application on behalf of the applicant.
  - C.** Upon receiving an application for an assignment of a Type A certificate, the Director shall post the notice required by A.R.S. § 45-579(E).
  - D.** If the Director determines that the application meets the criteria of A.R.S. § 45-579(A), the Director shall issue a Type A certificate to each applicant. A Type A certificate issued under this subsection shall retain the issue date, the number of lots, and the estimated water demand shown on the original certificate, except as provided in subsection (E) of this Section. The Director shall determine that the application meets the criteria of A.R.S. § 45-579(A) if all of the following apply:
    - 1. The application is submitted within the time allowed by A.R.S. § 45-579(A);
    - 2. The assignee is the owner or a potential purchaser of the portion of the subdivision that is the subject of the assignment;
    - 3. There have been no material changes to the plat for which the original certificate was issued, according to the criteria in R12-15-708;
    - 4. Neither the applicant nor a predecessor in interest has impaired the manner in which consistency with management goal requirements were satisfied when the original certificate was issued; and
    - 5. The applicant makes the certifications required in subsection (A)(4) of this Section.
  - E.** In the case of a partial assignment, the Director shall determine whether changes to the plat are material according to R12-15-708. The Director shall issue a Type A certificate to the assignee for the portion of the subdivision that is the subject of the assignment and for the number of lots and the estimated water demand of the current plat of the portion of the subdivision that is the subject of the assignment. The Director shall issue a Type A certificate to the certificate holder for the portion of the subdivision retained by the certificate holder and for the remainder of the number of lots and the remainder of the estimated water demand. The sum of the number of lots and the sum of the amount of the estimated water demand shown on each certificate shall equal the total number of lots and the total estimated water demand shown on the certificate being assigned.
  - F.** The Director shall review an application for an assignment of a Type A certificate of assured water supply pursuant to the licensing time-frame provisions in R12-15-401.
- Historical Note**
- Adopted effective February 7, 1995 (Supp. 95-1).  
 Amended by final rulemaking at 8 A.A.R. 4390, effective November 22, 2002 (Supp. 02-3). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).
- R12-15-706. Assignment of Type B Certificate of Assured Water Supply**
- A.** The certificate holder of a Type B certificate or a certificate issued before the effective date of this Section that has not been classified pursuant to R12-15-707 and the assignee may apply for approval of an assignment of the certificate to another person within the time allowed by A.R.S. § 45-579(A). The assignee may file the application if there is no certificate holder. The application shall be submitted on a form prescribed by the Director with the initial fee required by R12-15-103(C), and the applicant shall provide the following:
    - 1. One of the following forms of proof of ownership for each assignee:
      - a. A title report, condition of title report, limited search title report, or recorded deed, dated within 90 days of the date the application is submitted to the Director and demonstrating that the assignee is the owner of the land that is the subject of the proposed assignment; or
      - b. If the assignee is a potential purchaser, evidence of a purchase agreement;
    - 2. A current plat of the subdivision;
    - 3. An estimate of the 100-year water demand for the subdivision, based on the current plat;
    - 4. Evidence that all necessary water rights, permits, licenses, contracts, and easements have been or will be assigned to the assignee of the certificate;
    - 5. Evidence that the assignee has the financial capability to construct adequate delivery, storage, and treatment works for the subdivision according to the criteria in R12-15-720;
    - 6. Evidence that all water supplies listed on the current certificate are physically, continuously, and legally available to meet the estimated water demand of the subdivision after the assignment;
    - 7. Evidence that the proposed municipal provider has not changed and has agreed to serve the subdivision after the assignment;
    - 8. If the applicant requests that the Director classify the certificate pursuant to subsection (E) of this Section, evidence that the requirements of R12-15-704(H)(1) are satisfied;
    - 9. Any other information that the Director reasonably deems necessary to determine whether the application meets the criteria of A.R.S. § 45-579.
  - B.** Each applicant shall sign the application for an assignment of a certificate. If an applicant is not a natural person, the entity's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant shall sign the application. If an applicant submits a letter, signed by the applicant and dated

within 90 days of the date the application is submitted, authorizing a representative to submit applications for permits regarding the land to be included in the certificate, the authorized representative may sign the application on the applicant's behalf.

- C. Upon receiving an application for an assignment, the Director shall post the notice required by A.R.S. § 45-579(E).
- D. Except as provided in subsection (E) of this Section, if the Director determines that the application meets the criteria of A.R.S. § 45-579(A), the Director shall issue a Type B certificate to each applicant. A Type B certificate issued under this subsection shall retain the issue date, the number of lots, and the estimated water demand shown on the original certificate, except as provided in subsection (F) of this Section. The Director shall determine that the application meets the criteria of A.R.S. § 45-579(A) if all of the following apply:
  1. The application is submitted within the time allowed by A.R.S. § 45-579(A);
  2. The assignee is the owner or potential purchaser of the portion of the subdivision that is the subject of the assignment;
  3. There have been no material changes to the plat for which the original certificate was issued, according to the criteria in R12-15-708;
  4. The applicant demonstrates the financial capability to construct adequate delivery, storage, and treatment works for the subdivision according to the criteria in R12-15-720;
  5. All necessary water rights, permits, licenses, contracts, and easements have been or will be assigned to the assignee of the certificate;
  6. All water supplies listed on the current certificate are physically, continuously, and legally available to meet the estimated water demand of the subdivision after the assignment;
  7. Neither the applicant nor a predecessor in interest has impaired the manner in which consistency with management goal requirements were satisfied when the original certificate was issued; and
  8. The proposed municipal provider has agreed to serve the subdivision after the assignment.
- E. The applicant may include in the application a request to classify the certificate as a Type A certificate. If the Director determines that the request meets the requirements of R12-15-704(H)(1), the Director shall classify the certificate as a Type A certificate.
- F. In the case of a partial assignment, the Director shall determine whether changes to the plat are material according to R12-15-708. The Director shall issue a Type B certificate to the assignee for the portion of the subdivision that is the subject of the assignment and for the number of lots and the estimated water demand of the current plat of the portion of the subdivision that is the subject of the assignment. The Director shall issue a Type B certificate to the certificate holder for the portion of the subdivision retained by the certificate holder and for the remainder of the number of lots and the remainder of the estimated water demand. The sum of the number of lots and the sum of the amount of the estimated water demand shown on each certificate shall equal the total number of lots and the total estimated water demand shown on the certificate that is being assigned.
- G. The Director shall review an application for an assignment of a Type B certificate pursuant to the licensing time-frame provisions in R12-15-401.

#### Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section

repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

#### R12-15-707. Application for Classification of a Type A Certificate

- A. A holder of a Type B certificate or a certificate issued before the effective date of this Section may apply to the Director to classify the certificate as a Type A certificate by submitting an application on a form prescribed by the Director with the initial fee prescribed in R12-15-103(C), and attaching evidence that the certificate meets the requirements of R12-15-704(H)(1).
- B. At least one certificate holder shall sign the application for classification of a certificate as a Type A certificate. If the applicant is not a natural person, the applicant's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant shall sign the application. If the applicant submits a letter, signed by the applicant and dated within 90 days of the date the application is submitted, authorizing a representative to submit applications for permits regarding the land to be included in the certificate, the authorized representative may sign the application on behalf of the applicant.
- C. If the applicant demonstrates that the requirements of R12-15-704(H)(1) are met, the Director shall classify the certificate as a Type A certificate and issue a Type A certificate to each certificate holder.

#### Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

#### R12-15-708. Material Plat Change; Application for Review

- A. A certificate or a water report is applicable to the original plat for which the certificate or water report was issued and to a revised plat, unless the plat changes are material according to subsections (C) and (D) of this Section.
- B. If a plat is revised after the Director issues a certificate or a water report and the changes to the plat are material according to subsection (C) or (D) of this Section, the holder may:
  1. Apply for a new certificate or water report for the revised plat,
  2. Use the original plat for which the certificate or water report was issued, or
  3. Revise the plat so that any changes are not material according to subsections (C) and (D) of this Section.
- C. Changes to the plat for which a certificate or a water report has been issued are material if any of the following apply:
  1. The number of lots on the plat has increased by more than:
    - a. For subdivisions of six to 10 lots: one lot;
    - b. For subdivisions of 11 to 499 lots: 10%, rounding up to the nearest whole number; or
    - c. For subdivisions of 500 lots or more: 50 lots.
  2. The 100-year water demand for the revised plat exceeds the estimated water demand for the certificate, unless all of the following apply:

- a. The 100-year water demand for the revised plat does not exceed the estimated water demand for the certificate by more than 10%, rounding to the nearest whole acre-foot, or by more than 25 acre-feet per year, whichever is less;
- b. The 100-year water demand is not greater than the supply demonstrated to be physically, continuously, and legally available at the time of issuance of the certificate or water report, and that water supply remains physically, continuously, and legally available; and
- c. For a certificate, one of the following applies:
  - i. The subdivision is enrolled as a member land in the CAGRD;
  - ii. Groundwater is not included as a source of supply; or
  - iii. The subdivision is located in the Pinal AMA and the 100-year water demand for the revised plat will not exceed the sum of the amount of the groundwater allowance and the amount of any extinguishment credits pledged to the certificate, including extinguishment credits pledged after the certificate was issued.
- 3. For a certificate, additional land is included in the plat, unless all of the following apply:
  - a. The land included in the original plat for which the certificate was issued is located in a master-planned community;
  - b. The outer boundaries of the master-planned community have not expanded;
  - c. If the land included in the original plat for which the certificate was issued is enrolled as a member land in the CAGRD, the additional land has also been enrolled in the CAGRD; and
  - d. A certificate has been issued for the additional land.
- D.** Changes to a portion of a plat are not material if one of the following applies:
  - 1. The changes to the portion of the plat being reviewed are not material according to subsection (C) of this Section when compared to the equivalent portion of the plat for which the certificate was issued;
  - 2. The changes to the entire revised plat are not material according to subsection (C) of this Section when compared to the entire plat for which the certificate was issued; or
  - 3. For a partial assignment pursuant to R12-15-705 or R12-15-706, the plat for the portion of the subdivision retained by the certificate holder could be configured so that changes to the total number of lots and the estimated water demand for the entire subdivision, including the portion under consideration, are not material according to subsection (C) of this Section. For purposes of this subsection, the Director may require the applicant to submit evidence demonstrating whether changes to the plat are material. However, the Director shall not require the applicant to submit a plat for the retained portion of a subdivision, unless the materiality of changes to the plat cannot be determined with any other evidence.
- E.** A person may apply for a review of a revised plat to determine whether any changes to the plat are material as follows:
  - 1. The applicant shall submit an application on a form prescribed by the Director with the initial fee required by R12-15-103(C), and shall attach the revised plat.
  - 2. The Director shall review the revised plat and the plat for which the certificate or water report was originally issued

to determine whether any changes are material according to the criteria in subsections (C) and (D) of this Section.

- 3. The Director shall issue a letter to the applicant stating whether any changes to the plat are material and identifying which changes, if any, are material. If the Director determines that the changes to the plat are not material, the Director's letter shall state that the certificate or water report is applicable to the revised plat.

#### Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

#### **R12-15-709. Certificate of Assured Water Supply; Revocation**

- A.** The Director may revoke a certificate if an assured water supply does not exist.
- B.** The Director shall not revoke a certificate if any of the residential lots within the plat have been sold.
- C.** If the Director determines that a certificate should be revoked, the Director shall provide for an administrative hearing, in accordance with A.R.S. Title 41, Chapter 6, Article 10. To determine whether a certificate should be revoked, the Director shall use the standards in place at the time the original application was submitted for the certificate.

#### Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

#### **R12-15-710. Designation of Assured Water Supply**

- A.** A municipal provider applying for a designation of assured water supply shall submit an application on a form prescribed by the Director with the initial fee required by R12-15-103(C), and provide the following:
  - 1. The applicant's current demand;
  - 2. The applicant's committed demand;
  - 3. The applicant's projected demand for the proposed term of the designation;
  - 4. The proposed term of the designation, which shall not be less than two years;
  - 5. Evidence that the criteria in subsection (E) of this Section are met; and
  - 6. Any other information that the Director determines is necessary to decide whether an assured water supply exists for the municipal provider.
- B.** An application for a designation shall be signed by:
  - 1. If the applicant is a city or town, the city or town manager or a person employed in an equivalent position. The application shall also include a resolution of the governing body of the city or town, authorizing that person to sign the application; or
  - 2. If the applicant is a private water company, the applicant's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant.
- C.** The Director shall give public notice of an application for designation in the same manner as provided for certificates in A.R.S. § 45-578.
- D.** After a complete application is submitted, the Director shall review the application and associated evidence to determine:

1. The annual volume of water physically, continuously, and legally available for at least 100 years;
  2. The term of the designation, which shall not be less than two years;
  3. The applicant's estimated water demand;
  4. The applicant's groundwater allowance; and
  5. Whether the applicant has demonstrated compliance with all requirements in subsection (E) of this Section.
- E.** The Director shall designate the applicant as having an assured water supply if the applicant demonstrates all of the following:
1. Sufficient supplies of water are physically available to meet the applicant's estimated water demand, according to the criteria in R12-15-716;
  2. Sufficient supplies of water are continuously available to meet the applicant's estimated water demand, according to the criteria in R12-15-717;
  3. Sufficient supplies of water are legally available to meet the applicant's estimated water demand, according to the criteria in R12-15-718;
  4. The proposed sources of water are of adequate quality, according to the criteria in R12-15-719;
  5. The applicant has the financial capability to construct adequate delivery, storage, and treatment works in a timely manner according to the criteria in R12-15-720;
  6. Any proposed groundwater use is consistent with the management plan in effect at the time of the application, according to the criteria in R12-15-721; and
  7. Any proposed use of groundwater withdrawn within an AMA is consistent with the management goal, according to the criteria in R12-15-722.
- F.** The Director shall review an application for a designation of assured water supply pursuant to the licensing time-frame provisions in R12-15-401.

#### Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

#### **R12-15-711. Designation of Assured Water Supply; Annual Report Requirements, Review, Modification, Revocation**

- A.** A designated provider shall include in the annual report required by A.R.S. § 45-632 the following information for the preceding calendar year:
1. The designated provider's committed demand;
  2. The demand at build-out for customers with which the designated provider has entered into an agreement to serve water, other than committed demand;
  3. A report regarding the designated provider's compliance with water quality requirements;
  4. The depth-to-static water level of all wells from which the designated provider withdrew water; and
  5. Any other information the Director may reasonably require to determine whether the designated provider continues to meet the criteria for a designation of assured water supply.
- B.** If there is a change of ownership, the subsequent owner of a designated provider shall notify the Director in writing of the change in ownership within 90 days.
- C.** The Director shall review a designation at least every 15 years following issuance of the designation to determine whether the designation should be modified or revoked. To determine

whether the designation should be modified or revoked, the Director shall use the standards in place at the time of review.

- D.** The Director may modify a designation for good cause, including a merger, division of the designated provider, or a change in ownership of the designated provider.
- E.** A designated provider may request a modification of the designation at any time pursuant to R12-15-710.
- F.** The Director may revoke a designation if:
1. After notifying the designated provider and initiating a review of the designated provider's status, the Director determines that the designated provider has less water, according to the criteria in R12-15-710(E), than the amount required for a 100-year supply for the provider's:
    - a. Current demand,
    - b. Committed demand, and
    - c. Projected demand during the next two calendar years;
  2. The designated provider fails to construct adequate delivery, storage, and treatment works in a timely manner;
  3. ADEQ or another governmental entity with equivalent jurisdiction has determined, after notice and an opportunity for a hearing, that the designated provider is in significant noncompliance with A.A.C. Title 18, Chapter 4 and is not taking action to resolve the noncompliance; or
  4. The designated provider has violated its management plan requirements for two or more consecutive calendar years, and one of the following applies:
    - a. The provider fails to amend its water use plan in a manner that the Director determines will achieve compliance, or
    - b. The provider fails to sign a stipulated agreement to remedy the violation.
- G.** If the Director determines that a designation of assured water supply should be revoked, the Director shall provide for an administrative hearing, in accordance with A.R.S. Title 41, Chapter 6, Article 10.
- H.** If a designated provider's designated status terminates, the provider may apply for re-designation at anytime after termination.
- I.** Notwithstanding any other provision in this Article, a decision and order of the Director designating a city, town, or private water company as having an assured water supply is not affected by this Article solely because the rule numbers cited in the decision and order may have changed after the effective date of the decision and order.

#### Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

#### **R12-15-712. Analysis of Adequate Water Supply**

- A.** A person proposing to develop land outside an AMA that will not be served by a designated provider may apply for an analysis of adequate water supply before applying for a water report. An applicant for an analysis must be the owner of the land that is the subject of the application or have the written consent of the owner. The commissioner of the Arizona State Land Department may apply for an analysis for land owned by the state of Arizona outside an AMA or may consent to the inclusion of such land in an application.
- B.** An applicant for an analysis shall submit an application on a form prescribed by the Director with the initial fee required by R12-15-103(C), and attach the following:
1. A title report, condition of title report, limited search title report, or recorded deed, dated within 90 days of the date the application is submitted to the Director, demonstrat-



- ing the ownership of the land that is the subject of the application;
2. A description of the development, including:
    - a. A map of the land uses included in the development,
    - b. A list of water supplies proposed to be used by the development,
    - c. A summary of land use types included in the development, and
    - d. An estimate of the water demand for the land uses included in the development; and
  3. Evidence that the applicant has complied with subsection (E) of this Section.
- C.** An applicant shall sign the application for an analysis. If an applicant is not a natural person, the applicant's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant shall sign the application. If the applicant submits a letter, signed by the applicant and dated within 90 days of the date the application is submitted, authorizing a representative to submit applications for permits regarding the land that is the subject of the water report, the authorized representative may sign the application on the applicant's behalf.
- D.** After a complete application is submitted, the Director shall determine the estimated water demand of the development.
- E.** The Director shall issue an analysis if an applicant demonstrates one or more of the following:
1. Sufficient supplies of water are physically available to meet all or part of the estimated water demand of the development for 100 years, according to the criteria in R12-15-716;
  2. Sufficient supplies of water are continuously available to meet the estimated water demand of the development for 100 years, according to the criteria in R12-15-717;
  3. Sufficient supplies of water are legally available to meet the estimated water demand of the development for 100 years, according to the criteria in R12-15-718;
  4. The proposed sources of water are of adequate quality, according to the criteria in R12-15-719.
- F.** For 10 years after the Director issues an analysis, or a longer period allowed under subsections (H) or (I) of this Section:
1. If groundwater is a source of supply in the analysis and the applicant demonstrates that groundwater is physically available under subsection (E)(1), the Director shall consider that supply of groundwater reserved for the use of the proposed development in subsequent determinations of physical availability pursuant to R12-15-716(B).
  2. If an analysis holder applies for a water report for a subdivision located on land included in the analysis, the Director shall presume that a criterion demonstrated in the analysis remains satisfied with respect to the subdivision, unless the Director has received new evidence demonstrating that the criterion is not satisfied. If the Director issues the water report, the Director shall reduce the volume of groundwater reserved pursuant to subsection (F)(1) of this Section by the amount of the estimated water demand for the water report that will be met with groundwater.
- G.** The Director shall reduce the amount of water considered reserved for use of the development upon request by the analysis holder. If the analysis holder requesting a reduction is not the person to whom the analysis was issued, the Director shall reduce the amount of reserved groundwater only if the person to whom the analysis was issued or that person's designee consents to the request for reduction. The person to whom the analysis was issued shall notify the Director in writing of the person's designee for purposes of this subsection.
- H.** The analysis holder may apply to the Director for a five-year extension of the time period in subsection (F) of this Section by submitting an application on a form prescribed by the Director no earlier than 36 months before the end of the time period and no later than 30 days before the end of the time period. If an extension is granted, the analysis holder may apply to the Director for an additional five-year extension by submitting an application on a form prescribed by the Director no earlier than 36 months before the end of the extended time period and no later than 30 days before the end of the extended time period. The Director shall extend the time period for no more than two successive five-year periods under this subsection if the analysis holder demonstrates one of the following:
1. The analysis holder has made a substantial capital investment in developing the land included in the analysis.
  2. The analysis holder has made material progress in developing the land included in the analysis.
  3. Progress in developing the land included in the analysis has been delayed for reasons outside the control of the analysis holder.
- I.** After the Director grants two five-year extensions pursuant to subsection (H) of this Section, the Director may extend the time period for additional five-year periods if the analysis holder files a timely application pursuant to subsection (H) of this Section and demonstrates one of the criteria in subsections (H)(1), (2), or (3) of this Section.
- J.** The Director shall review an application for an analysis or an application for an extension pursuant to subsections (H) or (I) of this Section pursuant to the licensing time-frame provisions in R12-15-401.

#### Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

#### R12-15-713. Water Report

- A.** An application for a water report shall be filed by the current owner of the land that is the subject of the application.
- B.** An applicant for a water report shall submit an application on a form prescribed by the Director with the initial fee required by R12-15-103(C), and provide the following:
1. A title report, condition of title report, limited search title report, or recorded deed, dated within 90 days of the date the application is filed and demonstrating that the applicant is the owner of the land that is the subject of the application;
  2. A plat of the subdivision;
  3. An estimate of the 100-year water demand for the subdivision;
  4. A list of all proposed sources of water that will be used by the subdivision;
  5. If the applicant is seeking a finding that the subdivision has an adequate water supply, evidence that the criteria in subsection (E) of this Section are met; and
  6. Any other information that the Director reasonably determines is necessary to decide whether an adequate water supply exists for the subdivision.
- C.** Each applicant shall sign the application for a water report. If an applicant is not a natural person, the applicant's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions

for the applicant shall sign the application. If an applicant submits a letter, signed by the applicant and dated within 90 days of the date the application is submitted, authorizing a representative to submit applications for permits regarding the land to be included in the water report, the authorized representative may sign the application on the applicant's behalf.

- D. After a complete application is submitted, the Director shall review the application and associated evidence to determine:
  - 1. The estimated water demand of the subdivision;
  - 2. Whether the applicant has demonstrated all of the requirements in subsection (E) of this Section.
- E. The Director shall determine that the subdivision has an adequate water supply if the applicant demonstrates all of the following:
  - 1. Sufficient supplies of water are physically available to meet the estimated water demand of the subdivision, according to the criteria in R12-15-716;
  - 2. Sufficient supplies of water are continuously available to meet the estimated water demand of the subdivision, according to the criteria in R12-15-717;
  - 3. Sufficient supplies of water are legally available to meet the estimated water demand of the subdivision, according to the criteria in R12-15-718;
  - 4. The proposed sources of water will be of adequate quality, according to the criteria in R12-15-719;
  - 5. The applicant has the financial capability to construct adequate delivery, storage, and treatment works for the subdivision according to the criteria in R12-15-720.
- F. The Director shall issue a water report to the applicant that states whether the applicant has complied with the requirements in subsection (E) of this Section.
- G. The Director shall review an application for a water report pursuant to the licensing time-frame provisions in R12-15-401.
- H. The Director may review or modify a water report if the Director receives new evidence regarding the criteria in subsection (E) of this Section. The Director shall not modify a water report pursuant to this subsection if any of the residential lots included in the plat have been sold. To determine whether a water report should be modified pursuant to this subsection, the Director shall use the standards in place at the time the original application was submitted for the water report. If the Director modifies a water report, the Director shall:
  - 1. Provide for an administrative hearing pursuant to A.R.S. Title 41, Chapter 6, Article 10; and
  - 2. Notify the Arizona Department of Real Estate.
- I. An owner of land that is the subject of a water report may request a modification of the water report at any time by submitting an application in accordance with subsection (B) of this Section. To determine whether a water report should be modified pursuant to this Section, the Director shall use the standards in place at the time of review.
- J. A water report is subject to the provisions of R12-15-708.

#### Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

#### R12-15-714. Designation of Adequate Water Supply

- A. A municipal provider applying for a designation of adequate water supply shall submit an application on a form prescribed

by the Director with the initial fee required by R12-15-103(C), and the following:

- 1. The applicant's current demand;
  - 2. The applicant's committed demand;
  - 3. The applicant's projected demand for the proposed term of the designation;
  - 4. The proposed term of the designation, which shall not be less than two years;
  - 5. Evidence that the criteria in subsection (E) of this Section are met; and
  - 6. Any other information that the Director determines is necessary to decide whether an adequate water supply exists for the municipal provider.
- B. A city or town, other than a municipal provider, that is applying for a designation shall submit an application on a form prescribed by the Director with the initial fee required in R12-15-103(C), and provide the following:
    - 1. The current demand of the applicant's service area;
    - 2. The committed demand of the applicant's service area;
    - 3. The projected demand of the applicant's service area for the proposed term of the designation;
    - 4. The proposed term of the designation, which shall not be less than two years; and
    - 5. Evidence that the requirements in A.R.S. § 45-108(D) are met.
  - C. An application for a designation shall be signed by:
    - 1. If the applicant is a city or town, the city or town manager or a person employed in an equivalent position. The application shall also include a resolution of the governing body of the city or town, authorizing that person to sign the application; or
    - 2. If the applicant is a private water company, the applicant's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant.
  - D. After a complete application is submitted, the Director shall review the application and associated evidence to determine:
    - 1. The annual volume of water that is physically, continuously, and legally available for at least 100 years;
    - 2. The term of the designation, which shall not be less than two years;
    - 3. The estimated water demand for the applicant's service area for 100 years; and
    - 4. Whether the applicant has demonstrated compliance with all requirements in subsection (E) or (F) of this Section.
  - E. The Director shall designate the applicant has having an adequate water supply pursuant to subsection (A) of this Section if the applicant demonstrates all of the following:
    - 1. Sufficient supplies of water are physically available to meet the applicant's estimated water demand, according to the criteria in R12-15-716;
    - 2. Sufficient supplies of water are continuously available to meet the applicant's estimated water demand, according to the criteria in R12-15-717;
    - 3. Sufficient supplies of water are legally available to meet the applicant's estimated water demand, according to the criteria in R12-15-718;
    - 4. The proposed sources of water are of adequate quality, according to the criteria in R12-15-719; and
    - 5. The applicant has the financial capability to construct adequate delivery, storage, and treatment works in a timely manner according to the criteria in R12-15-720.
  - F. The Director shall issue a designation pursuant to subsection (B) of this Section if the applicant demonstrates that the requirements of A.R.S. § 45-108(D) are met.

- G. The Director shall review an application for a designation of adequate water supply pursuant to the licensing time-frame provisions in R12-15-401.

**Historical Note**

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

**R12-15-715. Designation of Adequate Water Supply; Annual Report Requirements, Review, Modification, Revocation**

- A. By March 31 of each calendar year, a designated provider shall submit the following information for the preceding calendar year on a form provided by the Director:
1. The designated provider's committed demand;
  2. The demand at build-out for customers with which the designated provider has entered into an agreement to serve water, other than committed demand;
  3. A report regarding the designated provider's compliance with water quality requirements;
  4. The depth-to static water level of all wells from which the designated provider withdrew water;
  5. A report regarding volume of water withdrawn, diverted, or received from each source for delivery to customers;
  6. Any other information the Director may reasonably require to determine whether the designated provider continues to meet the criteria for a designation of adequate water supply.
- B. If there is a change of ownership, the subsequent owner of a designated provider shall notify the Director in writing of the change in ownership within 90 days.
- C. The Director shall review a designation at least every 15 years following issuance of the designation to determine whether the designation should be modified or revoked.
- D. The Director may modify a designation for good cause, including a merger, division of the designated provider, or a change in ownership of the designated provider. A designated provider may request a modification of the designation at any time pursuant to R12-15-714. To determine whether the designation should be modified, the Director shall use the standards in place at the time of review.
- E. The Director may revoke a designation if:
1. After notifying the designated provider and initiating a review of the designated provider's status, the Director determines that the designated provider has less water, according to the criteria in R12-15-714(E), than the amount required for a 100-year supply for the provider's:
    - a. Current demand,
    - b. Committed demand, and
    - c. Projected demand for the next two calendar years;
  2. The designated provider fails to construct adequate delivery, storage, and treatment works in a timely manner; or
  3. ADEQ or another governmental entity with equivalent jurisdiction has determined, after notice and an opportunity for a hearing, that the designated provider is in significant noncompliance with A.A.C. Title 18, Chapter 4 and is not taking action to resolve the noncompliance.
- F. To determine whether the designation should be revoked, the Director shall use the standards in place at the time of review. If the Director determines that a designation of adequate water supply should be revoked, the Director shall provide for an

administrative hearing, in accordance with A.R.S. Title 41, Chapter 6, Article 10.

- G. If a designated provider's designated status terminates, the provider may apply for re-designation at anytime after termination.
- H. Notwithstanding any other provision in this Article, a decision and order of the Director designating a city, town, or private water company as having an assured water supply is not affected by this Article solely because the rule numbers cited in the decision and order may have changed after the effective date of the decision and order.

**Historical Head**

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

**R12-15-716. Physical Availability**

- A. The volume of a proposed source of water that is physically available to an applicant for a determination of assured water supply or a determination of adequate water supply is the amount determined by the Director to be physically available pursuant to subsections (B) through (L) of this Section.
- B. If the proposed source is groundwater, the applicant shall submit a hydrologic study, using a method of analysis approved by the Director, that accurately describes the hydrology of the affected area. Except as provided in subsection (D) of this Section, the Director shall determine that the proposed volume of groundwater will be physically available for the proposed use if both of the following apply:
1. The groundwater will be withdrawn as follows:
    - a. Except as provided in subsection (B)(1)(b) of this Section, from wells owned by the applicant or the proposed municipal provider that are located within the service area of the applicant or the proposed municipal provider or from proposed wells that the Director determines are likely to be constructed for future uses of the applicant or the proposed municipal provider.
    - b. If the application is for a dry lot development, from wells that the Director determines are likely to be constructed on individual lots.
  2. Except as provided in subsection (C) of this Section, the groundwater will be withdrawn from depths that do not exceed the applicable maximum 100-year depth-to-static water level according to the following:

Type and location of development	Maximum 100-year depth-to-static water level
a. Developments in Phoenix, Tucson, or Prescott AMAs, except dry lot developments	1000 feet below land surface
b. Developments in Pinal AMA, except dry lot developments	1100 feet below land surface
c. Developments outside AMAs, except dry lot developments	1200 feet below land surface
d. Dry lot developments	400 feet below land surface

3. The Director shall calculate the projected 100-year depth-to-static water level by adding the following for the area where groundwater withdrawals are proposed to occur:
  - a. The depth-to-static water level on the date of application.

- b. The projected declines caused by existing uses, using the projected decline in the 100-year depth-to-static water level during the 100-year period after the date of application, calculated using records of declines for the maximum period of time for which records are available up to 25 calendar years before the date of application. If evidence is provided to the Director of likely changes in pumpage patterns and aquifer conditions, as opposed to those patterns and conditions occurring historically, the Director may determine projected declines using a model rather than evidence of past declines.
  - c. The projected decline in the depth-to-static water level during the 100-year period after the date of application, calculated by adding the projected decline from each of the following that are not accounted for in subsection (B)(3)(b) of this Section:
    - i. The estimated water demand of issued certificates and water reports that will be met with groundwater or stored water recovered outside the area of impact of the stored water, not including the demand of subdivided lots included in abandoned plats;
    - ii. The estimated water demand of designations that will be met with groundwater or stored water recovered outside the area of impact of the stored water; and
    - iii. The groundwater reserved for developments for which the Director has issued an analysis pursuant to R12-15-703 or R12-15-712.
  - d. The projected decline in depth-to-static water level that the Director projects will result from the applicant's proposed use over a 100-year period.
- C.** The Director shall lower the maximum 100-year depth-to-static water level requirement specified in subsection (B)(2) of this Section for an applicant seeking a determination of adequate water supply if the applicant demonstrates both of the following:
1. Groundwater is available at the lower depth; and
  2. The applicant has the financial capability to obtain the groundwater at the lower depth, according to the criteria in R12-15-720.
- D.** If the proposed source is groundwater that will be withdrawn from a groundwater basin outside an AMA and transported into an AMA, the Director shall determine that the proposed volume of groundwater will be physically available if both of the following apply:
1. The groundwater will be withdrawn from wells owned by the applicant or the proposed municipal provider or from proposed wells that the Director determines are likely to be constructed for the future uses of the applicant or the proposed municipal provider.
  2. Withdrawal of the groundwater will comply with any depth-to-static water level criteria, decline rate criteria, and volume limitation criteria prescribed by statute. If there are no applicable depth-to-static water level criteria prescribed by statute, withdrawal of the groundwater shall comply with the depth-to-static water level criteria in subsection (B)(2) of this Section.
- E.** Subject to subsection (L) of this Section, if the proposed source of water is surface water, other than CAP water, or Colorado River water, the Director shall determine the annual volume of water that is physically available for the proposed use, taking into consideration the priority date of the right or claim, by calculating 120% of the firm yield of the proposed source at the point of diversion as limited by the capacity of the diversion works; except that if the applicant demonstrates that an alternative source of water will be physically available during times of shortage in the proposed surface water supply, the Director shall determine the annual volume of water available by calculating 100% of the median flow of the proposed source at the point of diversion as limited by the capacity of the diversion works. The Director shall determine the firm yield or median flow as follows:
1. By calculating the firm yield or median flow at the point of diversion based on at least 20 calendar years of flow records from the point of diversion, unless 20 calendar years of records are unavailable and the Director determines that a shorter period of record provides information necessary to determine the firm yield or median flow; or
  2. By calculating the firm yield or median flow at the point of diversion using a hydrologic model that projects the firm yield or median flow, taking into account at least 20 calendar years of historic river flows, changes in reservoir storage facilities, and projected changes in water demand. The yield available to any applicant may be composed of rights to stored water, direct diversion, or normal flow rights. If the permit for the water right was issued less than five years before the date of application, the Director shall require the applicant to submit evidence, as applicable, in accordance with this subsection.
- F.** Subject to subsection (L) of this Section, if the proposed source of water is CAP water, the Director shall determine the annual volume of water that is physically available for the proposed use as follows:
1. If the applicant or the proposed municipal provider has a non-declining, long-term municipal and industrial subcontract for CAP water, calculate 100% of the annual amount of water established in the subcontract.
  2. If the applicant has a lease for Indian priority CAP water, calculate 100% of the annual amount of water established in the lease.
  3. If the applicant has a subcontract for CAP water other than a non-declining, long-term municipal and industrial subcontract or a lease for Indian priority CAP water:
    - a. If the applicant submits evidence of sufficient backup water supplies, calculate 100% of the annual amount of water established in the subcontract. The applicant may establish backup water supplies by one or more of the following:
      - i. A drought response plan;
      - ii. Long-term storage credits;
      - iii. A contract for water with a multi-county water conservation district; or
      - iv. Evidence of other backup supplies that are physically, continuously, and legally available.
    - b. If the applicant does not submit evidence of sufficient backup water supplies pursuant to subsection (F)(3)(a) of this Section, calculate the percentage of the annual amount of water established in the subcontract that reasonably reflects the reliability of the applicant's CAP water supply.
- G.** Subject to subsection (L) of this Section, if the proposed source of water is Colorado River water, the Director shall determine the annual volume of water that is physically available for the proposed use as follows:
1. If the priority of the contract for Colorado River water provides reliability equal to or better than CAP municipal and industrial water, calculate 100% of the annual amount of water established in the contract.
  2. If the contract for Colorado River water provides reliability that is less than CAP municipal and industrial water:

- a. If the applicant submits evidence of sufficient backup water supplies, calculate 100% of the annual amount of water in the contract. The applicant may establish backup water supplies by one or more of the following:
    - i. A drought response plan;
    - ii. Long-term storage credits;
    - iii. A contract for water with a multi-county water conservation district; or
    - iv. Evidence of other backup supplies that are physically, continuously, and legally available.
  - b. If the applicant does not submit evidence of sufficient backup water supplies pursuant to subsection (G)(2)(a) of this Section, calculate the percentage of the annual amount of water established in the contract that reasonably reflects the reliability of the applicant's Colorado River water supply.
- H.** Subject to subsection (I) of this Section, if the proposed source of water is effluent, the Director shall determine the annual volume of water that will be physically available by evaluating the current, metered production or the projected production of effluent. The volume of effluent that is physically available shall not include the following:
- 1. If the effluent will be delivered directly from a wastewater treatment plant, the volume of effluent that exceeds the applicant's estimated water demand that will be met with effluent; and
  - 2. The volume of effluent that does not comply with any applicable water quality requirements for the proposed use of the effluent.
- I.** If the proposed source of water is stored water to be recovered from recovery wells, the Director shall determine the volume of water that is physically available for the proposed use as follows:
- 1. If the stored water is represented by long-term storage credits in existence on the date of application, the amount that is physically available is the amount that may be recovered pursuant to the credits in a manner consistent with A.R.S. Title 45, Chapter 3.1, subject to subsection (I)(3) of this Section.
  - 2. If the applicant proposes to use long-term storage credits that do not exist on the date of application or recover stored water on an annual basis pursuant to A.R.S. § 45-851.01, the Director shall evaluate the following in determining whether to include the proposed credits or the water proposed to be stored and recovered annually in the amount of water that is physically available for the applicant's proposed use:
    - a. The terms of a contract to obtain water to store in a storage facility;
    - b. The physical, continuous, and legal availability of the water proposed to be stored;
    - c. The presence of an existing storage facility that will be available for use for the proposed storage;
    - d. The existence of all required permits of an adequate duration; and
    - e. Whether recovery of the stored water will comply with subsection (I)(3) of this Section.
  - 3. If the applicant proposes to recover the stored water from recovery wells located outside the area of impact of storage, the stored water will be considered physically available only if sufficient water exists for the withdrawals consistent with both of the following:
    - a. The maximum 100-year depth-to-static water level requirements established in subsection (B)(2) of this Section; and
    - b. Any criteria for the withdrawals prescribed in the management plan in effect at the time of the application.
- J.** If the applicant will obtain the source of water through a water exchange agreement, the Director shall determine that the water is physically available for the proposed use if the applicant submits evidence that the source of water the applicant or the applicant's customers will use will be physically available in accordance with the terms of this Section.
- K.** In the case of two or more pending, conflicting, complete and correct applications for determinations of assured water supply or determinations of adequate water supply, the Director shall give priority to the application with the earliest priority date. The priority date of an application for a determination of assured water supply or determination of adequate water supply shall be the date that a complete and correct application is filed with the Director. The Director shall consider an application complete and correct if it contains all the information required and the Director verifies that the information is accurate.
- L.** For a certificate applicant that proposes to use surface water, the Director shall determine that the proposed source is physically available only if the applicant demonstrates one of the following:
- 1. The land that is the subject of the application is a member land of the CAGRD.
  - 2. The applicant has independently obtained the surface water supply.
  - 3. The proposed municipal provider would satisfy the criteria in R12-15-722 if the municipal provider were subject to those requirements.

#### Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

#### R12-15-717. Continuous Availability

- A.** The Director shall determine that an applicant will have sufficient supplies of water that will be continuously available for 100 years if the applicant submits sufficient evidence that adequate delivery, storage, and treatment works will be in place in a timely manner to make the water available to the applicant or the applicant's customers for 100 years and the applicant meets any applicable requirements in subsections (B) through (G) of this Section.
- B.** If the proposed source of water is groundwater, the applicant shall demonstrate that wells of a sufficient capacity will be constructed in a timely manner to serve the proposed uses on a continuous basis for 100 years.
- C.** If the proposed source of water is surface water other than CAP water or Colorado River water, the applicant shall demonstrate that a continuous supply will exist because of one or more of the following:
  - 1. The projected volume to be diverted from the source is perennial at the point of diversion;
  - 2. Adequate storage facilities will be available to the applicant in a timely manner to store water for use when a volume of surface water is not available at the point of diversion to satisfy the applicant's water demands;
  - 3. The applicant has presented evidence of supplies of other sources of water that the Director has determined will be physically, continuously, and legally available to supplement the applicant's proposed surface water supplies;
  - 4. The applicant or the proposed municipal provider will withdraw surface water from wells of sufficient capacity

to meet the applicant's estimated water demand on a continuous basis for 100 years; or

5. The applicant has submitted a drought response plan that the Director has determined will conserve or augment a volume of water equal to the volume of water that is subject to drought.
- D. If the proposed source of water is CAP water or Colorado River water, the applicant shall demonstrate that a continuous supply is available because of one or more of the following:
  1. Adequate storage facilities will be available to the applicant in a timely manner to store water when a volume of CAP water or Colorado River water is not available to meet the applicant's water demands;
  2. The applicant has presented evidence of supplies of other sources of water that the Director has determined will be physically, continuously, and legally available to the applicant to supplement the proposed CAP water or Colorado River water supplies; or
  3. The applicant has submitted a drought response plan that the Director has determined will conserve or augment a volume of water equal to the volume subject to drought.
- E. If the proposed source of water is effluent, the applicant shall demonstrate that the capability to use the effluent to meet the demands of the proposed use will not be affected by any fluctuations in the supply of the effluent.
- F. If the proposed source of water is stored water to be recovered from recovery wells, the applicant shall demonstrate that recovery wells of a sufficient capacity will be constructed in a timely manner to serve the proposed use on a continuous basis for 100 years.
- G. If an applicant will obtain the source of water through a water exchange agreement, the applicant shall demonstrate that the source of water the applicant or the applicant's customers will use will be continuously available in accordance with the terms of this Section.

#### Historical Note

Adopted effective February 7, 1995 (Supp. 95-1).  
Amended by emergency rulemaking at 11 A.A.R. 2706, effective June 29, 2005 for 180 days (Supp. 05-2). Emergency renewed for 180 days at 12 A.A.R. 144, effective December 23, 2005 (Supp. 05-4). Emergency expired.  
Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

#### R12-15-718. Legal Availability

- A. The Director shall determine that an applicant will have sufficient supplies of water that will be legally available for at least 100 years if the applicant submits all of the applicable information required by this Section.
- B. If the applicant is an applicant for a certificate or a water report, the applicant shall submit the following, as applicable:
  1. A Notice of Intent to Serve agreement between the owner of the land to be included in the subdivision and the proposed municipal provider, stating the proposed municipal provider's intent to serve the subdivision;
  2. If the proposed municipal provider is a city or town, evidence indicating that the proposed subdivision is located within the incorporated limits of the city or town or evidence of the legal right of the city or town to serve water to the subdivision outside the city or town's incorporated limits; or
  3. If the proposed municipal provider is a private water company, one of the following:
    - a. Evidence that the proposed municipal provider has a certificate of convenience and necessity approved by

the Arizona Corporation Commission and the subdivision is located within the geographic area described in the certificate of convenience and necessity or any other area in which the Arizona Corporation Commission authorizes the private water company to serve water;

- b. Evidence that the proposed municipal provider has an order preliminary issued by the Arizona Corporation Commission authorizing the municipal provider to provide water service and the proposed subdivision is located within the area described in the order preliminary; or
- c. Evidence that the proposed municipal provider is not a public service corporation regulated by the Arizona Corporation Commission.
- C. If the applicant is a private water company applying for a designation, the applicant shall submit evidence that the applicant has a certificate of convenience and necessity approved by the Arizona Corporation Commission, or has been issued an order preliminary by the Arizona Corporation Commission for a certificate of convenience and necessity, authorizing the applicant to serve the proposed use.
- D. If a proposed source of water is groundwater to be withdrawn within an AMA, the applicant shall submit evidence that the applicant or the proposed municipal provider has one or more of the following:
  1. A service area right;
  2. An applicable non-irrigation grandfathered right to withdraw groundwater, in an amount sufficient to serve the proposed use; or
  3. A pending notice of intent to establish a new service area and all of the following apply:
    - a. The notice of intent to establish a new service area identifies the proposed subdivision,
    - b. The applicant or the proposed municipal provider has obtained a permit for any wells used to establish the service area right,
    - c. The proposed municipal provider has obtained a water right or recovery well permit to establish the service area right, and
    - d. The water right is of sufficient volume and duration to meet the estimated water demand of the proposed subdivision until the anticipated date of issuance of a service area right.
- E. If a proposed source of water is surface water other than CAP water or Colorado River water:
  1. The applicant shall submit evidence that the applicant or the proposed municipal provider has a certificated surface water right, decreed water right, or a pre-1919 claim for the proposed source. If the applicant or the proposed municipal provider does not hold a surface water right or claim, but will receive water pursuant to a water right or claim that is appurtenant to the land that is the subject of the application, the applicant shall submit evidence of the water right or claim and evidence that the water right or claim may neither be legally withheld nor severed and transferred by the right holder or claimant.
  2. If the certificated surface water right or decreed water right pre-dates the date of application by at least five years, or the applicant submits a pre-1919 claim, the applicant shall submit one of the following:
    - a. Evidence that the surface water supply has been used pursuant to the applicable water right or claim within the five years before the date of application;
    - b. Evidence that a court has determined that the right has not been abandoned; or

- c. Evidence that the non-use would not have resulted in an abandonment of the right pursuant to A.R.S. § 45-189.
- 3. The Director shall determine that the volume of water that is legally available pursuant to a certificated surface water right, a decreed water right, or a pre-1919 claim is equal to the face value of the right or claim. If the right or claim is subsequently adjudicated, the Director shall determine the volume of water that is legally available based on the adjudicated amount of water.
- F. Subject to subsections (M) and (N) of this Section, if a proposed source of water is CAP water, the applicant shall submit evidence that the applicant or the proposed municipal provider has entered into a subcontract with a multi-county water conservation district for the proposed volume of CAP water. The Director shall presume that a 50-year long-term, non-declining municipal and industrial subcontract is sufficient evidence of the legal availability of the volume of CAP water specified in the subcontract for 100 calendar years.
- G. Subject to subsections (M) and (N) of this Section, if a proposed source of water is Colorado River water, the applicant shall submit evidence of one of the following:
  - 1. The applicant or the proposed municipal provider has a contract with the United States Secretary of the Interior for the proposed supply; or
  - 2. The applicant has obtained an allocation of Colorado River water from an entity to which all of the following apply:
    - a. The entity holds a contract for Colorado River water with the United States Secretary of the Interior;
    - b. The entity provides Colorado River water to the proposed municipal provider;
    - c. The entity has allocated a sufficient volume of the Colorado River water to the subdivision; and
    - d. The area that the entity may serve, described in the contract with the United States Secretary of the Interior, includes the subdivision.
- H. If a proposed source of water is effluent, the applicant shall submit evidence that the applicant or the proposed municipal provider has the legal right to use the effluent.
- I. If the applicant will obtain a proposed source of water through a written contract other than a water exchange agreement, a contract between a certificate applicant and the municipal provider proposed to serve the applicant, a contract with the United States Secretary of the Interior for Colorado River water, or a subcontract with a multi-county water conservation district, the applicant shall submit evidence that the person providing the water under the contract has a legal right to the water in accordance with the terms of this Section and that the terms of the contract will ensure that the proposed source of water will be delivered to the applicant or to the proposed subdivision. The Director shall determine the term of years for which the proposed source of water is legally available based on the term of years remaining in the contract. The Director shall determine the quantity of water legally available based on the volume established in the contract.
- J. If the applicant will obtain a proposed source of water through a water exchange agreement, the applicant shall submit evidence that the water exchange agreement satisfies the requirements of A.R.S. Title 45, Chapter 4.
- K. If the Director can determine the proposed source of water to be physically and continuously available only because of the use of storage facilities by the applicant or by the proposed municipal provider, the applicant shall submit evidence of the applicant's or the proposed municipal provider's legal right to store water in the storage facilities.
- L. If the applicant proposes to use long-term storage credits, the applicant shall submit evidence that the applicant or the proposed municipal provider has the legal right to use the credits under A.R.S. Title 45, Chapter 3.1.
- M. If a proposed supply of water is Colorado River water or CAP water leased from an Indian community, the applicant shall submit evidence that the water leased has a priority equal to or higher than CAP municipal and industrial water, evidence that the Indian community is expressly authorized by an Act of Congress to lease the water for use off Indian community lands, evidence of the lease, and evidence of one of the following:
  - 1. The proposed water supply is available under the lease for at least 100 years from any time during the year in which the applicant submits the application.
  - 2. The term of the lease has less than 100 years remaining in the year in which the applicant submits the application and a supplemental water supply, together with the leased water, provides a 100-year water supply. The applicant shall demonstrate that the supplemental water supply is physically, continuously, and legally available and, if such supplemental supply is groundwater, that use of the groundwater is consistent with the management goal of the AMA. If the supplemental supply is water recovered through the use of long-term storage credits, the applicant shall also submit the following, as applicable:
    - a. If the applicant is to use the long-term storage credits before the beginning of the lease term, evidence that the applicant or the proposed municipal provider has obtained a recovery well permit that allows the applicant or the proposed municipal provider to recover water pursuant to the long-term storage credits; or
    - b. If the long-term storage credits will be accrued in the future, evidence that the applicant or the proposed municipal provider will accrue the long-term storage credits within 20 years after the effective date of the designation, certificate, or water report by storing the water under an issued water storage permit at a permitted storage facility and that no more than 20 years of the applicant's supplemental water supply will be provided by the long-term storage credits.
- N. If the Director previously determined that Colorado River water or CAP water leased from an Indian community was legally available to a designated provider for 100 years, the Director shall determine that the designated provider continues to have a legally available supply of water for 100 years for the annual amount of water available under the lease if:
  - 1. The lease has at least 50 years remaining in its term or the lease has at least 40 years remaining in its term and the designated provider submits evidence to the Director of active and ongoing negotiations with the Indian community to renew or re-negotiate the lease; and
  - 2. One of the following applies:
    - a. No more than 15% of the total water supplies that the designated provider establishes as physically, continuously, and legally available during any year are obtained through leases with Indian communities;
    - b. Groundwater will be physically, continuously, and legally available to the designated provider at the end of the lease term to substitute for the leased water for the remainder of the 100-year period, and the projected use of groundwater is consistent with the management goal of the AMA. For purposes of this subsection, the designated provider may demon-

strate that the proposed use is consistent with the management goal by entering into a written agreement with the Director under which the designated provider agrees to replace through replenishment or underground storage any groundwater used at the end of the lease term if groundwater use is not consistent with the management goal. The written agreement shall provide that specific performance is the only remedy in the event of default;

- c. A non-groundwater source of water will be physically, continuously, and legally available at the end of the lease term to substitute for the leased water for the remainder of the 100-year period; or
- d. The designated provider's governing board or council submits a resolution requesting that the designated provider be allowed to increase its projected use of Indian lease water from 15%, as allowed by subsection (N)(2)(a) of this Section, to 20%, and the Director finds that all of the following apply:
  - i. No more than 20% of the total water supplies that the designated provider establishes as physically, continuously, and legally available during any year are obtained through leases with Indian communities;
  - ii. No more than 15% of the total water supplies that the designated provider establishes as physically, continuously, and legally available during any year are obtained through any single lease with an Indian community; and
  - iii. The designated provider does not meet the requirements of subsections (N)(2)(a), (b), or (c) of this Section.

#### Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

#### R12-15-719. Water Quality

- A. Except as provided in subsection (B) of this Section, when reviewing an application for a determination of assured water supply or a determination of adequate water supply, the Director shall determine that the water supply is of adequate quality if one of the following applies:
  - 1. The applicant certifies on the application that the applicant or the proposed municipal provider will be regulated by ADEQ, or another governmental entity with equivalent jurisdiction, as a public water system pursuant to A.R.S. § 49-351, et seq., unless ADEQ, or another governmental entity with equivalent jurisdiction, has determined, after notice and an opportunity for a hearing, that the public water system is in significant noncompliance with A.A.C. Title 18, Chapter 4 and is not taking action to resolve the noncompliance; or
  - 2. The applicant has submitted results of a lab analysis demonstrating that the water meets water quality requirements in accordance with A.A.C. Title 18, Chapter 4, or that the water will meet these requirements after treatment that is required by law. The lab analysis shall be based on water withdrawn from a well representative of the well or wells from which water will be withdrawn for the proposed use, conducted in compliance with sample collection and analysis requirements in A.A.C. Title 18, Chapter 4, and completed within 60 days of the date the application is submitted to the Director. If ADEQ waives any of the water quality or sample collection and analysis requirements in A.A.C. Title 18, Chapter 4, the Director

shall not require the applicant to meet the waived requirements.

- B. If a well or a proposed well from which water will be withdrawn for the proposed use is located within one mile of a WQARF site or Superfund site, the Director shall determine that the water supply is of adequate quality only if the applicant submits a contaminant migration and mitigation analysis, demonstrating that the water supply will continue to meet the requirements in A.A.C. Title 18, Chapter 4 for 100 years. The contaminant migration and mitigation analysis may include the impact of any mitigation or treatment, including mitigation or treatment required pursuant to a consent decree.

#### Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

#### R12-15-720. Financial Capability

- A. The Director shall determine that an applicant for a certificate or a water report has the financial capability to construct adequate delivery, storage, and treatment works if the applicant demonstrates one or more of the following:
  - 1. The applicant will submit its final plat to a qualified platting authority;
  - 2. The applicant has constructed adequate delivery, storage, and treatment works, and water service is available to each lot; or
  - 3. The applicant has posted a performance bond with the platting authority for the entire cost of adequate delivery, storage, and treatment works.
- B. Upon receiving evidence that a platting authority has established standards for proof of financial capability to construct adequate delivery, storage, and treatment works, pursuant to A.R.S. § 9-463.01(C)(8) or A.R.S. § 11-806.01(G), the Director shall classify the platting authority as a qualified platting authority. The Director shall maintain a list of qualified platting authorities.
- C. The Director shall determine that an applicant for a designation has the financial capability to construct adequate delivery, storage, and treatment works if the applicant demonstrates one or more of the following for each of those facilities:
  - 1. The applicant has constructed adequate delivery, storage, and treatment works;
  - 2. The applicant has entered into written agreements requiring a potential developer to construct adequate delivery, storage, and treatment works;
  - 3. If the applicant is a city or town, the applicant has:
    - a. Adopted a five year capital improvement plan that provides for the construction, or the commencement of construction, of adequate delivery, storage, and treatment works in a timely manner, and has submitted a certification by the applicant's chief financial officer that finances are available to implement that portion of the five-year plan; or
    - b. Submitted evidence demonstrating that financing mechanisms are in place to construct adequate delivery, storage, and treatment works in a timely manner; or
  - 4. If the applicant is a private water company, the applicant has received approval from the Arizona Corporation Commission for financing the construction of adequate delivery, storage, and treatment works.

#### Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).



**R12-15-721. Consistency with Management Plan**

- A.** The Director shall determine whether a designation applicant's projected use of groundwater withdrawn within an active management area is consistent with the management plan as follows:
1. If the applicant is providing water to customers as of the date of application, the applicant's projected water use is consistent with the management plan if either of the following apply:
    - a. The applicant is in compliance with its applicable management plan requirements in the most recent calendar year for which data is available before the date of application; or
    - b. The applicant has signed a stipulation and consent order that is in effect on the date of the application, or that becomes effective during the time of review of the application, to remedy non-compliance with the management plan requirements and the applicant is in compliance with the terms of the stipulation and consent order.
  2. If the applicant has not commenced serving water to customers as of the date of application, the applicant shall submit a water use plan that demonstrates to the Director that compliance with management plan requirements will be achieved through the use of conservation or augmentation measures.
  3. If the applicant has a pending request for an administrative review or variance from its management plan requirements, the Director shall not make a finding regarding compliance with this Section until the Director has issued a final decision and order on the request or the request has been withdrawn.
- B.** The Director shall determine that a certificate applicant's projected use of groundwater withdrawn within an AMA is consistent with the management plan if the applicant submits a water use plan for the subdivision that includes both of the following:
1. Information demonstrating that compliance with management plan requirements will be achieved through conservation or augmentation measures; and
  2. All information required to calculate the water requirements for each proposed water use.
- C.** A certificate applicant for a subdivision of 50 or fewer lots is exempt from the requirements of this rule.

**Historical Note**

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

**R12-15-722. Consistency with Management Goal**

- A.** For the Phoenix, Prescott, or Tucson AMAs, the Director shall calculate the volume of groundwater that may be used consistent with the management goal of the AMA in which the proposed use is located for at least 100 years by adding the following:
1. The amount of the groundwater allowance, according to R12-15-724(A), R12-15-726(A), or R12-15-727(A).
  2. The amount of any extinguishment credits pledged to the certificate or designation, according to R12-15-724(B), R12-15-726(B), or R12-15-727(B).
  3. Any groundwater that is consistent with the achievement of the management goal pursuant to A.R.S. Title 45, Chapter 2.
- B.** The Director shall determine that a proposed groundwater use in the Phoenix, Prescott, or Tucson AMA is consistent with the

management goal of the AMA if the volume calculated in subsection (A) of this Section is equal to or greater than the portion of the applicant's estimated water demand to be met with groundwater.

- C.** For a certificate in the Pinal AMA, the Director shall calculate the volume of groundwater that may be used consistent with the management goal of the AMA for at least 100 years by adding the following:
1. The amount of the groundwater allowance, according to R12-15-725(A)(1).
  2. The amount of any extinguishment credits pledged to the certificate for a grandfathered right that was extinguished on or after October 1, 2007, according to R12-15-725(B).
  3. The amount of any extinguishment credits pledged to the certificate for a grandfathered right that was extinguished before October 1, 2007. The Director shall calculate the amount of the extinguishment credits by multiplying the annual amount of the credits by 100.
  4. Any groundwater that is consistent with the achievement of the management goal pursuant to A.R.S. Title 45, Chapter 2.
- D.** For a certificate in the Pinal AMA, the Director shall determine that the proposed groundwater use is consistent with the management goal of the AMA if the volume calculated in subsection (C) of this Section is equal to or greater than the portion of the applicant's estimated water demand to be met with groundwater.
- E.** For a designation in the Pinal AMA, the Director shall calculate the volume of groundwater that may be used consistent with the management goal of the Pinal AMA on an annual basis by adding the following:
1. The amount of the groundwater allowance, according to R12-15-725(A)(2). If any of the groundwater allowance is not used during a year, the unused groundwater allowance shall not be added to the volume calculated under this subsection for the following year.
  2. The amount of any extinguishment credits pledged to the designation for a grandfathered right that was extinguished on or after October 1, 2007, according to R12-15-725(B), divided by 100. Extinguishment credits for a grandfathered right that was extinguished on or after October 1, 2007 may be used in any year.
  3. The annual amount of any extinguishment credits pledged to the designation for a grandfathered right that was extinguished before October 1, 2007. The following shall apply if any of the extinguishment credits are not used during a calendar year:
    - a. If the extinguishment credits were pledged to the designation before October 1, 2007, any extinguishment credits not used during a calendar year shall be added to the volume calculated under this subsection for the following calendar year.
    - b. If the extinguishment credits are pledged to the designation on or after October 1, 2007, any of the extinguishment credits not used during a calendar year shall not be added to the volume calculated under this subsection for the following calendar year, except that if the extinguishment credits were originally pledged to a certificate before October 1, 2007 and are used to support the municipal provider's designation pursuant to R12-15-723(G)(2), any of the extinguishment credits not used during a calendar year shall be added to the volume calculated under this subsection for the following calendar year.

4. Any groundwater that is consistent with the achievement of the management goal pursuant to A.R.S. Title 45, Chapter 2.
- F. For a designation in the Pinal AMA, the Director shall determine that the proposed groundwater use is consistent with the management goal of the Pinal AMA if the annual volume calculated in subsection (E) of this Section is equal to or greater than the portion of the applicant's annual estimated water demand to be met with groundwater.
- G. Upon application, the following volumes of groundwater used by an applicant are considered consistent with the management goal:
  1. If the Director determines that a surface water supply is physically available under R12-15-716 and the volume of the supply actually available during a calendar year is equal to or less than the drought volume for the supply, the volume of groundwater, other than the groundwater that is accounted for under subsection (A), (C), or (E) of this Section, withdrawn within the AMA that, when combined with the available surface water supply, is equal to or less than the drought volume.
  2. Any volume of groundwater withdrawn within a portion of an AMA that is exempt from conservation requirements under A.R.S. Title 45 due to waterlogging. The Director shall review the application of this exclusion on a periodic basis, not to exceed 15 years.
  3. Remedial groundwater that is consistent with the management goal according to the requirements of R12-15-729.
- H. An applicant for a certificate of assured water supply for a dry lot subdivision of 20 lots or fewer is exempt from the requirements of this Section.

#### Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by final rulemaking at 13 A.A.R. 1394, effective October 1, 2007 (Supp. 07-2).

#### R12-15-723. Extinguishment Credits

- A. Except as provided in subsection (D), the owner of a grandfathered right may extinguish the right in exchange for extinguishment credits by submitting the following:
  1. A notarized statement of extinguishment of a grandfathered right on a form provided by the Director;
  2. The grandfathered right number;
  3. If the right being extinguished is a Type 1 non-irrigation grandfathered right or an irrigation grandfathered right, evidence of ownership of the land to which the grandfathered right is appurtenant;
  4. If the grandfathered right is located in the Prescott AMA, evidence that all of the following conditions are met:
    - a. The land to which the right is appurtenant has not been and will not be subdivided pursuant to a preliminary plat or a final plat that was approved by a city, town, or county before August 21, 1998; and
    - b. The land to which the right is appurtenant is not and will not be the location of a subdivision for which a complete and correct application for a certificate of assured water supply was submitted to the Director before August 21, 1998;
  5. If the right being extinguished is an irrigation grandfathered right, evidence that the development of the land to which the right is appurtenant is not completed; and
  6. Any additional information the Director may reasonably require to process the extinguishment.
- B. The Director shall calculate the amount of extinguishment credits pursuant to R12-15-724(B), R12-15-725(B), R12-15-726(B) or R12-15-727(B). The Director shall notify the owner of the amount of extinguishment credits in writing. If the owner is extinguishing only a portion of the right, the Director shall issue a new certificate of grandfathered right for the remainder of the right.
- C. A Type 1 non-irrigation grandfathered right or an irrigation grandfathered right may be extinguished in whole or in part. A Type 2 non-irrigation grandfathered right may be extinguished only in whole.
- D. The following rights may not be extinguished in exchange for extinguishment credits:
  1. An irrigation grandfathered right that is appurtenant to land that has been physically developed for a non-irrigation use. The Director shall not consider the land to be physically developed until the development is completed.
  2. A Type 1 non-irrigation grandfathered right, if the Director determines that the holder is likely to continue to receive groundwater from an undesignated municipal provider for the same use pursuant to the provider's service area right or pursuant to a groundwater withdrawal permit.
  3. A Type 2 non-irrigation grandfathered right that was issued based on the withdrawal of groundwater for mineral extraction or processing or for the generation of electrical energy.
  4. On or after January 1, 2025, any grandfathered right that is in the Phoenix, Prescott, or Tucson AMAs.
  5. Any grandfathered right in the Pinal AMA beginning in the first calendar year in which the allocation factor for the extinguishment of a grandfathered right is zero, pursuant to R12-15-725(B)(3) or (4).
  6. A Type 1 non-irrigation grandfathered right that was requested to be included by a city or town in the Tucson AMA in the determination made under A.R.S. § 45-463(F).
- E. The owner of extinguishment credits may pledge the credits to a certificate or to a designation before the certificate or designation is issued by submitting with the application for the certificate or designation a notice of intent to pledge extinguishment credits on a form provided by the Director. The extinguishment credits shall be pledged to the certificate or designation upon issuance of the certificate or designation.
- F. The owner of extinguishment credits may pledge the credits to a certificate or to a designation after the certificate or designation is issued by submitting a notice of intent to pledge extinguishment credits on a form provided by the Director. The Director shall notify the owner of the extinguishment credits and the certificate holder or designated provider that the credits have been pledged to the certificate or designation.
- G. Extinguishment credits that have not been pledged to a certificate or designation may be conveyed within the same AMA. Extinguishment credits pledged to a certificate or designation shall not be conveyed to another person, except that:
  1. If extinguishment credits are pledged to a certificate that is later assigned or reissued, any unused credits are transferred, by operation of this subsection, to the assigned or reissued certificate. If the certificate is partially assigned or reissued, a pro rata share of the unused extinguishment credits is transferred to each assigned or reissued certificate according to the estimated water demand.
  2. If extinguishment credits are pledged to a certificate for a subdivision that is later served by a designated provider or a municipal provider that is applying for a designation, any unused extinguishment credits may be used to sup-

port the municipal provider's designation as long as the municipal provider serves the subdivision and remains designated. If the municipal provider is no longer serving the subdivision or if the municipal provider loses its designated status, any unused extinguishment credits shall revert, by operation of this subsection, to the certificate to which they were originally pledged.

- H. The Director shall review a statement of extinguishment of a grandfathered right and a notice of intent to pledge extinguishment credits pursuant to the licensing time-frame provisions in R12-15-401.
- I. A person may apply to the Director on or before December 31, 2015 for the restoration of all or a portion of an irrigation grandfathered right extinguished under this Section during calendar year 2005, 2006 or 2007 if all of the following conditions are met:
  - 1. The person owns the land to which the right or portion of the right was appurtenant;
  - 2. The land to which the right or portion of the right was appurtenant is physically capable of being irrigated and the infrastructure for delivering water to the land for irrigation purposes remains intact and is operable;
  - 3. The person holds extinguishment credits that were issued for the extinguishment of a grandfathered right in the AMA in which the land is located and that have not been pledged to a certificate or designation under subsection (E) or (F) in the following amount, as applicable:
    - a. If the person seeks to restore the entire irrigation grandfathered right, an amount of extinguishment credits equal to the amount of extinguishment credits issued by the Director in exchange for extinguishment of the irrigation grandfathered right; or
    - b. If the person seeks to restore a portion of the irrigation grandfathered right, an amount of extinguishment credits equal to the result obtained by multiplying the percentage of the right sought to be restored by the amount of extinguishment credits issued by the Director in exchange for the extinguishment of the right.
- J. An application to restore all or a portion of an irrigation grandfathered right under subsection (I) shall be on a form provided by the Director and include all of the following:
  - 1. A fee of \$250.00;
  - 2. The irrigation grandfathered right number of the right sought to be restored;
  - 3. If a certificate of extinguishment credits was issued by the Director for the extinguishment credits described in subsection (I)(3), the original certificate or an affidavit stating that the certificate is lost;
  - 4. A copy of a deed showing that the applicant owns the land to which the right or portion of the right sought to be restored was appurtenant and, if the application seeks to restore only a portion of the right, the legal description of the land to which that portion of the right was appurtenant;
  - 5. A certification by the applicant that the conditions described in subsection (I) are met; and
  - 6. An agreement in writing that if the right or portion of the right is restored, the flexibility account for the land to which the right or portion of the right is appurtenant shall have an account balance of zero at the beginning of the calendar year in which the right or portion of the right is restored and that any credits registered to the flexibility account after the right is restored may not be conveyed or sold to any person, including the applicant.

- K. The Director shall approve an application to restore all or a portion of an irrigation grandfathered right submitted under subsection (I) if the application includes the fee and the information required under subsection (J) and the Director determines that the information is correct. If the Director approves an application to restore all or a portion of an irrigation grandfathered right, all of the following apply:
  - 1. The irrigation water duty for the land to which the right or portion of the right is restored shall be the same as it was when the right was extinguished, unless the irrigation water duty is changed in a management plan adopted after the right was extinguished or is modified pursuant to A.R.S. § 45-575;
  - 2. The flexibility account for the land to which the right or portion of the right is appurtenant shall have an account balance of zero at the beginning of the calendar year in which the right or portion of the right is restored and any credits registered to the flexibility account after the right is restored may not be conveyed or sold to any person, including the applicant.
  - 3. The applicant shall forfeit the extinguishment credits described in subsection (I)(3); and
  - 4. The restored irrigation grandfathered right may be extinguished in exchange for extinguishment credits under this Section. For purposes of calculating the amount of extinguishment credits under R12-15-724(B), R12-15-725(B), R12-15-726(B) or R12-15-727(B), the calendar year of extinguishment is the calendar year in which the restored irrigation grandfathered right is extinguished.
- L. The Director shall review an application to restore an irrigation grandfathered right under subsection (I) pursuant to the licensing time-frame provisions in R12-15-401. The application shall have an administrative completeness review time-frame of 30 days, a substantive review time-frame of 90 days, and an overall time-frame of 120 days.

#### Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Amended by final rulemaking at 13 A.A.R. 1394, effective October 1, 2007 (Supp. 07-2). Amended by final rulemaking at 17 A.A.R. 1989, effective September 13, 2011 (Supp. 11-3).

#### R12-15-724. Phoenix AMA Calculation of Groundwater Allowance and Extinguishment Credits

- A. The Director shall calculate the groundwater allowance for a certificate or designation in the Phoenix AMA as follows:
  - 1. If the application is for a certificate, multiply the applicable allocation factor in the table below by the annual estimated water demand for the proposed subdivision.

MANAGEMENT PERIOD	ALLOCATION FACTOR
Third	4
Fourth	2
Fifth	1
After Fifth	0

- 2. If the application is for a designation and the applicant provided water to its customers prior to February 7, 1995, multiply 7.5 by the total volume of water provided by the applicant to its customers from any source during calendar year 1994, consistent with the municipal conservation requirements established for the applicant pursuant to

Section 5-103(A)(1) of the Second Management Plan for the Phoenix AMA.

3. If the application is for a designation and the applicant commenced providing water to its customers on or after February 7, 1995, the applicant's groundwater allowance is zero acre-feet.
4. For each calendar year of a designation, the Director shall calculate the volume of incidental recharge for a designated provider within the Phoenix AMA and add that volume to the designated provider's groundwater allowance. The Director shall calculate the volume of incidental recharge by multiplying the provider's total water use from any source in the previous calendar year by the standard incidental recharge factor of 4%. A designated provider may apply for a variance from the standard incidental recharge factor as provided in A.R.S. § 45-566.01(E)(1). The Director may establish a different incidental recharge factor for the designated provider if the provider demonstrates to the satisfaction of the Director that the ratio of the average annual amount of incidental recharge expected to be attributable to the provider during the management period, to the average amount of water expected to be withdrawn, diverted, or received for delivery by the provider for use within its service area during the management period, is different than 4%.

**B.** The Director shall calculate the extinguishment credits for the extinguishment of a grandfathered right in the Phoenix AMA as follows:

1. For the extinguishment of a type 2 non-irrigation grandfathered right, multiply the number of acre-feet indicated on the certificate by the difference between 2025 and the calendar year of extinguishment.
2. For the extinguishment of all or part of an irrigation grandfathered right, or all or part of a type 1 non-irrigation grandfathered right, multiply 1.5 acre-feet per acre by the number of irrigation acres associated with the extinguished irrigation grandfathered right or the number of acres to which the extinguished type 1 non-irrigation grandfathered right is appurtenant, and then multiply the product by the difference between 2025 and the calendar year of extinguishment, except that:
  - a. If only a portion of an irrigation grandfathered right or a type 1 non-irrigation grandfathered right is extinguished, the Director shall include in the calculation only those acres associated with the portion of the right that is extinguished; and
  - b. If an extinguished irrigation grandfathered right has a debit balance in the corresponding flexibility account established under A.R.S. § 45-467, the Director shall subtract the amount of the debit from the amount of the extinguishment.

**Historical Note**

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

**R12-15-725. Pinal AMA – Groundwater Allowance**

The Director shall calculate the groundwater allowance for a certificate or designation in the Pinal AMA as follows:

1. If the application is for a certificate, multiply the applicable allocation factor in the table below for the management period in effect on the date of application by the

annual estimated water demand for the proposed subdivision.

MANAGEMENT PERIOD/ DATE OF APPLICATION	ALLOCATION FACTOR
Third	10
Fourth	10
Fifth	5
After Fifth	0

2. If the application is for a designation:
  - a. If the applicant was designated as having an assured water supply as of October 1, 2007:
    - i. Multiply the applicant's service area population as of October 1, 2007 by 125 gallons per capita per day and multiply the product by 365 days. The service area population shall be determined using the methodology set forth in Section 5-103(D) of the Third Management Plan for the Pinal AMA.
    - ii. Convert the number of gallons determined in subsection (A)(2)(a)(i) into acre-feet by dividing the number by 325,851 gallons.
    - iii. Determine the number of residential lots within plats that were recorded as of October 1, 2007 but not served water as of that date, and to which the applicant commenced water service by January 1, 2010.
    - iv. Multiply the number of lots determined in subsection (A)(2)(a)(iii) of this Section by 0.35 acre-foot per lot.
    - v. Add the volume from subsection (A)(2)(a)(ii) of this Section and the volume from subsection (A)(2)(a)(iv) of this Section.
  - b. If the applicant provided water to its customers before October 1, 2007 but was not designated as having an assured water supply as of that date, and a complete and correct application for designation is filed before January 1, 2012, multiply the applicant's service area population as of October 1, 2007 by 125 gallons per capita per day and multiply the product by 365 days. The service area population shall be determined using the methodology in Section 5-103(D) of the Third Management Plan for the Pinal AMA.
  - c. If the applicant provided water to its customers before October 1, 2007 but was not designated as having an assured water supply as of that date, and a complete and correct application for designation is filed on or after January 1, 2012, the applicant's groundwater allowance is zero acre-feet.
  - d. If the applicant commenced providing water to its customers on or after October 1, 2007, the applicant's groundwater allowance is zero acre-feet.
3. For each calendar year of a designation, the Director shall calculate the volume of incidental recharge for a designated provider within the Pinal AMA and add that volume to the designated provider's groundwater allowance. The Director shall calculate the volume of incidental recharge by multiplying the provider's total water use from any source in the previous calendar year by the standard incidental recharge factor of 4%. A designated provider may apply for a variance from the standard incidental recharge factor by submitting a hydrologic

study demonstrating, to the satisfaction of the Director, that the ratio of the average annual amount of incidental recharge expected to be attributable to the designated provider during the management period to the average annual amount of water expected to be withdrawn, diverted or received for delivery by the designated provider for use within its service area during the management period is different than 4%. The hydrologic study shall include the amount of water withdrawn, diverted or received for delivery by the designated provider for use within its service area during each of the preceding five years and the amount of incidental recharge that was attributable to the designated provider during each of those years. The Director may establish a different incidental recharge factor for the designated provider upon such demonstration.

#### Historical Note

Adopted effective February 7, 1995 (Supp. 95-1). Section repealed; new Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Section repealed; new Section made by final rulemaking at 13 A.A.R. 1394, effective October 1, 2007 (Supp. 07-2). Amended by final rulemaking at 15 A.A.R. 1979, effective January 2, 2010 (Supp. 09-4). Amended by final rulemaking at 19 A.A.R. 4174, effective December 3, 2013 (Supp. 13-4).

#### R12-15-725.01. Pinal AMA – Extinguishment Credits Calculation

The Director shall calculate the extinguishment credits for the extinguishment of a grandfathered right in the Pinal AMA as follows:

1. For the extinguishment of a type 2 non-irrigation grandfathered right, multiply the number of acre-feet indicated on the certificate by the applicable allocation factor as determined under subsection (A)(3) or (A)(4) of this Section.
2. For the extinguishment of all or part of an irrigation grandfathered right, or all or part of a type 1 non-irrigation grandfathered right, an amount calculated by multiplying 1.5 acre-feet by the number of irrigation acres associated with the extinguished irrigation grandfathered right or the number of acres to which the extinguished type 1 non-irrigation grandfathered right is appurtenant, and then multiply that product by the applicable allocation factor as determined under subsection (A)(3) or (A)(4) of this Section, except that:
  - a. If only a portion of an irrigation grandfathered right or a type 1 non-irrigation grandfathered right is extinguished, the Director shall include in the calculation only those acres associated with the portion of the right that is extinguished; and
  - b. If an extinguished irrigation grandfathered right has a debit balance in the corresponding flexibility account established under A.R.S. § 45-467, the Director shall subtract the amount of the debit from the amount of the extinguishment credits.
3. Except as provided in subsection (A)(4) of this Section, in calculating the extinguishment credits for the extinguishment of a grandfathered right under subsection (A)(1) or (A)(2) of this Section, the Director shall use the allocation factor associated with the year in which the grandfathered right is extinguished, as shown in the table below.

Year	Allocation Factor
2010	100

2011	100
2012	100
2013	100
2014	100
2015	100
2016	100
2017	100
2018	100
2019	94
2020	88
2021	82
2022	76
2023	74
2024	72
2025	70
2026	68
2027	66
2028	64
2029	62
2030	60
2031	58
2032	56
2033	54
2034	52
2035	50
2036	48
2037	46
2038	44
2039	42
2040	40
2041	38
2042	36
2043	34
2044	32
2045	30
2046	28
2047	26
2048	24
2049	22
2050	20
2051	18
2052	16
2053	14
2054	12
2055	10
2056	8
2057	6
2058	4
2059	2
After 2059	0

4. If, before January 1, 2060, there is a moratorium on adding new member lands and member service areas in the Pinal AMA pursuant to A.R.S. § 45-576.06(A), in calculating the extinguishment credits for the extinguishment of a grandfathered right under subsection (A)(1) or (A)(2) of this Section, the Director shall use an allocation factor determined as follows:
  - a. If the grandfathered right is extinguished while the moratorium is in effect, the Director shall use the allocation factor associated with the year in which the moratorium first became effective, as shown in the table in subsection (A)(3) of this Section.

- b. If the grandfathered right is extinguished when the moratorium is no longer in effect, the Director shall use the allocation factor associated with the year determined pursuant to this subsection, as shown in the table in subsection (A)(3) of this Section. The Director shall determine the year as follows:
  - i. Subtract the year in which the moratorium first became effective from the year in which the moratorium ended.
  - ii. Subtract the difference in subsection (A)(4)(b)(i) of this Section from the year in which the grandfathered right was extinguished.

#### Historical Note

New Section made by final rulemaking at 19 A.A.R. 4174, effective December 3, 2013; with automatic repeal date of September 15, 2014 (Supp. 13-4). Section amended with automatic repeal, removed by final rulemaking at 20 A.A.R. 2673; effective September 12, 2014 (Supp. 14-3).

#### R12-15-725.02. Repealed

#### Historical Note

New Section made by final rulemaking at 19 A.A.R. 4174, effective September 15, 2014 (Supp. 13-4). Repealed by final rulemaking at 20 A.A.R. 2673, effective September 12, 2014 (Supp. 14-3).

#### R12-15-726. Prescott AMA Calculation of Groundwater Allowance and Extinguishment Credits

A. The Director shall calculate the groundwater allowance for a certificate or designation in the Prescott AMA as follows:

1. If the application is for a certificate of assured water supply, the Director shall:
  - a. Subtract the year of application from 2025,
  - b. Multiply the number determined in subsection (A)(1)(a) by the applicant's annual estimated water demand, and
  - c. Divide that product by two. The minimum volume that may be calculated in this subsection is zero acre-feet.
2. If the application is for a designation of assured water supply:
  - a. Except as provided in subsections (A)(3) and (A)(5), if the applicant was in existence as of January 12, 1999, and the application is filed before calendar year 2026, the Director shall:
    - i. Multiply by 100 the largest volume of groundwater determined by the Director to have been withdrawn by the applicant from within the Prescott AMA for use within the applicant's service area in any calendar year from 1995 through 1998, consistent with the municipal conservation requirements applicable under the second management plan for the Prescott active management area;
    - ii. Determine the volume of the applicant's total water demand, from any source, for 1999, consistent with the municipal conservation requirements established for the applicant in the management plan in effect on the date of application;
    - iii. Determine the volume of the applicant's total water demand, from any source, for 2014, consistent with the municipal conservation requirements established for the applicant in the

management plan in effect on the date of application;

- iv. Subtract the volume calculated in subsection (A)(2)(a)(ii) from the volume calculated in subsection (A)(2)(a)(iii) and then multiply the difference by 26;
  - v. Divide the product obtained in subsection (A)(2)(a)(iv) by two;
  - vi. If any residential groundwater uses, including residential groundwater uses served by an exempt well, in existence on August 21, 1998, have been replaced by permanent water service from the applicant after August 21, 1998, multiply one-half acre-foot of groundwater by the number of housing units receiving the service and then multiply that product by 100;
  - vii. Determine the volume of groundwater withdrawn by the applicant from within the Prescott active management area during the period beginning January 1, 1999, and ending December 31 of the calendar year before the date of the application;
  - viii. Multiply the volume of groundwater withdrawn by the applicant from within the Prescott active management area in 1999 by the number of calendar years in the period beginning with 1999 and ending with the calendar year before the date of application;
  - ix. Subtract from the volume calculated in subsection (A)(2)(a)(vii) the volume calculated in subsection (A)(2)(a)(viii). The volume calculated in this subsection shall not be less than zero; and
  - x. Add the volumes calculated in subsections (A)(2)(a)(i), (A)(2)(a)(v), and (A)(2)(a)(vi), and then subtract from the sum the volume calculated in subsection (A)(2)(a)(ix).
- b. If the applicant did not exist as of January 12, 1999, or the date of application occurs after calendar year 2025, the groundwater allowance is zero acre-feet, except that if any residential groundwater uses, including residential groundwater uses served by an exempt well, in existence on August 21, 1998, have been replaced by permanent water service from the applicant after August 21, 1998, the groundwater allowance is a volume of groundwater computed by multiplying one-half acre-foot of groundwater by the number of housing units receiving the service and multiplying that product by 100.
3. For the purpose of determining the groundwater allowance under subsection (A)(2)(a), at the request of the applicant, the Director shall replace the volume of groundwater calculated in subsection (A)(2)(a)(ii) through (v) with the amount of groundwater necessary for the applicant to serve the residential lots described in subsection (A)(4):
    - a. To compute this amount of groundwater, the Director shall:
      - i. Determine the average dwelling occupancy within the applicant's service area and multiply that average occupancy by an amount of groundwater, calculated by multiplying 150 gallons per capita per day by 365 days; and
      - ii. Multiply the product in subsection (A)(3)(a)(i) by the number of residential lots described in

- subsection (A)(4), and then multiply that product by 100.
- b. The Director shall not include the amount computed in subsection (A)(3)(a) within the amount of groundwater that the applicant may use under subsection (A)(2)(a) until a final plat for the lots has been recorded.
4. The Director shall include residential lots that will be served by the applicant in the calculation made under subsection (A)(3) if the lots meet all of the following criteria:
    - a. A preliminary plat for the lots was submitted to the city, town, or county on or before August 21, 1998, and the final plat is subsequently recorded;
    - b. The lots were not being served water on or before August 21, 1998; and
    - c. Any one of the following applies:
      - i. The lots were included within an application for certificate of assured water supply that was filed before August 21, 1998, the Director determined that the application was complete and correct as of August 21, 1998, and the Director subsequently issued a certificate of assured water supply for the lots.
      - ii. A preliminary plat for the lots was approved by a city, town, or county on or before August 21, 1998. At the time the preliminary plat was approved, the subdivider of the lots obtained a written commitment of water service from a municipal provider that was designated as having an assured water supply and the provider demonstrated to the satisfaction of the Director that sufficient water is physically available to serve the lots under the criteria in R12-15-716.
  5. For the purpose of determining the groundwater allowance under subsection (A)(2)(a), if the applicant makes the request described in subsection (A)(3), the Director shall replace the volume of groundwater calculated in subsection (A)(2)(a)(viii) with an amount of groundwater calculated as follows. The Director shall:
    - a. Determine the number of calendar years in the period beginning with 1999 and ending with the calendar year before the date of application and multiply that number of years by the largest volume of groundwater determined by the Director to have been withdrawn by the applicant from within the Prescott active management area for use within the applicant's service area in any calendar year from 1995 through 1998, consistent with the municipal conservation requirements applicable under the second management plan for the Prescott active management area;
    - b. Determine the average dwelling occupancy within the applicant's service area and multiply that average dwelling occupancy by an amount of groundwater calculated by multiplying 150 gallons per capita per day by 365 days;
    - c. For each year in the period beginning with 1999 and ending with the calendar year before the date of application, determine the number of the residential lots that meet the criteria in subsection (A)(4) and were served water by the applicant as of July 1 of the relevant year and add the number of these residential lots determined for each year;
      - d. Multiply the volume of groundwater calculated in subsection (A)(5)(b) by the number of residential lots in subsection (A)(5)(c); and
      - e. Add the volumes of groundwater from subsections (A)(5)(a) and (A)(5)(d).
- B.** The Director shall calculate the extinguishment credits for extinguishing a grandfathered right in the Prescott AMA as follows:
1. For the extinguishment of a type 2 non-irrigation grandfathered right, multiply the number of acre-feet indicated on the certificate by the difference between 2025 and the calendar year of extinguishment.
  2. For the extinguishment of an irrigation grandfathered right or a type 1 non-irrigation grandfathered right:
    - a. Through December 31, 2010:
      - i. If the irrigation acres associated with the extinguished right were irrigated for at least four of the six calendar years preceding January 1, 2000, multiply 1.5 acre-feet per acre by the number of irrigation acres associated with the extinguished right or the number of acres to which the extinguished right is appurtenant and multiply that product by 25.
      - ii. If the irrigation acres associated with the extinguished right were not irrigated for at least four of the six calendar years preceding January 1, 2000, multiply 1.5 acre-feet per acre by the number of irrigation acres associated with the extinguished right or the number of acres to which the extinguished right is appurtenant and multiply the product by the difference between 2025 and the year in which the statement of intent to extinguish is filed.
    - b. After December 31, 2010, multiply 1.5 acre-feet per acre by the number of irrigation acres associated with the extinguished right or the number of acres to which the extinguished right is appurtenant and multiply the product by the difference between 2025 and the year in which the statement of intent to extinguish is filed.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

**R12-15-727. Tucson AMA Calculation of Groundwater Allowance and Extinguishment Credits**

- A.** The Director shall calculate the groundwater allowance for a certificate or designation in the Tucson AMA as follows:
1. If the application is for a certificate, multiply the applicable allocation factor in the table below by the annual estimated water demand for the proposed subdivision.

MANAGEMENT PERIOD	ALLOCATION FACTOR
Third	8
Fourth	4
Fifth	2
After Fifth	0

2. If the application is for a designation and the applicant provided water to its customers before February 7, 1995, multiply 15 by the total volume of water provided by the applicant to its customers from any source during calendar year 1994, consistent with the municipal conservation requirements established for the applicant pursuant to

Section 5-103(A)(1) of the Second Management Plan for the Tucson AMA.

3. If the application is for a designation and the applicant commenced providing water to its customers on or after February 7, 1995, the applicant's groundwater allowance is zero acre-feet.
  4. For each calendar year of the designation, the Director shall calculate the volume of incidental recharge for a designated provider within the Tucson AMA and add that volume to the designated provider's groundwater allowance. The Director shall calculate the volume of incidental recharge by multiplying the provider's total water use from any source in the previous calendar year by the standard incidental recharge factor of 4%. A designated provider may apply for a variance from the standard incidental recharge factor as provided in A.R.S. § 45-566.01(E)(1). The Director may establish a different incidental recharge factor for the designated provider if the provider demonstrates to the satisfaction of the Director that the ratio of the average annual amount of incidental recharge expected to be attributable to the provider during the management period, to the average amount of water expected to be withdrawn, diverted, or received for delivery by the provider for use within its service area during the management period, is different than 4%.
- B.** The Director shall calculate the extinguishment credits for the extinguishment of a grandfathered right in the Tucson AMA as follows:
1. For the extinguishment of a type 2 non-irrigation grandfathered right, multiply the number of acre-feet indicated on the certificate by the difference between 2025 and the calendar year of extinguishment.
  2. For the extinguishment of all or part of an irrigation grandfathered right, or all or part of a type 1 non-irrigation grandfathered right, multiply 1.5 acre-feet per acre by the number of irrigation acres associated with the extinguished irrigation grandfathered right or the number of acres to which the extinguished type 1 non-irrigation grandfathered right is appurtenant, and then multiply the product by the difference between 2025 and the calendar year of extinguishment, except that:
    - a. If only a portion of an irrigation grandfathered right or a type 1 non-irrigation grandfathered right is extinguished, the Director shall include in the calculation only those acres associated with the portion of the right that is extinguished; and
    - b. If an extinguished irrigation grandfathered right has a debit balance in the corresponding flexibility account established under A.R.S. § 45-467, the Director shall subtract the amount of the debit from the amount of the extinguishment.
- Historical Note**
- New Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).
- R12-15-728. Reserved**
- R12-15-729. Remedial Groundwater; Consistency with Management Goal**
- A.** Use of remedial groundwater by a municipal provider before January 1, 2025, is deemed consistent with the management goal of the AMA in which the remedial groundwater is withdrawn and is excluded when determining compliance with management goal requirements in this Article if all of the following apply:
1. The Director determines that the remedial groundwater use is consistent with the management goal under subsection (F) or (H) of this Section or the remedial groundwater use is consistent with the management goal under subsection (J) of this Section; and
  2. The municipal provider complies with the metering and reporting requirements in subsection (K) of this Section.
- B.** A municipal provider that is using remedial groundwater or that has agreed in a consent decree or other document approved by ADEQ or the EPA to use remedial groundwater may apply to the Director for a determination that the municipal provider's use of the remedial groundwater is consistent with the management goal of the active management area by submitting an application on a form provided by the Director with the information required in subsection (D) of this Section before January 1, 2010.
- C.** A municipal provider filing an application under subsection (B) of this Section for remedial groundwater use associated with a treatment plant in operation before June 15, 1999, may request an increase in the project's annual authorized volume at the time the application is filed. The Director shall grant the request and increase the annual authorized volume up to the maximum treatment capacity of the treatment plant if the municipal provider submits evidence that an increase in the annual authorized volume is necessary to further the purpose of the remedial action project and that the increase is not in violation of the consent decree or other document approved by ADEQ or the EPA for the remedial action project.
- D.** An applicant shall provide the following with an application submitted under subsection (B) of this Section:
1. A document evidencing ADEQ's or EPA's approval of the municipal provider's withdrawal and use of remedial groundwater, such as a remedial action plan, record of decision, or consent decree;
  2. The volume of remedial groundwater that will be withdrawn and used annually by the municipal provider and the purpose for which the remedial groundwater will be used;
  3. The time period during which the remedial groundwater will be withdrawn and used by the municipal provider;
  4. A reference to the annual authorized volume provided in the document submitted pursuant to subsection (D)(1) of this Section or, if the document submitted pursuant to subsection (D)(1) does not specify the annual authorized volume for the project, the annual authorized volume claimed by the municipal provider and a written justification for that volume;
  5. If the approved remedial action project is currently operating, the volume of remedial groundwater withdrawn pursuant to the project for each year before the year in which the application is filed;
  6. The designated provider or certificate to which the remedial groundwater will be pledged;
  7. If the municipal provider is requesting an increase in the annual authorized volume of the project pursuant to subsection (C) of this Section, evidence that the increase is necessary to further the purpose of the remedial action project and that the increase is not in violation of the consent decree or other document approved by ADEQ or the EPA for the project;
  8. The name and telephone number of a person the Department may contact regarding the application; and
  9. Any other information reasonably required to assist the Director in making the determination under subsection (F) of this Section.



- E. After receiving an application under subsection (B) of this Section, the Director shall determine that the application is complete and correct if it contains all the information required in subsection (D) of this Section and the Director verifies that the information is accurate. If the Director determines that the application is complete and correct, the Director shall assign a priority date to the application according to the following:
1. If the Director determines that the application was complete and correct when filed, the priority date of the application is the date the application was filed.
  2. If the Director determines that the application was not complete or correct when filed because of minor deficiencies, the Director shall notify the applicant of the deficiencies in writing and give the applicant 30 days to correct the deficiencies. If the applicant submits the necessary information to correct the deficiencies within 30 days after the date of the notice, the priority date of the application is the date the application was filed.
  3. If the Director determines that the application was not complete or correct when filed and that the deficiencies are not minor, the Director shall notify the applicant of the deficiencies and give the applicant at least 60 days to submit the necessary information to correct the deficiencies. If the applicant submits the necessary information to correct the deficiencies within the time allowed by the Director, the priority date of the application is the date the applicant submits the necessary information to correct the deficiencies.
- F. The Director shall approve a complete and correct application filed under subsection (B) of this Section if the Director determines that the applicant will use remedial groundwater before January 1, 2025. If the Director approves a municipal provider's application, the Director shall calculate the annual amount of remedial groundwater use that is deemed consistent with the management goal of the AMA as follows:
1. The Director shall determine the total annual amount of remedial groundwater use in all AMAs that is deemed to be consistent with the management goal under this subsection and subsections (H) and (I) of this Section for applications with a priority date earlier than the priority date of the municipal provider's application.
  2. If the amount determined in subsection (F)(1) of this Section is less than 65,000 acre-feet and the difference between those amounts is equal to or greater than the municipal provider's authorized remedial groundwater use during the year, the amount of remedial groundwater use by the municipal provider that is deemed to be consistent with the management goal during the year is the amount of the municipal provider's authorized remedial groundwater use during the year.
  3. If the amount determined in subsection (F)(1) of this Section is less than 65,000 acre-feet and the difference between those amounts is less than the municipal provider's authorized remedial groundwater use during the year, the amount of remedial groundwater use by the municipal provider that is deemed consistent with the management goal during the year is the amount of the municipal provider's authorized remedial groundwater use during the year up to the difference between the amount determined in subsection (F)(1) and 65,000 acre-feet, plus a percentage of the municipal provider's authorized remedial groundwater use during the year that exceeds the difference. The percentage is 50 percent for calendar years 2000 through 2009, 25 percent for calendar years 2010 through 2019, and 10 percent for calendar years 2020 through 2024.
  4. If the amount determined in subsection (F)(1) of this Section is equal to or greater than 65,000 acre-feet, the amount of remedial groundwater use by the municipal provider that is deemed consistent with the management goal during the year is a percentage of the municipal provider's authorized remedial groundwater use during the year. The percentage is 50 percent for calendar years 2000 through 2009, 25 percent for calendar years 2010 through 2019, and 10 percent for calendar years 2020 through 2024.
- G. If the Director determines that remedial groundwater use by a municipal provider is consistent with the management goal of the active management area under subsection (F) of this Section, the determination shall apply to remedial groundwater used by the municipal provider between the priority date of the application and January 1, 2025.
- H. If, before the effective date of this Section, a municipal provider filed an application with the Director requesting that the Director determine that the provider's use of remedial groundwater pursuant to an approved remedial action project is consistent with the management goal of the active management area under Laws 1997, Ch. 287, § 52, as amended by Laws 1999, Ch. 295, § 50, the following shall apply:
1. If the Director approved the application before the effective date of this Section and determined the annual amount of remedial groundwater use by the applicant that will be considered consistent with the management goal, the Director's determination shall apply after the effective date of this Section and the Director shall include the annual amount of remedial groundwater use determined by the Director to be consistent with the management goal in the total amount of remedial groundwater determined in subsection (F)(1) of this Section.
  2. If the Director did not approve the application before the effective date of this Section, the Director shall process the application under subsections (E) and (F) of this Section. If the Director approves the application, the Director's determination shall apply to remedial groundwater withdrawn and used by the municipal provider pursuant to the approved remedial action project from the priority date of the application until January 1, 2025.
- I. A municipal provider that is using remedial groundwater that has been determined by the Director to be consistent with the management goal under subsection (F) or (H) of this Section may apply to the Director for an increase in the annual authorized volume of the approved remedial action project as follows:
1. The applicant shall submit an application on a form provided by the Director.
  2. The Director shall determine that the application is complete and correct if it contains all of the required information and the Director verifies that the information is accurate.
  3. If the Director determines that an application filed under this subsection is complete and correct, the Director shall assign a priority date to the application using the criteria in subsection (E) of this Section.
  4. The Director shall approve the application if the municipal provider submits information that demonstrates one of the following:
    - a. The annual authorized volume of the approved remedial action project has been increased in a consent decree or other document approved by ADEQ or the EPA; or
    - b. An increase is necessary to further the purpose of the approved remedial action project, and the increase is

not in violation of the consent decree or other document approved by ADEQ or the EPA for the project.

5. If the Director approves the application, the Director shall determine the additional annual amount of remedial groundwater use by the municipal provider that is deemed consistent with the management goal of the active management area, using the criteria in subsections (F) and (G) of this Section. The Director shall include the annual amount of remedial groundwater use determined by the Director to be consistent with the management goal under this subsection in the total amount of remedial groundwater determined in subsection (F)(1) of this Section.
- J. Until January 1, 2025, use of remedial groundwater by a municipal provider during a year is deemed consistent with the management goal of the AMA in which the remedial groundwater was withdrawn without approval of the Director under subsection (F) or (H) of this Section if:
  1. The total annual amount of remedial groundwater withdrawn from all wells pursuant to the approved remedial action project does not exceed 250 acre-feet; and
  2. If remedial groundwater withdrawals pursuant to the approved remedial action project commenced before June 15, 1999, the municipal provider notified the Director in writing of the volume and duration of the anticipated withdrawals on or before August 15, 1999. If remedial groundwater withdrawals pursuant to the approved remedial action project commenced on or after June 15, 1999, the municipal provider gave written notice of the volume and duration of the anticipated withdrawals on or before August 15, 1999, or before the date the withdrawals commenced, whichever is later. If the municipal provider gives notice after the effective date of this Section, the municipal provider shall include or attach all of the following:
    - a. A copy of a document evidencing ADEQ's or EPA's approval of the municipal provider's withdrawal and use of remedial groundwater, such as a remedial action plan, record of decision, or consent decree;
    - b. The volume of remedial groundwater that will be withdrawn and used annually by the municipal provider and the purpose for which the remedial groundwater will be used;
    - c. The time period during which the remedial groundwater will be withdrawn and used by the municipal provider;
    - d. If the approved remedial action project is currently operating, the volume of remedial groundwater withdrawn pursuant to the project for each year before the year in which the application is filed;
    - e. The designated provider or certificate of assured water supply to which the remedial groundwater will be pledged; and
    - f. The name and telephone number of a person the Department may contact regarding the exemption.
- K. A municipal provider withdrawing remedial groundwater that has been determined to be consistent with the management goal under subsection (F) or (H) of this Section or that is consistent with the management goal under subsection (J) of this Section shall meter the remedial groundwater withdrawals separately from groundwater withdrawn pursuant to another groundwater withdrawal authority. The municipal provider shall include in its annual reports, filed under A.R.S. § 45-632, the amount of remedial groundwater withdrawn during the reporting year that is consistent with the management goal

under this Section and the purposes for which the remedial groundwater was used.

#### Historical Note

New Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3).

#### R12-15-730. Repealed

#### Historical Note

New Section made by final rulemaking at 12 A.A.R. 3475, effective September 12, 2006 (Supp. 06-3). Section repealed by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). New Section made by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Section repealed by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

### ARTICLE 8. WELL CONSTRUCTION AND LICENSING OF WELL DRILLERS

#### R12-15-801. Definitions

In addition to the definitions set forth in A.R.S. §§ 45-101, 45-402, and 45-591 and in R12-15-202, the following words and phrases in this Article shall have the following meanings, unless the context otherwise requires:

1. "Annular space" means the space between the outer well casing and the borehole wall. An annular space also means the space between an inner well casing and outer well casing.
2. "Aquifer" means an underground formation capable of yielding or transmitting usable quantities of water.
3. "Artesian aquifer" means an aquifer which is overlain by a confining formation and which contains groundwater under sufficient pressure for the water to rise above the top of the aquifer.
4. "Artesian well" means a well that penetrates an artesian aquifer.
5. "Bentonite" means a colloidal clay composed mainly of sodium montmorillonite, a hydrated aluminum silicate.
6. "Cap" means a tamper-resistant, watertight steel plate of at least one-quarter inch thickness on the top of all inside and outside casings of a well.
7. "Casing" means the tubing or pipe installed in the borehole during or after drilling to support the sides of the well and prevent caving.
8. "Confining formation" means the relatively impermeable geologic unit immediately overlying an artesian aquifer.
9. "Consolidated formation" means a naturally occurring geologic unit through or into which a well is drilled, having a composition, density, and thickness which will provide a natural hydrologic barrier.
10. "Department" means the Arizona Department of Water Resources.
11. "Director" means the Director of the Arizona Department of Water Resources.
12. "Drilling card" means a card which is issued by the Director to the well drilling contractor or single well licensee designated in the notice of intent or permit, authorizing the well drilling contractor or licensee to drill the specific well or wells in the specific location as noticed or permitted.
13. "Exploration well" means a well drilled in search of geophysical, mineralogical or geotechnical data.
14. "Flowing artesian well" means an artesian well in which the pressure is sufficient to cause the water to rise above the land surface.

15. "Grout" or "cement grout" means cement mixed with no more than 50% sand by volume, and containing no more than six gallons of water per 94 pound sack of cement.
16. "Mineralized water" means any groundwater containing over 3000 milligrams per liter (mg/l) of total dissolved solids or containing any of the following chemical constituents above the indicated concentrations:
 

Constituent	Concentration (mg/l)
Arsenic	0.05
Barium	1.0
Cadmium	0.01
Chromium (total)	0.05
Fluoride	4.0
Lead	0.05
Mercury	0.002
Nitrate (as N)	10.0
Selenium	0.01
Silver	0.05
17. "Monitor well" means a well designed and drilled for the purpose of monitoring water quality within a specific depth interval.
18. "Open well" means a well which is not equipped with either a cap or a pump.
19. "Perforations" means a series of openings in a casing, made either before or after installation of the casing, to permit the entrance of water into the well.
20. "Piezometer well" means a well that is designed and drilled for the purpose of monitoring water levels within a specific depth interval.
21. "Pitless adaptor" means a commercially manufactured watertight unit or device designed for attachment to a steel well casing which permits discharge from the well below the land surface and allows access into the well casing while preventing contaminants from entering the well.
22. "Polluted water" means water whose chemical, physical, biological, or radiological integrity has been degraded through the artificial or natural infusion of chemicals, radionuclides, heat, biological organisms, or mineralogical or other extraneous matter.
23. "Pressure grouting" means a process by which a grout is confined within the borehole or casing of a well by the use of retaining plugs, packers, or a displacing fluid by which sufficient pressure is applied to drive the grout into and within the annular space or interval to be grouted.
24. "Qualifying party" means a partner, officer, or employee of a well drilling contractor, who has significant supervisory responsibilities and who has been designated to take the licensing examination for that well drilling contractor.
25. "Single well license" means a license issued to a person which allows the drilling or modification of a single exempt well on land owned by that person.
26. "Vadose zone well" means a well constructed in the interval between the land surface and the top of the static water level.
27. "Vault" means a tamper-resistant watertight structure used to complete a well below the land surface.
28. "Well abandonment" means the modification of the structure of a well by filling or sealing the borehole so that water may not be withdrawn or obtained from the well.
29. "Well drilling" means the construction or repair of a well, or the modification, except for abandonment, of a well, regardless of whether compensation is involved, including any deepening or additional perforating, any addition of casing or change to existing casing construction, and any other change in well construction not normally asso-

ciated with well maintenance, pump replacement, or pump repair.

30. "Well drilling contractor" means an individual, public or private corporation, partnership, firm, association, or any other public or private organization or enterprise that holds a well driller's license pursuant to A.R.S. § 45-595(B).

#### Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2).

#### R12-15-802. Scope of Article

This Article shall apply to man-made openings in the earth through which water may be withdrawn or obtained from beneath the surface of the earth, including all water wells, monitor wells and piezometer wells. It shall also apply to geothermal wells to the extent provided by A.R.S. § 45-591.01, and all exploration wells and grounding or cathodic protection holes greater than 100 feet in depth. However, this Article shall not apply to the following:

1. Man-made openings in the earth not commonly considered to be wells, such as construction and mining blast holes, underground mines and mine shafts, open pit mines, tunnels, septic tank systems, caissons, basements, and natural gas storage cavities.
2. Injection wells and vadose zone wells which are subject to regulation by the Arizona Department of Environmental Quality.
3. Oil, gas, and helium wells drilled pursuant to the provisions of A.R.S. Title 27.
4. Drilled boreholes in the earth less than 100 feet in depth which are made for purposes other than withdrawing or encountering groundwater, such as exploration wells and grounding or cathodic protection holes; except that in the event that groundwater is encountered in the drilling of a borehole, this Article shall apply.

#### Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2).

#### R12-15-803. Well Drilling and Abandonment Requirements; Licensing and Supervision Requirements

- A. A person shall not drill or abandon a well, or cause a well to be drilled or abandoned, in a manner which is not in compliance with A.R.S. Title 45, Chapter 2, Article 10, and the rules adopted thereunder.
- B. A person, other than a single well licensee or a bona fide employee of a well drilling contractor, shall not engage in well drilling or abandonment without first securing a well drilling license in accordance with R12-15-804, R12-15-805 and R12-15-806.
- C. A qualifying party of a well drilling contractor shall provide direct and personal supervision of the contractor's employees to ensure that all wells are constructed and abandoned in accordance with this Article.

#### Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Section 12-15-803 amended and the text of former Section R12-15-804 renumbered to subsections (B) and (C) and amended effective June 18, 1990 (Supp. 90-2).

#### R12-15-804. Application for well drilling license

- A. An applicant for a well drilling license shall submit a verified application of a form prescribed and furnished by the Director which contains the following information:
  1. A designation of the classification of license sought by the applicant.

2. If the applicant is an individual, the individual's name, address and telephone number.
  3. If the applicant is a partnership, the names, addresses, and telephone numbers of all partners, with a designation of any limited partners.
  4. If the applicant is a corporation, association or other organization, the names, addresses and telephone numbers of the directors and of the president, vice president, secretary and treasurer, or the names, addresses and telephone numbers of the functional equivalent of such officers.
  5. The address or location of the applicant's place of business, the mailing address if it is different from the applicant's place of business, and if applicant is a corporation, the state in which it is incorporated.
  6. The name, address and telephone number of each qualifying party, the qualifying party's relationship to the applicant, and a detailed history of each qualifying party's supervisory responsibilities and well drilling experience, including previous employers, job descriptions, duties and types of equipment utilized.
  7. The names, addresses and telephone numbers of three persons not members of each qualifying party's immediate family, who can attest to each qualifying party's good character and reputation, experience in well drilling, and qualifications for licensing.
  8. Such additional information relevant to the applicant's or qualifying party's experience and qualifications in well drilling as the Director may require.
- B.** An applicant shall notify the Director in writing of any change in the information contained in the application within 30 days after such change.
- C.** The Director shall not issue a license under this Article if the applicant or a qualifying party lacks good character and reputation.
- D.** Prior to the issuance of a license, a qualifying party shall demonstrate three years of experience, dealing specifically with the type of drilling for which the applicant is applying for a license. This experience requirement may be reduced if the Director finds that the qualifying party has clearly and convincingly demonstrated a high degree of understanding and knowledge of well drilling techniques for the type of drilling for which the applicant is applying for a license. In no case, however, shall the practical experience requirement be less than two years.

#### Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Former Section R12-15-804 renumbered to R12-15-803(B) and (C), new Section R12-15-804 adopted effective June 18, 1990 (Supp. 90-2).

#### R12-15-805. Examination for Well Drilling License

- A.** The Director shall offer an examination for a well drilling license no less than six times yearly. The examination shall be administered to those eligible applicants whose applications were submitted at least 20 days prior to the date of the examination. The examination shall consist of a section on legal requirements, a section on general knowledge and one or more of six specialized sections. The section on legal requirements shall test the qualifying party's knowledge of A.R.S. Title 45, Chapter 2, Article 10, and the rules adopted thereunder. The section on general knowledge shall test the qualifying party's knowledge of general hydrologic concepts, principles, and practices in the well construction industry, and shall test knowledge of groundwater protection, pollution, water quality and public health effects. The specialized sections shall test the qualifying party's knowledge in the following classifications:
1. Cable tool drilling in rock and unconsolidated material.
  2. Air rotary drilling in rock and unconsolidated material.
  3. Mud rotary drilling in rock and unconsolidated material.
  4. Reverse rotary drilling in rock and unconsolidated material.
  5. Jetting and driving wells in unconsolidated material.
  6. Boring and augering in unconsolidated material.
- B.** Only the qualifying party, department personnel, and persons having the express permission of the Director shall be permitted in the examination room while the examination is in progress. The qualifying party shall not bring books or notes into the examination room, or communicate by any means whatsoever while the examination is in progress without the express permission of the presiding examiner. The qualifying party shall not leave the examination room while the examination is in progress without first obtaining the permission of the presiding examiner. The Director may disqualify an applicant for violation of this subsection.
- C.** To obtain a well drilling license, a qualifying party of the applicant shall pass the section on legal requirements, the section on general knowledge, and one or more specialized sections. Each section of the examination shall be graded separately. The passing grade on each section shall be 70 percent.
- D.** No person may take the examination more than twice during any 12 months.
- E.** The Director may exempt a qualifying party from taking the section on general knowledge, and one or more of the specialized sections, if the qualifying party provides proof of passing an equivalent examination given by the National Ground Water Association.

#### Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Section repealed, new Section adopted effective June 18, 1990 (Supp. 90-2). Amended by final rulemaking at 13 A.A.R. 3022, effective October 6, 2007 (Supp. 07-3).

#### R12-15-806. License Fee; Issuance and Term of Licenses; Renewal; Display of License

- A.** The fee for a well driller's license shall be \$50.00.
- B.** Upon submittal of the license fee and satisfactory completion of an examination, the Director shall issue the applicant a well drilling license. The license shall be numbered and shall state the specialized classifications of drilling activities for which the applicant is qualified and licensed. The applicant shall be licensed in only those classifications for which the qualifying party has passed the specialized sections of the examination. If the qualifying party subsequently passes other specialized sections, the applicant's license shall be amended. The applicant shall pay a fee of \$50.00 for the amendment of a well driller's license.
- C.** A well drilling contractor shall notify the Director in writing within 30 days of the date on which the well drilling contractor no longer has a qualifying party for one or more of its specialized drilling classifications. Upon such notification, the Director may revoke or suspend part or all of the well drilling license of the well drilling contractor and require a new qualifying party to take and pass the examination.
- D.** A well drilling license shall expire each year on June 30th, unless renewed pursuant to subsection (E).
- E.** A person may renew a well drilling license by submitting an application for renewal on forms prescribed and furnished by the Director and a fee of \$50.00. If the application and renewal fee are postmarked on or before June 30, the well drilling contractor may operate as a licensee until actual issuance of the renewal license. A license which has expired may be reactivated.

vated and renewed within one year of its expiration by filing the required application and a reactivation fee of \$50.00. If a license has been expired for one or more years for failure to renew, the well drilling contractor shall apply for a new license and repeat the examination.

- F. A well drilling contractor shall prominently display the well drilling license number on all well drilling rigs owned or operated by the contractor in this state. Good quality paint or commercial decal numbers shall be used in placing each identification number on the drilling rig. The license number shall not be inscribed in crayon, chalk, pencil, or other temporary markings.

#### Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

#### R12-15-807. Single Well License

- A. An applicant for a single well license pursuant to A.R.S. § 45-595(D) shall submit a verified application on forms prescribed and furnished by the Director, which shall include:
1. The name and address of the applicant.
  2. The location of the well and whether the applicant owns the land.
  3. The type of drill rig to be used and the owner of the rig.
  4. The proposed design of the well or method of abandonment.
  5. The names of any people who will be assisting the applicant in the drilling or abandonment of the well, and whether the applicant will compensate them for their efforts.
  6. The applicant's experience, if any, in well drilling or abandonment.
  7. Such other information as the Director may require relevant to the applicant's experience and qualifications in well drilling or abandonment.
- B. The Director shall offer the single well examination no less than six times yearly and shall administer the examination to those eligible applicants whose applications were submitted at least 20 days prior to the date of the examination.
- C. The single well examination shall be of a form prescribed and furnished by the Director and shall test the applicant's knowledge of abandonment techniques, or those minimum well construction requirements and drilling techniques applicable to the proposed design of the well. The passing grade on the sections of the examination dealing with construction requirements and drilling techniques, respectively, shall be 70 percent.
- D. Rule R12-15-805 relating to testing procedures shall be fully applicable.
- E. Applicants who twice fail the examination shall wait a minimum of 90 days before re-testing.
- F. Upon passing the examination, the applicant shall be issued a single well license, authorizing the applicant to drill or abandon one exempt well at the location specified in the application. The license shall be valid for a period of one year from issuance.

#### Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2).

#### R12-15-808. Revocation of License

The Director may revoke, suspend, or place on probationary status a well drilling license issued pursuant to R12-15-806, or a single well license, for good cause, including:

1. Intentionally making a misstatement of fact on any filing with the Department.
2. Violating any provision of A.R.S. Title 45, Chapter 2, Article 10, and the rules promulgated thereunder, or aiding and abetting in such a violation.

#### Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2). Section number corrected (Supp. 93-1).

#### R12-15-809. Notice of Intention to Drill

A notice of intention to drill required to be filed pursuant to A.R.S. § 45-596 shall be signed by the owner or lessee of the property upon which the well is to be drilled.

#### Historical Note

Adopted effective March 5, 1984 (Supp. 84-2).

#### R12-15-810. Authorization to Drill

- A. A well drilling contractor or single well licensee may commence drilling a well only if the well drilling contractor or licensee has possession of a drilling card at the well site issued by the Director in the name of the well drilling contractor or licensee, authorizing the drilling of the specific well in the specific location.
- B. In extraordinary situations not requiring a permit but only a notice of intention to drill, the Director may grant a request by telephone for emergency authorization of commencement of drilling prior to the actual receipt by the well driller of the drilling card. Within seventy-two hours after such a request is granted, the well driller shall file a written statement indicating the nature and reasons for the request, and the date, time and Department employee granting the request, and the well owner shall file a notice of intent to drill if such a notice has not previously been filed.

#### Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2). Amended to correct typographical error under A.A.C. R1-1-109 (Supp. 01-2). Amended by final rulemaking at 13 A.A.R. 3022, effective October 6, 2007 (Supp. 07-3).

#### R12-15-811. Minimum Well Construction Requirements

- A. Well casing
1. Casing shall be of a sufficient strength and wall thickness to hold the borehole open and survive any necessary grouting. A person shall use only steel or thermoplastic casing in the construction of a well, unless the person has received a variance from the Director pursuant to R12-15-820. The well casing or an extension of the casing shall extend a minimum of one foot above ground level. When installing a pitless adaptor, the casing may be terminated below ground level for aesthetic reasons or freeze protection purposes. Casing made of, or which has been exposed to, hazardous or potentially harmful materials, such as asbestos, shall not be used.
  2. All well casing joints or overlaps shall be made watertight to prevent the degradation of the water supply by the migration of inferior quality water. Except as provided in subsection (H) of this rule, any openings in the casing that will be above the water level in the well, such as bar holes, cracks or perforations, shall be completely plugged or sealed.

3. Thermoplastic casing shall be installed only in an over sized drillhole without driving. Thermoplastic casing shall conform with American Society for Testing and Materials Standard Specification F480-89 (1989), which is incorporated herein by reference and is on file with the Office of the Secretary of State. Rivets or screws used in the casing joints shall not penetrate the inside of the casing.
  4. Steel casing shall be new or in like-new condition, free from pits or breaks, and shall conform with American Society for Testing and Materials Standard Specification A53-89a (1989), A139-89b (1989) or A312/A312M-89a (1989), whichever is applicable, all of which are incorporated herein by reference and are on file with the Office of the Secretary of State.
  5. Copies of The American Society for Testing and Materials standard specifications referred to in subsections (3) and (4) above may be obtained with these rules at the Office of the Secretary of State of the State of Arizona, State Capitol, West Wing, Phoenix, Arizona 85007; from the Department of Water Resources, 3550 N. Central Avenue, Phoenix, AZ 85012; and from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959. This rule does not include any later amendments or editions of those standard specifications.
- B. Surface seal**
1. Except as provided in subsections (2) and (4) of this subsection, and R12-15-817(B)(1), all wells shall be constructed with a surface seal as herein provided. The seal shall consist of steel casing, one foot of which shall extend above ground level, and cement grout placed in one continuous application from the bottom of the zone to be grouted to the land surface. If a pitless adaptor is utilized, the cement grout may terminate at the bottom of the pitless adaptor. The minimum length of the steel casing shall be 20 feet. The minimum annular space between the casing and the borehole for placement of grout shall be one and one-half inches. Curing additives, such as calcium chloride, shall not exceed ten percent of the total volume of grout. Bentonite as an additive shall not exceed five percent of the total volume. The minimum length of the surface seal shall be 20 feet. Any annular space between the outer casing and an inner casing shall be completely sealed to prevent contamination of the well.
  2. All hand-dug wells shall be constructed with a watertight curbing extending, at a minimum, from one foot above the natural ground level to the static water level, or into the confining formation if the aquifer is artesian. The curbing shall consist of poured cement grout or casing surrounded by cement grout. Concrete block with cement grout and rock with cement grout may also be used. The poured cement grout shall not be less than six inches thick. If casing is to be used, the minimum annular space between the casing and the borehole shall be three inches. Hand-dug wells shall be sealed at the surface with a watertight, tamper-resistant cover to prevent contaminants from entering the well.
  3. All wells constructed by jetting or driving shall have cement grout placed in the annular space to a minimum depth of six feet. The minimum annular space between the casing and the borehole for placement of the grout shall be one and one-half inches.
  4. All horizontal wells, to prevent leakage, shall be constructed with a surface seal consisting of steel casing and cement grout extending a minimum of ten feet into the land surface.
- C. Access port.** Every well with casing four inches in diameter or larger shall be equipped with a functional watertight access port with a minimum diameter of one-half inch so that the water level or pressure head in the well can be monitored at all times.
- D. Gravel packed wells**
1. If a gravel pack has been installed, the annular space between the outer casing and the inner casing shall be sealed, either by welding a cap at the top or by filling with cement grout from the bottom of the outer casing to the surface.
  2. If a gravel tube is installed, it shall be sealed with a cap.
- E. Vents.** All vents installed in the well casing shall open downward and be screened to prevent the entrance of foreign material.
- F. Removal of drilling materials**
1. In constructing a water well, the well driller shall take all reasonable precautions to protect the producing aquifer from contamination by drilling materials. Upon completion of the well, the well driller shall remove all foreign substances and materials introduced into the aquifer or aquifers during well construction. For purposes of this subsection, "substances and materials" means all drilling fluids, filter cake, lost circulation materials, and any other organic or inorganic substances.
  2. Materials known to present a health hazard, such as chrome-based mud thinners, asbestos products, and petroleum-based fluids, shall not be used as construction, seal or fill materials or drilling fluids.
  3. Drilling fluids and cuttings shall be contained in a manner which prevents discharge into any surface water.
- G. Repair of existing wells**
1. If, in the repair of a well, the old casing is withdrawn, the well shall be recased in conformance with these rules.
  2. If an inner casing is installed to prevent leakage of undesirable water into a well, the annular space between the casings shall be completely sealed by packers, casing swedging, pressure grouting or other methods which will prevent the movement of water between the casings.
- H. Monitor wells**
1. A monitor well may be screened up to ten feet above the highest seasonal static water level of record for the purpose of monitoring contaminants.
  2. A monitor well shall be identified as such on the vault cover or at the top of the steel casing. Identification information shall include the well registration number.
- I. Completion at the surface.** In areas of traffic or public rights-of-way, wells may be constructed below the land surface in a vault. All other requirements in this Article shall apply.

#### Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2). The reference to R12-14-817(B)(1) in subsection (B)(1) corrected to read R12-15-817(B)(1) (Supp. 93-1). Amended by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4).

#### R12-15-812. Special Aquifer Conditions

##### A. Artesian wells

1. The well casing shall extend into the confining formation immediately overlying the artesian aquifer and shall be grouted from a minimum of ten feet into the confining formation to the land surface to prevent surface leakage into and subsurface leakage from the artesian aquifer.

2. If leaks occur adjacent to the well or around the well casing, within 30 days the well shall be completed with the seals, packers, or casing and grouting necessary to eliminate such leakage or the well shall be abandoned according to R12-15-816.
3. If the well flows at land surface, the well shall be equipped with a control valve, or suitable alternative means of completely controlling the flow, which must be available for inspection at the well site at all times.

**B.** Mineralized or polluted water. In all water-bearing geologic units containing mineralized or polluted water as indicated by available data, the borehole shall be cased and grouted so that contamination of the overlying or underlying groundwater zones will not occur.

#### Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2).

#### R12-15-813. Unattended Wells

All wells, when unattended during well drilling, shall be securely covered for safety purposes and to prevent the introduction of foreign substances into the well.

#### Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Section number corrected (Supp. 93-1).

#### R12-15-814. Disinfection of Wells

A well drilling contractor shall disinfect any well from which the water to be withdrawn is intended to be utilized for human consumption or culinary purposes without prior treatment before removing the drill rig from the well site in accordance with the requirements contained in Engineering Bulletin No. 8, "Disinfection of Water Systems", issued by the Arizona Department of Health Services in August 1978, and Engineering Bulletin No. 10, "Guidelines for the Construction of Water Systems", issued by the Arizona Department of Health Services in May 1978, both of which are incorporated by reference and are on file with the Office of the Secretary of State. Copies of the Engineering Bulletins referred to above may be obtained with these rules at the Office of the Secretary of State of the State of Arizona, State Capitol, West Wing, Phoenix, Arizona 85007, and from the Department of Water Resources, 3550 N. Central Avenue, Phoenix, AZ 85012. This rule does not include any later amendments or editions of those Bulletins.

#### Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2). Amended by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4).

#### R12-15-815. Removal of Drill Rig from Well Site

The drilling rig shall not be removed from the well site unless the well is in one of the following conditions:

1. Constructed in full conformance with R12-15-811 and R12-15-812 and either sealed with a cap or equipped with a pump.
2. Abandoned in accordance with R12-15-816.

#### Historical Note

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2).

#### R12-15-816. Abandonment

- A.** Well abandonment shall be performed only by a licensed well drilling contractor or single well licensee.
- B.** Except as provided in subsection (F) of this Section, the owner of a well shall file a notice of intent to abandon the well prior

to abandonment, on a form prescribed and furnished by the Director, which shall include:

1. The name and mailing address of the person filing the notice.
  2. The legal description of the land upon which the well proposed to be abandoned is located and the name and mailing address of the owner of the land.
  3. The legal description of the location of the well on the land.
  4. The depth, diameter and type of casing of the well.
  5. The well registration number.
  6. The materials and methods to be used to abandon the well.
  7. When abandonment is to begin.
  8. The name and well drilling license number of the well drilling contractor or single well licensee who is to abandon the well.
  9. The reason for the abandonment.
  10. Such other information as the Director may require.
- C.** The Director shall, upon receipt of a proper notice of intent to abandon, mail a well abandonment authorization card to the designated well drilling contractor or single well licensee.
- D.** Except as described in subsection (F) of this Section, a well drilling contractor or single well licensee may commence abandoning a well only if the driller has possession of an abandonment card at the well site, issued by the Director in the name of the driller, authorizing the abandonment of that specific well or wells in that specific location.
- E.** Within 30 days after a well is abandoned pursuant to this Section, the well drilling contractor or single well licensee shall file with the Director a Well Abandonment Completion Report on a form prescribed and furnished by the Director which shall include the date the abandonment of the well was completed and such other information as the Director may require.
- F.** In the course of drilling a new well, the well may be abandoned without first filing a notice of intent to abandon and without an abandonment card. If the well is abandoned pursuant to this subsection without first filing a notice of intent to abandon and without an abandonment card, the well drilling contractor or single well licensee shall provide the following information in the Well Abandonment Completion Report:
1. The legal description of the land upon which the well was abandoned and the name and mailing address of the owner of the land.
  2. The legal description of the location of the well on the land.
  3. The depth, diameter and type of casing of the well prior to abandonment.
  4. The well registration number.
  5. The materials and methods used to abandon the well.
  6. The name and well drilling license number of the well drilling contractor or single well licensee who abandoned the well.
  7. The date of completion of the abandonment of the well.
  8. The reason for the abandonment.
  9. Such other information as the Director may require.
- G.** The abandonment of a well shall be accomplished through filling or sealing the well so as to prevent the well, including the annular space outside the casing, from being a channel allowing the vertical movement of water.
- H.** A well drilling contractor or single well licensee shall construct a surface seal for a well that does not penetrate an aquifer, as follows:
1. If the casing is removed from the top 20 feet of the well, a cement grout plug shall be set extending from two feet below the land surface to a minimum of 20 feet below the

land surface, and the well shall be backfilled above the top of the cement grout plug to the original land surface.

2. If the casing is not removed from the top 20 feet of the well, a cement grout plug shall be set extending from the top of the casing to a minimum of 20 feet below the land surface and the annular space outside the casing shall be filled with cement from the land surface to a minimum of 20 feet below the land surface.

**I.** In addition to the surface seal required in subsection (H):

1. A well penetrating a single aquifer system with no vertical flow components shall be filled with cement grout, concrete, bentonite drilling muds, clean sand with bentonite, or cuttings from the well.
2. A well penetrating a single or multiple aquifer system with vertical flow components shall be sealed with cement grout or a column of bentonite drilling mud of sufficient volume, density, and viscosity to prevent fluid communication between aquifers.

**J.** Materials containing organic or toxic matter shall not be used in the abandonment of a well.

**K.** The owner or operator of the well shall notify the Director in writing no later than 30 days after abandonment has been completed. The notification shall include the well owner's name, the location of the well, and the method of abandonment.

**Historical Note**

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2). Amended by final rulemaking at 13 A.A.R. 3022, effective October 6, 2007 (Supp. 07-3).

**R12-15-817. Exploration Wells**

**A.** Notification. Prior to drilling one or more exploration wells, the well owner, lessee, or exploration firm shall file a notice of intention to drill on forms provided by the Director. If the notice of intention to drill is filed for the project as a whole, the drilling card shall be issued for the project as a whole.

**B.** Construction and abandonment.

1. If an exploration well which is to be left open for re-entry at a later date encounters groundwater, it shall be cased and capped in accordance with R12-15-811, R12-15-812, and R12-15-822. The minimal length of surface seal shall be either 20 feet, or five feet into the first encountered consolidated formation, whichever is less. If no groundwater is encountered, the well shall be cased, grouted and capped in such a manner so as to prevent contamination of the well bore from the surface.
2. Exploration wells not left open for re-entry shall be abandoned in accordance with R12-15-816.

**C.** Completion report. Within 30 days of project completion, the well owner, lessee, or exploration firm shall submit a project completion report on forms provided by the Director. The report shall include:

1. The exact number of wells drilled.
2. The depth to water encountered or detected, with reference to specific wells.
3. The abandonment method utilized, or construction details if completed for re-entry.
4. Any other information which the Director may require.

**Historical Note**

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2).

**R12-15-818. Well Location**

Except for monitor wells and piezometer wells, no well shall be drilled within 100 feet of any septic tank system, sewage disposal area, landfill, hazardous waste facility, storage area of hazardous

materials or petroleum storage areas and tanks, unless authorized in writing by the Director.

**Historical Note**

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2).

**R12-15-819. Use of Well as Disposal Site**

No well may be used as a storage or disposal site for sewage, toxic industrial waste, or other materials that may pollute the groundwater, except as authorized by the Arizona Department of Environmental Quality.

**Historical Note**

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2).

**R12-15-820. Request for Variance**

**A.** If extraordinary or unusual conditions exist, a well drilling contractor or owner may request a variance from the provisions of this Article.

**B.** The request for variance shall be in writing and shall set forth the location of the well site, the reasons for the request, and the recommended requirements to be applied. The Director may approve the request only if the well drilling contractor or owner has clearly demonstrated that the variance will not adversely affect other water users or the local aquifers.

**C.** A variance shall not be effective until the well drilling contractor or owner receives from the Director a written approval of the variance and a new drilling card stamped "variance issued."

**Historical Note**

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2).

**R12-15-821. Special Requirements**

If the Director determines that the literal application of the minimum well construction requirements contained in this Article would not adequately protect the aquifer or other water users, the Director may require that further additional measures be taken, such as increasing the length of the surface seal or increasing the well's minimum distance from a potential source of contamination.

**Historical Note**

Adopted effective March 5, 1984 (Supp. 84-2). Amended effective June 18, 1990 (Supp. 90-2).

**R12-15-822. Capping of Open Wells**

**A.** The owner of an open well shall either install a cap on the well or abandon the well in accordance with R12-15-816. Within five days after capping the well, the owner of the well shall file with the Department a notice of well capping on a form approved by the Director which shall include the following information:

1. The name and address of the well owner.
2. The name and address of the person installing the cap.
3. The well registration number.
4. The legal description of the location of the well.
5. The date the well was capped.
6. The method of capping.
7. The type and diameter of casing.

**B.** If no casing exists in an open well, or if the integrity of the existing casing is insufficient to allow installation of a cap, the well owner shall install a surface seal in accordance with R12-15-811(B) prior to capping.

**C.** The owner of a well on which a cap is installed shall make the cap tamper resistant by welding the cap to the top of the casing by the electric arc method of welding, except that the owner of a well may make the cap tamper resistant by securing the cap



to the top of the casing with a lock during temporary periods of well maintenance, modification or repair, not to exceed 30 days, or at any time if the well is a monitor well or piezometer well.

#### Historical Note

Adopted as an emergency effective March 2, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Readopted without change as an emergency effective June 2, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-2). Emergency expired. Readopted without change as an emergency effective September 5, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-3). Emergency expired. Readopted without change as an emergency effective December 1, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-4). Emergency expired. Readopted without change as an emergency effective March 23, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-1). Permanent rule adopted with changes effective June 18, 1990 (Supp. 90-2). Amended by final rulemaking at 13 A.A.R. 3022, effective October 6, 2007 (Supp. 07-3).

**R12-15-823. Reserved through**

**R12-15-849. Reserved**

#### **R12-15-850. Evaluation of Notices of Intention to Drill; Notification of Registered Site Locations; Vertical Cross-Contamination Evaluation**

- A. The Director shall, upon receipt of a complete and correct notice of intention to drill form required under A.R.S. § 45-596, or upon receipt of an application for a permit under A.R.S. § 45-597 through 45-599, identify whether the proposed well will be drilled within a groundwater basin or sub-basin in which there exists a site listed on the registry established under A.R.S. § 49-287.01(D). If the proposed well is situated within such a groundwater basin or subbasin, the Director shall notify the applicant and the authorized well drilling contractor in writing of the existence of the site and shall enclose a map indicating the boundaries of all listed sites within the groundwater basin or subbasin. The notification letter shall include the name, address, and telephone number of a Department contact person, along with a reference to the provision in R12-15-851 that requires the applicant to notify the Department in advance of the date drilling of the well will commence. The Department shall also specify in the notification letter whether the applicant is subject to the requirements of R12-15-851.
- B. The Director shall, upon receipt of a complete and correct notice of intention to drill form required under A.R.S. § 45-596, or upon receipt of an application for a permit under A.R.S. § 45-597 through 45-599, identify whether the proposed well will be drilled within an area where existing or anticipated future groundwater contamination presents a risk of vertical cross-contamination, as defined in A.R.S. § 49-281(15). If the Director determines that the proposed well will be drilled in such an area, and if the Director finds that the requirements of R12-15-811 are insufficient to prevent the risk of vertical cross-contamination, the Director shall establish site-specific requirements pursuant to R12-15-812 and R12-15-821.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 469, effective January 3, 2000 (Supp. 00-1).

#### **R12-15-851. Notification of Well Drilling Commencement**

A well owner who has been issued a drilling card for a notice of intent to drill authorizing the drilling of a well located within a site listed on the registry established under A.R.S. § 49-287.01, shall provide written notice to the Director indicating the date drilling will commence. The well owner shall coordinate with the contracted well driller to ensure that the Department receives proper notification under this Section. This notification shall consist of a letter or facsimile transmission received by the Department at least 2 business days before drilling commences at the well site. The Department shall use notification letters required by R12-15-850(A) to inform well owners whether they are subject to the requirements of this Section.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 469, effective January 3, 2000 (Supp. 00-1).

#### **R12-15-852. Notice of Well Inspection; Opportunity to Comment**

- A. At least 30 days before the beginning of a well inspection under A.R.S. § 45-605(A), the Director shall notify in writing all potentially affected well owners of record within a community involvement area established under A.R.S. § 49-289.02 or within other areas that the Director has selected for inspection of wells that may be contributing to vertical cross-contamination. The notices shall include a map of the community involvement area, remedial site, or a subsection of either, that the Department intends to inspect, indicating the location of affected wells of record. The notice shall indicate the approximate date the inspection will start, the approximate duration of the inspection, an access agreement defining what specific activities will occur during a well inspection, and the name, address, and telephone number of a Department contact person.
- B. Once the Director has given notice of a well inspection under A.R.S. § 45-605(A), potentially affected well owners have 30 days from the date the letter is postmarked to comment on the proposed inspection. The Director, upon receiving a written request, may extend the comment period for a maximum of 30 additional days.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 469, effective January 3, 2000 (Supp. 00-1).

### **ARTICLE 9. WATER MEASUREMENT**

#### **R12-15-901. Definitions**

In addition to the definitions set forth in A.R.S. §§ 45-101 and 45-402, the following words and phrases shall have the following meanings, unless the context otherwise requires:

1. "Approved measuring device" means an instrument, approved by the Director pursuant to R12-15-903 or R12-15-909(A) which measures the volume or flow rate of water withdrawn, delivered, received, transported, recharged, stored, recovered, or used, and which measurements, when used with an approved measuring method, allow for accurate computation of a volume of water.
2. "Approved measuring method" means a procedure, approved by the Director in R12-15-903 or R12-15-909(A), which, when used with an approved measuring device, will accurately calculate a volume of water.
3. "Flow rate" or "discharge" means the volume of water, including any sediment or other solids that may be dissolved or mixed with it, which passes through a particular reference section in a unit of time.

4. "Measured system" means a system through which water passes for the purpose of withdrawal, delivery, receipt, transportation, recharge, storage, replenishment, recovery or use.
5. "Responsible party" means an irrigation district or a person required by A.R.S. Title 45 or by a permit, rule, or order issued pursuant to A.R.S. Title 45, to use a measuring device or method approved by the Director.

#### Historical Note

Adopted effective December 27, 1982 (Supp. 82-6).  
Amended effective June 15, 1995 (Supp. 95-2). Amended to correct typographical error under A.A.C. R1-1-109 (Supp. 01-2).

#### R12-15-902. Installation of Approved Measuring Devices

- A. A responsible party shall install an approved measuring device to monitor the volume of water withdrawn, delivered, transported, recharged, stored, replenished, recovered, and used.
- B. A responsible party shall install and use a sufficient number of approved measuring devices to allow for the separate monitoring and reporting of the volume of water passing through the measured system pursuant to the following categories of rights:
  1. Irrigation grandfathered rights,
  2. Non-irrigation grandfathered rights,
  3. Service area rights,
  4. Groundwater withdrawal permits, and
  5. Recovery well permits or water storage permits.

This subsection does not require separate measuring devices for rights within each category unless otherwise required by A.R.S. Title 45, a permit, rule, or order pursuant to that Title.
- C. An approved measuring device which measures groundwater withdrawals shall be installed as close to the wellhead as is practical, consistent with the manufacturer's instructions. An approved measuring device which measures another point in the measured system shall be installed as close as is practical to the point of delivery, receipt, transportation, recharge, storage, replenishment, recovery, or use which the device is intended to measure, consistent with the manufacturer's instructions.

#### Historical Note

Adopted effective December 27, 1982 (Supp. 82-6).  
Amended effective June 15, 1995 (Supp. 95-2). Amended to correct typographical error under A.A.C. R1-1-109 (Supp. 01-2).

#### R12-15-903. Approved Water Measuring Devices and Methods

- A. Any measuring device is approved by the Director if it is installed, maintained, and used in accordance with the manufacturer's recommendations, and if it meets the accuracy requirements set forth in R12-15-905(A).
- B. An approved measuring device shall be used with an approved measuring method set forth in R12-15-903(C) or an alternative measuring method approved by the Director as provided in R12-15-909(A).
- C. The following water measuring methods are approved by the Director:
  1. Totalizing measuring method: This method requires an approved measuring device which continuously records the volume of water passing through the measured system;
  2. Electrical consumption measuring method: This method requires measurements of either pipeflow rates or open-channel flow rates used in combination with electrical energy records;

3. Natural gas consumption measuring method: This method requires measurements of either pipe flow rates or open channel flow rates used in combination with natural gas energy records;
4. Hour meter measuring method: This method requires measurements of either pipe flow rates or open-channel flow rates used in combination with hour meter readings;
5. Elapsed time of flow method: This method requires measurements of flow rates used in combination with elapsed time of the flow. This method may be used only by a responsible party who receives water from an open channel or by a person or entity who delivers water in an open channel to one or more grandfathered rightholders or permit holders, if it is not possible to use the electrical or gas consumption measurement methods or hour meter measuring method.

#### Historical Note

Adopted effective December 27, 1982 (Supp. 82-6).  
Amended effective June 15, 1995 (Supp. 95-2).

#### R12-15-904. Water Measuring Method Reporting Requirements

- A. A responsible party using one of the water measuring methods described in R12-15-903 shall file, with the annual report required by A.R.S. Title 45 and on a form prescribed by the Director, the following information, unless that information has not changed from that submitted in the annual report filed in the previous calendar year.
  1. The approved measuring method used;
  2. The type of approved measuring device used;
  3. The make, model, and size of the approved measuring device used.
- B. Except as provided in R12-15-904(B)(5) and R12-15-909(B) and (D), a responsible party shall file with the annual report the information required in subsection (A) of this Section and the following information on a form prescribed by the Director:
  1. Totalizing measuring method:
    - a. The initial totalizing meter reading for the reporting year taken prior to the first use of the measured system during the reporting year;
    - b. The end totalizing meter reading for the year taken subsequently to the last use of the measured system during the reporting year;
    - c. The units in which the water is measured;
    - d. Whether the power meter serves uses other than the pump motor or engine;
    - e. An estimate of the amount of any water passing through the measured system during measuring device malfunctions;
    - f. If the well is in operation for more than a 30-day period, the results of a minimum of two flow-rate measurements per reporting year taken under normal system operating conditions. The responsible party shall not submit the results of the flow-rate measurements with the annual report unless a meter malfunction continues longer than 72 hours during the reporting year;
    - g. The installation or overhaul date of the totalizing meter; and
    - h. The name of the energy company supplying energy to the responsible party's measured system, its power account number, meter number, total energy consumption for the year, and the type of energy unit.
  2. Electrical consumption measuring method:

- a. The results of a minimum of two flow-rate measurements per reporting year taken at least 30 days apart and under normal system operating conditions or, if the measured system is used during a single period of 30 days or less during the year, the result of one flow-rate measurement taken during that single period in that year under normal system operating conditions;
  - b. The dates of the measurements;
  - c. The discharges in gallons per minute;
  - d. The time, in seconds, of ten cycles of the electric meter disk, power indicator pulse, or an alternative measurement, provided that the alternative means of measurement is approved in advance by the Director;
  - e. The inside diameter of the discharge pipe;
  - f. The multiplier ( $K_T$ ) and disk constant ( $K_H$ ) of the electric meter; and
  - g. The name of the energy company supplying energy to the responsible party's measured system, its power account number, meter number, total energy consumption for the year, and the type of energy unit.
3. Natural gas consumption measuring method:
- a. The results of a minimum of two flow-rate measurements per reporting year taken at least 30 days apart and under normal system operating conditions or, if the measured system is used during a single period of 30 days or less during the year, the result of one flow-rate measurement taken during that single period in that year under normal system operating conditions;
  - b. The dates of the measurements;
  - c. The discharges in gallons per minute;
  - d. The amounts of gas per second in cubic feet indicated by the gas meter;
  - e. The billing factors (F);
  - f. The inside diameter of the discharge pipe; and
  - g. The name of the energy company supplying energy to the responsible party's measured system, its power account number, meter number, total energy consumption for the year, and the type of energy unit.
4. Hour meter measuring method:
- a. The results of a minimum of two flow-rate measurements per reporting year taken at least 30 days apart and under normal system operating conditions or, if the measured system is used during a single period of 30 days or less during the year, the result of one flow-rate measurement taken during that single period in that year under normal system operating conditions;
  - b. The dates of the measurements;
  - c. The discharges in gallons per minute;
  - d. The initial hour meter reading for the reporting year taken prior to the first use of the measured system during the reporting year;
  - e. The end hour meter reading taken subsequently to the last use of the measured system during the reporting year;
  - f. Whether the energy meter serves uses other than the pump motor or engine;
  - g. The installation or overhaul date of the hour meter; and
  - h. The name of the energy company supplying energy to the responsible party's measured system, its power account number, meter number, total energy consumption for the year, and the type of energy unit.
5. Elapsed time of flow measuring method: A responsible party using this measuring method shall not be required to submit the following information with the annual report but instead shall record and retain it for three years after the reporting year.
- a. The responsible party or agent shall measure and record an initial flow rate taken at the start of flow for each delivery of water;
  - b. If the flow rate continues for more than eight hours, a subsequent measured flow-rate measurement shall be taken. If any subsequently measured flow-rate differs by more than 10% from the initial flow rate, and the delivery is not adjusted to conform with the initial flow rate, the responsible party or agent shall record the subsequent flow rate;
  - c. The time the flow begins and the time the flow ends for each delivery of water; and
  - d. The dates of the measurements.
- C. A responsible party or person or entity who uses an approved measuring method or an approved alternative water measurement method shall save the records required by subsections (A) and (B) of this Section for three years after the reporting year.

#### Historical Note

Adopted effective December 27, 1982 (Supp. 82-6). Former Section R12-15-904 renumbered to R12-15-905, new Section adopted effective June 15, 1995 (Supp. 95-2). Amended by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4).

#### R12-15-905. Accuracy of Approved Measuring Devices

- A. A responsible party shall install, maintain, and use an approved measuring device and method in a manner which will ensure that its measurement error does not exceed 10% of the actual flow rate.
- B. All measured systems shall be installed or constructed and thereafter maintained so as to allow the Director, using another measuring device, to check readily the accuracy of the measuring device utilized by the responsible party.

#### Historical Note

Adopted effective December 27, 1982 (Supp. 82-6). Former Section R12-15-905 renumbered to R15-15-906, new Section R12-15-905 renumbered from R12-15-904 and amended effective June 15, 1995 (Supp. 95-2).

#### R12-15-906. Repair and Replacement of Approved Measuring Devices

If an approved measuring device fails to perform its designated function for more than 72 hours, the responsible party shall notify the Director of the failure, in writing, within seven calendar days after the discovery of the failure of the device. The reason for such failure shall be stated, as well as the estimated date of return to service of the device. If the malfunction is discovered by the Director and the malfunction does not appear to be the result of an attempt to render the device inaccurate, the Director shall notify the responsible party of the malfunction. The responsible party shall return the measuring device to full service within 30 days of either original notice by the responsible party to the Director or by the Director to the responsible party, unless repair or replacement service or parts are not available. In such case, the responsible party shall notify the Director of the delay within seven days and the reasons for it. The responsible party shall take corrective action in such cases as soon as practical. In all cases, the responsible party shall notify the

Director within seven days when the measuring device is returned to full service and shall submit on a form prescribed by the Director estimates of the volume of water, if any, passing through the measured system during the period the measuring device was out of service and a description of the method used to calculate the estimates.

#### Historical Note

Section R12-15-906 renumbered from R12-15-905 and amended effective June 15, 1995 (Supp. 95-2).

#### R12-15-907. Calculation of Irrigation Water Deliveries

If one or more irrigation grandfathered rights receive water by a common distribution system where water is measured with an approved device or method at the point of delivery to the common distribution system, but not at a point of delivery to each irrigation grandfathered right, each irrigation grandfathered rightholder or agent shall report the water used by either of the following methods:

1. Estimate the amount of water used based on a pro rata share of the acres irrigated, or
2. Estimate the amount of water used based on a combination of the pro rata share of the acres irrigated and the consumptive use of each crop grown.

#### Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

#### R12-15-908. Measurement of Water by One Person on Behalf of Another

A responsible party shall be liable for any fines, penalties, or other sanctions resulting from the installation, monitoring, use, or accuracy of any measuring device, method, or recordkeeping, notwithstanding that the installation, monitoring, use, or recordkeeping may have been done by an agent of the responsible party.

#### Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

#### R12-15-909. Alternative Water Measuring Devices, Methods, and Reporting

- A. A responsible party may use an alternative water measuring device or method that differs from those described in R12-15-903 provided the device or method is approved in advance by the Director. The Director shall approve an alternative water measuring device or method if the device meets the requirements of R12-15-905. The Director may require from the responsible party such information as may be necessary to demonstrate that the alternative device or method meets the requirements of R12-15-905.
- B. Responsible parties may substitute equivalent information for the information required on the annual report form or use reporting formats that differ from that required in R12-15-904, provided the substituted information or format is approved in advance by the Director.
- C. Responsible parties may use estimation methods that differ from those described in R12-15-907 provided they are approved in advance by the Director.
- D. A municipal provider is exempted from the reporting requirements under R12-15-904 and the provisions under R12-15-906 pertaining to notification to the Director of measuring device malfunctions regarding metered service connections, unless required to report by A.R.S. Title 45 or by a permit, rule, or order issued pursuant to A.R.S. Title 45.
- E. Municipal providers and irrigation districts may notify the Director of measuring device malfunctions at the time of filing the annual report and in a manner that differs from the requirements of R12-15-906, provided the municipal provider or irrigation district implements a schedule of regular maintenance of measuring devices, repairs or replaces malfunctioning mea-

suring devices within seven days of discovery of the malfunction, and the alternative notification is approved in advance by the Director.

#### Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

### ARTICLE 10. REPORTING REQUIREMENTS FOR ANNUAL REPORTS, ANNUAL ACCOUNTS, OPERATING FLEXIBILITY ACCOUNTS, AND CONVEYANCES OF GROUNDWATER RIGHTS

#### R12-15-1001. Definitions

In addition to the definitions in A.R.S. §§ 45-101 and 45-402, the following words and phrases in this Article have the following meanings, unless the context otherwise requires:

1. "Annual account" means an accounting of water required to be filed pursuant to A.R.S. § 45-468.
2. "Annual report" means an annual report of water withdrawn, delivered, received, transported, recharged, stored, recovered, replenished or used as required by A.R.S. §§ 45-437, 45-467, 45-632, 45-875.01, 45-876.01, 45-877.01, 45-878.01 or 45-1004.
3. "Central Arizona project water" means Colorado River water delivered through the facilities of the central Arizona project, and surface water from any other source conserved and developed by dams and reservoirs in the central Arizona project and lawfully delivered by the United States or a multi-county conservation district.
4. "Decreed or appropriative surface water" means surface water which is delivered or used pursuant to a decreed or appropriative water right, except any such water which is included in central Arizona project water.
5. "Farm" means an area of irrigated land under the same ownership as defined in A.R.S. § 45-402, including the area of land described in a certificate of irrigation grandfathered right, as well as contiguous land that the owner is legally entitled to irrigate only with decreed or appropriative surface water.
6. "Maximum annual groundwater allotment" means the quantity of water in acre-feet obtained by multiplying the number of water duty acres for a farm by the current irrigation water duty for the farm unit.
7. "Normal flow" means water delivered or used pursuant to a right to appropriate an unstored, natural flow of surface water.
8. "Operating flexibility account" means an accounting of water use pursuant to an irrigation grandfathered right as provided in A.R.S. § 45-467.
9. "Responsible party" means a person required by law to file an annual account or annual report.
10. "Spillwater" means surface water, other than Colorado River water, released for beneficial use from storage, diversion, or distribution facilities to avoid spilling that would otherwise occur due to uncontrolled surface water inflows that exceed facility capacity and to which one of the following applies:
  - a. The water is released from the facility under written criteria for releasing water to avoid spilling that have been approved in writing by the Director.
  - b. The water is released from the facility because an unreasonable risk exists that the storage capacity of the facility will be exceeded within the next 30 days because the facility is near capacity and either the inflow to the facility or the forecast runoff into the facility is equal to or greater than the quantity of water ordered from the facility.

- c. The water is released from the facility because an unreasonable risk exists that the storage capacity of the facility will be exceeded more than 30 days in the future because the forecast runoff into the facility exceeds current unused storage capacity and projected water demand during the forecast period, provided that the Director has made a written finding before the release that the forecast is reasonable.
- 11. "Surface water right acre" means land to which the owner is legally entitled to apply decreed or appropriative surface water.
- 12. "Tailwater" means water which, after having been applied to a farm for irrigation purposes,
  - a. Is subsequently used for the irrigation of a different farm, without having entered the distribution system of a city, town, private water company or irrigation district, or
  - b. Is delivered to an irrigation district in accordance with R12-15-1010. Such water, once having entered the distribution system of the irrigation district, loses its characterization as tailwater.
- 13. "Water deliverer" means a city, town, private water company or irrigation district delivering a combination of groundwater and any other type of water for irrigation purposes.

**Historical Note**

Adopted effective December 27, 1982 (Supp. 82-6). Section R12-15-1001 renumbered to R12-15-1003, new Section R12-15-1001 adopted effective December 12, 1990 (Supp. 90-4). Amended to correct typographical error under A.A.C. R1-1-109 (Supp. 01-2). Amended by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4).

**R12-15-1002. Form of Annual Account or Annual Report**

- A. A person filing an annual account or an annual report shall do so on a form prescribed by the Director, unless the person has requested and received the Director's prior written approval to use an alternative form.
- B. A person may file both an annual account and an annual report in one document. A person required to file an annual account shall designate in the annual account whether the annual account is being filed also as an annual report.

**Historical Note**

Adopted effective December 12, 1990 (Supp. 90-4).

**R12-15-1003. Accuracy of Annual Reports**

The quantity of water a responsible party reports in an annual report as having been withdrawn, delivered, received, transported, recharged, replenished, stored, recovered, or used during a year shall not deviate from the quantity of water actually withdrawn, delivered, received, transported, recharged, replenished, stored, recovered, or used by the responsible party during the year unless both of the following apply:

1. The deviation is 10 percent or less.
2. The deviation is not the result of an intentional act of misrepresentation by the responsible party.

**Historical Note**

Section R12-15-1003 renumbered from R12-15-1001 effective December 12, 1990 (Supp. 90-4). Amended by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4).

**R12-15-1004. Annual Reports Filed on Behalf of a Responsible Party**

- A. A responsible party is liable for any fines, penalties, or other sanctions resulting from or attributable to the filing or content of an annual report filed on behalf of the responsible party by an irrigation district pursuant to A.R.S. § 45-632, or by another person in a form acceptable to the Director.
- B. If a responsible party has not filed an annual report for a calendar year, and the Department receives an annual report for that calendar year purportedly filed on behalf of the responsible party by an irrigation district pursuant to A.R.S. § 45-632, or by another person in a form acceptable to the Director, there is a rebuttable presumption that the annual report was filed with the responsible party's knowledge, consent, and authorization.

**Historical Note**

Adopted effective December 12, 1990 (Supp. 90-4).

Amended to correct typographical error under A.A.C.

R1-1-109 (Supp. 01-2). Amended by final rulemaking at

11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4).

**R12-15-1005. Management Plan Monitoring and Reporting Requirements**

A responsible party who is required by a provision of a management plan to comply with monitoring and reporting requirements shall comply with such requirements and shall include all such information in an annual account or annual report.

**Historical Note**

Adopted effective December 12, 1990 (Supp. 90-4).

**R12-15-1006. Reporting Requirements for Holders of Recovery Well Permits**

A responsible party recovering water during a year pursuant to a recovery well permit shall include in the annual report required by A.R.S. § 45-875.01 the names of any persons, other than non-irrigation customers of cities, towns, private water companies and irrigation districts, to whom the responsible party delivered the recovered water during the year, the quantity of recovered water delivered to each person named, and the uses to which the recovered water was applied. If the recovered water included commingled groundwater, decreed or appropriative surface water other than spillwater, central Arizona project water, effluent or spillwater, the responsible party shall include in the annual report an estimate of the quantity of each type of water delivered to each person named in the annual report or put to a specific use by the responsible party.

**Historical Note**

Adopted effective December 12, 1990 (Supp. 90-4).

Amended by final rulemaking at 11 A.A.R. 5395, effective

February 4, 2006 (Supp. 05-4).

**R12-15-1007. Reporting Requirements for Annual Account**

A person required to file an annual account pursuant to A.R.S. § 45-468 shall account for water provided to the following classes of users:

1. Cities and towns,
2. Private water companies,
3. Irrigation districts,
4. Dairies,
5. Metal mining facilities,
6. Cattle feed lots,
7. Turf-related facilities,
8. Sand and gravel facilities,
9. Electrical power generation facilities,
10. Other industrial users.

**Historical Note**

Adopted effective December 12, 1990 (Supp. 90-4).

**R12-15-1008. Information Required to Maintain an Operating Flexibility Account**

- A.** A responsible party who withdraws, receives, or uses groundwater during a calendar year pursuant to an irrigation grandfathered right, including any in lieu water received pursuant to a groundwater savings facility permit issued pursuant to A.R.S. § 45-812.01, shall include the following information for the calendar year in an annual report filed pursuant to A.R.S. § 45-467 or 45-632:
1. The quantity of groundwater withdrawn from each well.
  2. The quantity of groundwater withdrawn and delivered to another person for irrigation purposes.
  3. The quantity of groundwater received from a city, town, private water company, or irrigation district, including any in lieu water received pursuant to a groundwater savings facility permit issued pursuant to A.R.S. § 45-812.01.
  4. The quantity of groundwater received from a person other than a city, town, private water company, or irrigation district, including any in lieu water received pursuant to a groundwater savings facility permit issued pursuant to A.R.S. § 45-812.01.
  5. The quantity of effluent received.
  6. The quantity of decreed or appropriative surface water received, other than normal flow and spillwater.
  7. The quantity of normal flow received.
  8. The quantity of spillwater received.
  9. The quantity of tailwater used.
  10. The quantity of tailwater delivered in accordance with the provisions of R12-15-1010(A), and the farm or irrigation district to which the tailwater was delivered.
  11. The quantity of central Arizona project water received.
  12. The quantity of any surface water received and not accounted for pursuant to subsections (6) through (11) of this subsection.
  13. The number of surface water right acres in the farm to which the irrigation grandfathered right is appurtenant.
  14. The quantity of water used for the legal irrigation of acres in the farm to which irrigation grandfathered rights are not appurtenant. If the responsible party omits this information, the Director shall presume that the total amount of water received or used for the irrigation of the farm was applied to acres to which irrigation grandfathered rights are appurtenant.
  15. Any other information the Director may reasonably require to accomplish the management goals of the applicable active management area.
- B.** A water deliverer shall include the following information for an accounting period in an annual account filed pursuant to A.R.S. § 45-468:
1. The quantity of groundwater delivered to each farm, including any in lieu water delivered pursuant to a groundwater savings facility permit issued pursuant to A.R.S. § 45-812.01.
  2. The quantity of normal flow delivered to each farm.
  3. The quantity of spillwater delivered to each farm.
  4. The quantity of decreed or appropriative surface water, other than normal flow and spillwater, delivered to each farm.
  5. The quantity of central Arizona project water delivered to each farm.
  6. The quantity of decreed or appropriative surface water, other than normal flow and spillwater, delivered for use within the service area of the water deliverer, including all farm and non-farm deliveries.

7. The number of surface water right acres within the service area of the water deliverer.
8. The quantity of effluent delivered to each farm.
9. Any other information the Director may reasonably require to accomplish the purposes of A.R.S. § 45-468.

**Historical Note**

Adopted effective December 12, 1990 (Supp. 90-4).

Amended by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4).

**R12-15-1009. Credits to Operating Flexibility Account**

- A.** Except as provided in subsection (B) of this Section and in R12-15-1010, if the total amount of water from all sources other than spillwater used by a farm for irrigation purposes in a calendar year is less than the farm's maximum annual groundwater allotment for the year, the Director shall register the difference as a credit to the farm's operating flexibility account.
- B.** If a farm is within the service area of a water deliverer, the Director shall reduce the credit as calculated pursuant to subsection (A) of this Section by an amount equal to the difference between the farm's pro rata share of the total quantity of decreed or appropriative surface water, other than normal flow or spillwater, delivered by the water deliverer during the year for use within its service area, and the quantity of water actually received by the farm during the year. The Director shall determine the farm's pro rata share by dividing the number of surface water right acres in the farm that are within the service area of the water deliverer by the total number of surface water right acres within the service area of the water deliverer, and multiplying the quotient by the total quantity of decreed or appropriative surface water, other than normal flow or spillwater, delivered by the water deliverer during the year for use within its service area.

**Historical Note**

Adopted effective December 12, 1990 (Supp. 90-4).

Amended by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4).

**R12-15-1010. Operating Flexibility Account; Tailwater**

- A.** When calculating credits or debits to a farm's operating flexibility account for a year, the Director shall exclude from the total amount of water used on the farm during that year the amount of any tailwater that originated on the farm and that was delivered from the farm to another farm or to an irrigation district for irrigation purposes during the year if all of the following apply:
1. Prior to January 1 of the year in which the deliveries of tailwater take place, the Director approves a written plan to measure and record the tailwater deliveries. The plan shall include:
    - a. The installation and use of a totalizing water measuring device that will record tailwater deliveries with no greater than a 10 percent margin of error.
    - b. Procedures for keeping accurate records of the tailwater deliveries.
    - c. A description of how the tailwater will be delivered.
    - d. An identification of the farm or irrigation district to which the tailwater will be delivered.
  2. The person has measured, recorded, and delivered the tailwater in accordance with the plan approved under subsection (A)(1) of this Section.
  3. The tailwater was delivered directly from the farm on which it originated to:
    - a. A specified farm that used the tailwater for the legal irrigation of irrigation acres or surface water right acres on that farm, or

- b. A specified irrigation district that delivered the tailwater for the legal irrigation of irrigation acres or surface water right acres within that district.
- B. A person who delivers tailwater in accordance with subsection (A) of this Section, and a person who directly receives and uses the tailwater pursuant to subsection (A)(3)(a) of this Section, shall account for and report the tailwater as if it were comprised of a mixture of groundwater, decreed and appropriate surface water other than normal flow, central Arizona project water, spillwater, other surface water, and effluent, as applicable, in the same proportions as those types of water comprise the total amount of water other than normal flow received or withdrawn for irrigation use during the calendar year on the farm on which the tailwater originated.
- C. A person who uses tailwater that has not been delivered and accounted for as provided in subsections (A) and (B) of this Section may credit against the person's use of groundwater in a calendar year the amount of the tailwater used during the calendar year if the use of such tailwater would cause a debit to be incurred. The credit shall be applied only against the person's operating flexibility account debits that otherwise would have been incurred that year and shall not be used to discharge debits from prior years or accumulate credits for future years. For purposes of calculating credits to the person's operating flexibility account, the Director shall treat tailwater as groundwater, unless reported otherwise according to its source.
- D. An irrigation district that receives tailwater pursuant to subsection (A)(3)(b) shall account for the water in the same manner as other water in the district's distribution system.

**Historical Note**

Adopted effective December 12, 1990 (Supp. 90-4).  
Amended by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4).

**R12-15-1011. Statement of Operating Flexibility Account**

- A. The Director shall annually issue to each owner or user of an irrigation grandfathered right for which a current annual report has been filed a statement of the operating flexibility account setting forth the status of the operating flexibility account for the farm, based on the information submitted in the annual report filed for the right.
- B. Upon a motion or on the initiative of the Director, the Director may amend a statement of operating flexibility account at any time to correct clerical mistakes or to adjust the balance of the account based on information submitted in an amended or late annual report. The Director shall give written notice of any amendments made pursuant to this subsection to the person to whom the statement of operating flexibility account was issued.

**Historical Note**

Adopted effective December 12, 1990 (Supp. 90-4).  
Amended by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4).

**R12-15-1012. Rule of Construction**

Nothing in A.A.C. R12-15-1001 through R12-15-1011 shall be construed to determine the legality of any water use for which an accounting is required under these rules.

**Historical Note**

Adopted effective December 12, 1990 (Supp. 90-4).

**R12-15-1013. Retention of Records for Annual Accounts and Annual Reports**

The responsible party shall keep and maintain, for at least three calendar years following the filing of an annual account or an annual

report, all records which may be necessary to verify the information and data contained therein.

**Historical Note**

Adopted effective December 12, 1990 (Supp. 90-4).

**R12-15-1014. Late Filing or Payment of Fees; Extension Penalties**

- A. An annual account, an annual report, or a request for extension pursuant to subsection (E) of this rule shall be deemed to be filed at the time a complete annual account, a complete annual report or a request for extension is hand-delivered to any Department office, or at the time the envelope in which it is mailed is postmarked.
- B. Except as provided in subsection (C) of this Section, groundwater withdrawal fees and long-term storage credit recovery fees are deemed paid at the time the fees are hand-delivered to any Department office, or at the time the envelope in which they are mailed is postmarked.
- C. If any groundwater withdrawal fees or long-term storage credit recovery fees are paid with a negotiable instrument that is not honored and paid upon the Department's initial demand, the fees are deemed paid at the time the Department actually receives the fees in cash or when the negotiable instrument is honored and paid to the Department.
- D. If an annual account or an annual report filed on or before the date required by the applicable statute is found by the Director to be incomplete, the Director shall notify the responsible party of the inadequacies and allow the responsible party 30 days from the date of the notice to provide the missing information in a form prescribed by the Director. If the responsible party does not provide the missing information within 30 days from the date of the notice, late penalties under A.R.S. §§ 45-437, 45-632, 45-875.01, 45-876.01, 45-877.01, 45-878.01 or 45-1004 shall begin to accrue on the 31st day following the date of the notice. The Director shall not recommend to a court, pursuant to A.R.S. §§ 45-634, 45-635, 45-881.01, 45-882.01, 45-1062 or 45-1063, that civil penalties be imposed through the first 30 days following the date of the notice. However, if the inadequacy included the failure to pay all groundwater withdrawal fees due or all long-term storage credit recovery fees due, late penalties under A.R.S. §§ 45-614 or 45-874.01 shall begin to accrue on April 1, except as provided in subsection (E) of this Section.
- E. A responsible party required to file an annual account or annual report for a year may request a 30-day extension of the first day of accrual of the late penalties under A.R.S. §§ 45-437, 45-614, 45-632, 45-874.01, 45-875.01, 45-876.01, 45-877.01, 45-878.01 or 45-1004 and of the civil penalties that the Director may recommend that a court impose pursuant to A.R.S. §§ 45-634, 45-635, 45-881.01, 45-882.01, 45-1062 or 45-1063. The request shall be filed no later than the date the annual account or annual report is required to be filed under the applicable statute. The Director shall grant a request for a 30-day extension if good cause is shown. If the Director grants the request, the late penalties and civil penalties shall begin to accrue on the first day after the 30-day extension period, except that if the Director finds that the person making the request presented false or misleading information to the Director and the Director relied on that information in granting the request, the late penalties and civil penalties shall begin to accrue as if the request was not granted. The Director shall not grant an extension to a responsible party who was granted an extension in the preceding calendar year and who subsequently failed to file a complete annual account or annual report and pay all groundwater withdrawal fees and all long-

term storage credit recovery fees due within the 30-day extension period.

#### Historical Note

Adopted effective December 12, 1990 (Supp. 90-4).  
Amended by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4).

#### **R12-15-1015. Reporting Requirements for Conveyances of Grandfathered Rights and Groundwater Withdrawal Permits**

- A. A person who is required by A.R.S. § 45-482 to notify the Director of a conveyance of a grandfathered right shall file a notice of conveyance, on a form prescribed by the Director, within 30 days of the conveyance. All parties to the conveyance may use a single form for the required notice. Except provided in subsection (B) of this rule, the notice of conveyance shall include an accounting of the amount of water withdrawn or received pursuant to that grandfathered right from January 1 to the date of conveyance for that calendar year.
- B. If the person to whom a grandfathered right is conveyed is unable, because of extraordinary circumstances and good cause shown, to perform the accounting otherwise required by subsection (A) of this rule, the Director may waive the requirement for that person.
- C. If a person, including a person who is granted a waiver pursuant to subsection (B) of this rule, fails to include the required accounting in a timely filed notice of conveyance pursuant to subsection (A) of this rule, the Director shall determine the amount of groundwater withdrawn or received pursuant to the grandfathered right from January 1 to the date of conveyance for that calendar year. Such a person shall bear the burden, in any subsequent administrative or judicial proceeding, of establishing by clear and convincing evidence that the Director's determination was incorrect.
- D. A person requesting the Director's approval of a proposed conveyance of a groundwater withdrawal permit pursuant to A.R.S. § 45-520(B) shall include with such request the quantity of groundwater withdrawn pursuant to the groundwater withdrawal permit for that calendar year and all other information required to be submitted pursuant to A.R.S. § 45-632.

#### Historical Note

Adopted effective December 12, 1990 (Supp. 90-4).

#### **R12-15-1016. Spillwater Reporting by Water Deliverers**

A water deliverer that delivers spillwater during a year shall include the following information in the annual account or annual report submitted by the water deliverer for that year:

1. The total quantity of spillwater delivered for non-irrigation uses during the year.
2. The total quantity of spillwater delivered for irrigation uses during the year.
3. Any other information the Director may reasonably require to determine whether the water qualifies as spillwater under R12-15-1001(10).

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4).

#### **R12-15-1017. Maintenance and Filing of Annual Reports Required by A.R.S. § 45-343**

A community water system required to file an annual report under A.R.S. § 45-343 shall maintain the report on a calendar year basis and shall file the report with the Director no later than June 1 of each year for the preceding calendar year.

#### Historical Note

New Section made by final rulemaking at 11 A.A.R. 5395, effective February 4, 2006 (Supp. 05-4).

## **ARTICLE 11. INSPECTIONS AND AUDITS**

### **R12-15-1101. Inspections**

- A. For the purpose of this rule, "inspection" means an entry by the Director at reasonable times onto private or public property for any of the following purposes:
  1. To obtain factual data or access to records required to be kept under A.R.S. §§ 45-632, 45-879.01, or 45-1004.
  2. To inspect a well or another facility for the withdrawal, transportation, use, measurement, or recharge of groundwater under A.R.S. § 45-633.
  3. To inspect a facility that is used for the purpose of water storage, stored water recovery, or stored water use under A.R.S. § 45-880.01(A).
  4. To inspect a body of water under A.R.S. § 45-135 or to ascertain compliance with A.R.S. Title 45, Chapter 1, Article 3.
  5. To inspect or to obtain factual data or access to records pursuant to any Section of A.R.S. Title 45 that requires the Director to adopt rules for conducting inspections, examining records, and obtaining warrants.
  6. To inspect facilities used for the withdrawal, diversion, or use of water pursuant to a water exchange under A.R.S. § 45-1061.
- B. Not less than seven days prior to an inspection, the Director shall mail notice of the inspection by first class letter to the owner, manager or occupant of the property. The notice shall include the statutory authorization and purpose for the inspection. The notice shall specify a date and time certain or a seven-day period within which the inspection may take place. If a request is made before the seven-day period, the Director shall schedule the inspection for a time certain within the seven-day period to allow an opportunity for a representative of the property to be present at the inspection. The notice shall include the name and telephone number of a Department employee who may be contacted to arrange such an appointment.
- C. Whenever practical, Department employees shall minimize disruptions to on-going operations caused by an inspection.
- D. If the property is controlled or secured against entry at the time specified in the notice of inspection but consent to the inspection was not denied, the Director shall give a second notice in the manner prescribed in subsection (B) before seeking a search warrant or its equivalent. The second notice shall request that a representative of the property be present at the inspection to accompany Department personnel.
- E. If the Director gives notice of an inspection and is not permitted to conduct an inspection, the Director may apply for and obtain a search warrant or its equivalent.
- F. Notice of inspection shall not be required under subsections (B) and (D) of this rule if the Director reasonably believes that notice would frustrate the enforcement of A.R.S. Title 45, or where entry is sought for the sole purpose of inspecting water measuring devices required pursuant to A.R.S. § 45-604.
- G. The Director shall mail a copy of the report of the inspection either to the person to whom the notice of inspection was directed, or to the owner, manager or occupant of the property if no notice of inspection was given. The report shall include the date of the inspection and a short summary of the findings. If no notice was given, the report shall include an explanation of the reason for determining that notice would not be given, unless providing the explanation would frustrate enforcement of A.R.S. Title 45. An aggrieved person may file with the Director written comments on the report within 30 days after the report is mailed.
- H. The owner, manager or occupant of the property may waive the provisions for notice contained in this rule.



- I. The Director shall comply with the requirements of A.R.S. § 41-1009 when conducting inspections under this Section.

**Historical Note**

Adopted effective August 31, 1992 (Supp. 92-3).  
Amended effective July 22, 1994 (Supp. 94-3). Amended  
by final rulemaking at 11 A.A.R. 5395, effective  
February 4, 2006 (Supp. 05-4).

**R12-15-1102. Audits**

- A. For the purpose of this rule, "representative" means
1. An officer or director of a corporation subject to the audit,
  2. A general partner of a partnership subject to the audit, or
  3. A person who appears at an audit and produces a signed authorization to act on behalf of the person subject to the audit.
- B. This rule applies to audits conducted pursuant to A.R.S. §§ 45-633(C), 45-880.01, and any other Section of A.R.S. Title 45 that authorizes the Director to require a person to appear at the Director's office and produce records and information and that also requires the Director to adopt rules for conducting inspections, examining records, and obtaining warrants.
- C. No less than 20 days prior to an audit, the Director shall mail notice of the audit by first class letter to the person that is the subject of the audit. The notice shall state the date, time and place of the audit. The notice shall specify the records or information which the person must produce. The notice shall also include the statutory authorization and purpose for the audit and the name and telephone number of a Department employee who may be contacted for further information. The audit shall be held at the Department's offices, unless the Director grants a request to have the audit conducted at a different location.
- D. The person subject to the audit or a representative shall appear at the scheduled time and shall produce the records and information specified in the notice. The person subject to the audit or a representative may make one request to reschedule the audit, which the Department shall grant if practicable.
- E. The Director shall mail a copy of the report of the audit to the person subject to the audit. An aggrieved person may file with the Director written comments on the report within 30 days after the report is mailed.
- F. The person subject to the audit may waive the provisions for notice contained in this rule.

**Historical Note**

Adopted effective August 31, 1992 (Supp. 92-3).  
Amended effective July 22, 1994 (Supp. 94-3).

**ARTICLE 12. DAM SAFETY PROCEDURES**

**R12-15-1201. Applicability**

- A. This Article applies to any artificial barrier meeting the specifications of A.R.S. § 45-1201(1) as interpreted by R12-15-1204. This Article applies to an application for the construction of a dam and reservoir; an application to reconstruct, repair, alter, enlarge, breach, or remove an existing dam and reservoir, including a breached or damaged dam; operation and maintenance of an existing dam and reservoir; and enforcement. A structure identified in R12-15-1203 is exempt from this Article.
- B. This Article is applicable to any dam regardless of hazard potential classification, with the following exceptions:
1. R12-15-1208, R12-15-1209, R12-15-1213, R12-15-1221, R12-15-1225, and R12-15-1226 apply only to a dam classified as a high or significant hazard potential dam.
  2. R12-15-1210 applies only to a dam classified as a low hazard potential dam. A low hazard potential dam is exempt from R12-15-1208, R12-15-1209, R12-15-1211,

R12-15-1213, R12-15-1221, R12-15-1225, and R12-15-1226.

3. R12-15-1211 applies only to a dam classified as a very low hazard potential dam. A very low hazard potential dam is exempt from R12-15-1208, R12-15-1209, R12-15-1210, R12-15-1212, R12-15-1213, R12-15-1215, R12-15-1216, R12-15-1221, R12-15-1225, and R12-15-1226.
4. R12-15-1216(B) applies only to an embankment dam.

**Historical Note**

Adopted effective November 2, 1978 (Supp. 78-6). Former Section R12-15-01 renumbered without change as Section R12-15-1201 effective October 8, 1982 (Supp. 82-5). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

**R12-15-1202. Definitions**

In addition to the definitions provided in A.R.S. § 45-1201, the following definitions are applicable to this Article:

1. "Alteration or repair of an existing dam or appurtenant structure" means to make different from the originally approved construction drawings and specifications or current condition without changing the height or storage capacity of the dam or reservoir, except for ordinary repairs and general maintenance as prescribed in R12-15-1217.
2. "Appurtenant structure" means any structure that is contiguous and essential to the safe operation of the dam including embankments, saddle dikes, outlet works and controls, diversion ditches, spillway and controls, access structures, bridges, and related housing at a dam.
3. "Classification of dams" means the placement of dams into categories based upon an evaluation of the size and hazard potential, regardless of the condition of the dam.
4. "Concrete dam" means any dam constructed of concrete, including arch, gravity, arch-gravity, slab and buttress, and multiple arch dams. A dam that only has a concrete facing is not a concrete dam.
5. "Construction" means any activity performed by the owner or someone employed by the owner that is related to the construction, reconstruction, repair, enlargement, removal, or alteration of any dam, unless the context indicates otherwise. Construction is performed after approval of an application and before issuance of a license.
6. "Dam failure inundation map" means a map depicting the maximum area downstream from a dam that would be flooded in the event of the worst condition failure of the dam.
7. "Department" means the Arizona Department of Water Resources.
8. "Director" means the Director of the Arizona Department of Water Resources or the Director's designee.
9. "Embankment dam" means a dam that is constructed of earth or rock material.
10. "Emergency spillway" means a spillway designed to safely pass the inflow design flood routed through the reservoir. If the flow is controlled by gates, it is a controlled spillway. If the flow is not controlled by gates, it is an uncontrolled spillway.
11. "Engineer" means a Professional Engineer registered and licensed in accordance with A.R.S. Title 32, Chapter 1, with proficiency in engineering and knowledge of dam technology.
12. "Enlargement to an existing dam or appurtenant structure" means any alteration, modification, or repair that

- increases the vertical height of a dam or the storage capacity of the reservoir.
13. "Flashboards" mean timber, concrete, or steel sections placed on the crest of a spillway to raise the retention water level that may be quickly removed at time of flood either by a tripping device or by designed failure of the flashboards or their supports.
  14. "Flood control dam" means a dam that uses all of its reservoir storage capacity for temporary impoundment of flood waters and collection of sediment or debris.
  15. "Hazard potential" means the probable incremental adverse consequences that result from the release of water or stored contents due to failure or improper operation of a dam or appurtenances.
  16. "Hazard potential classification" means a system that categorizes dams according to the degree of probable incremental adverse consequences of failure or improper operation of a dam or appurtenances. The hazard potential classification does not reflect the current condition of the dam with regard to safety, structural integrity, or flood routing capacity.
  17. "Height" means the vertical distance from the lowest elevation of the outside limit of the barrier at its intersection with the natural ground surface to the spillway crest elevation. For the purpose of determining jurisdictional status, the lowest elevation of the outside limit of the barrier may be the outlet pipe invert elevation if the outlet is constructed below natural ground.
  18. "Impound" means to cause water or a liquid to be confined within a reservoir and held with no discharge.
  19. "Incremental adverse consequences" means under the same loading conditions, the additional adverse consequences such as economic, intangible, lifeline, or human losses, that would occur due to the failure or improper operation of the dam over those that would have occurred without failure or improper operation of the dam.
  20. "Inflow design flood" or "IDF" means the reservoir flood inflow magnitude selected on the basis of size and hazard potential classification for emergency spillway design requirements of a dam.
  21. "Intangible losses" means incremental adverse consequences to property that are not economic in nature, including property related to social, cultural, unique, or resource-based values, including the loss of irreplaceable and unique historic and cultural features; long-lasting pollution of land or water; or long-lasting or permanent changes to the ecology, including fish and endangered species habitat identified and evaluated by a public natural resource management or protection agency.
  22. "Jurisdictional dam" means a barrier that meets the definition of a dam prescribed in A.R.S. § 45-1201 that is not exempted by R12-15-1203 over which the Department of Water Resources exercises jurisdiction.
  23. "Levee" means an embankment of earth, concrete, or other material used to prevent a watercourse from spreading laterally or overflowing its banks. A levee is not used to impound water.
  24. "License" means license of final approval issued by the Director upon completion or enlargement of a dam under A.R.S. § 45-1209.
  25. "Lifeline losses" mean disruption of essential services such as water, power, gas, telephone, or emergency medical services.
  26. "Liquid-borne material" means mine tailings or other milled ore products transported in a slurry to a storage impoundment.
  27. "Maximum credible earthquake" means the most severe earthquake that is believed to be possible at a point on the basis of geologic and seismological evidence.
  28. "Maximum water surface" means the maximum elevation of the reservoir water level attained during routing of the inflow design flood.
  29. "Natural ground surface" means the undisturbed ground surface before excavation or filling, or the undisturbed bed of the stream or river.
  30. "Outlet works" means a closed conduit under or through a dam or through an abutment for the controlled discharge of the contents normally impounded by a dam and reservoir. The outlet works include the inlet and outlet structures appurtenant to the conduit. Outlet works may be controlled or uncontrolled.
  31. "Probable" means likely to occur, reasonably expected, and realistic.
  32. "Probable maximum flood" or "PMF" means the flood runoff expected from the most severe combination of critical meteorologic and hydrologic conditions that are reasonably possible in the region, including rain and snow where applicable. 1/2 PMF is that flood represented by the flood hydrograph with ordinates equal to 1/2 the corresponding ordinates of the PMF hydrograph.
  33. "Probable maximum precipitation" means the greatest depth of precipitation for a given duration that is theoretically physically possible over a particular size storm area at a particular geographical location at a particular time of year.
  34. "Reservoir" means any basin that contains or is capable of containing water or other liquids impounded by a dam.
  35. "Residual freeboard" means the vertical distance between the highest water surface elevation during the inflow design flood and the lowest point at the top of the dam.
  36. "Restricted storage" means a condition placed on a license by the Director to reduce the storage level of a reservoir because of a safety deficiency.
  37. "Saddle dike or saddle dam" means any dam constructed in a topographically low area on the perimeter of a reservoir, required to contain the reservoir at the highest water surface elevation.
  38. "Safe" means that a dam has sufficient structural integrity and flood routing capacity to make failure of the dam unlikely.
  39. "Safe storage level" means the maximum reservoir water surface elevation at which the Director determines it is safe to impound water or other liquids in the reservoir.
  40. "Safety deficiency" means a condition at a dam that impairs or adversely affects the safe operation of the dam.
  41. "Safety inspection" means an investigation by an engineer or a person under the direction of an engineer to assess the safety of a dam and determine the safe storage level for a reservoir, which includes review of design reports, construction documents, and previous safety inspection reports of the dam, spillways, outlet facilities, seepage control and measurement systems, and permanent monument or monitoring installations.
  42. "Spillway crest" means the highest elevation of the floor of the spillway along a centerline profile through the spillway.
  43. "Storage capacity" means the maximum volume of water, sediment, or debris that can be impounded in the reservoir with no discharge of water, including the situation where an uncontrolled outlet becomes plugged. The storage capacity is reached when the water level is at the crest of the emergency spillway, or at the top of permanently

mounted emergency spillway gates in the closed position. Storage capacity excludes dead storage below the natural ground surface.

44. "Surcharge storage" means the additional water storage volume between the emergency spillway crest or closed gates, and the top of the dam.
45. "Total freeboard" means the vertical distance between the emergency spillway crest and the top of the dam.
46. "Unsafe" means that safety deficiencies in a dam or spillway could result in failure of the dam with subsequent loss of human life or significant property damage.

#### Historical Note

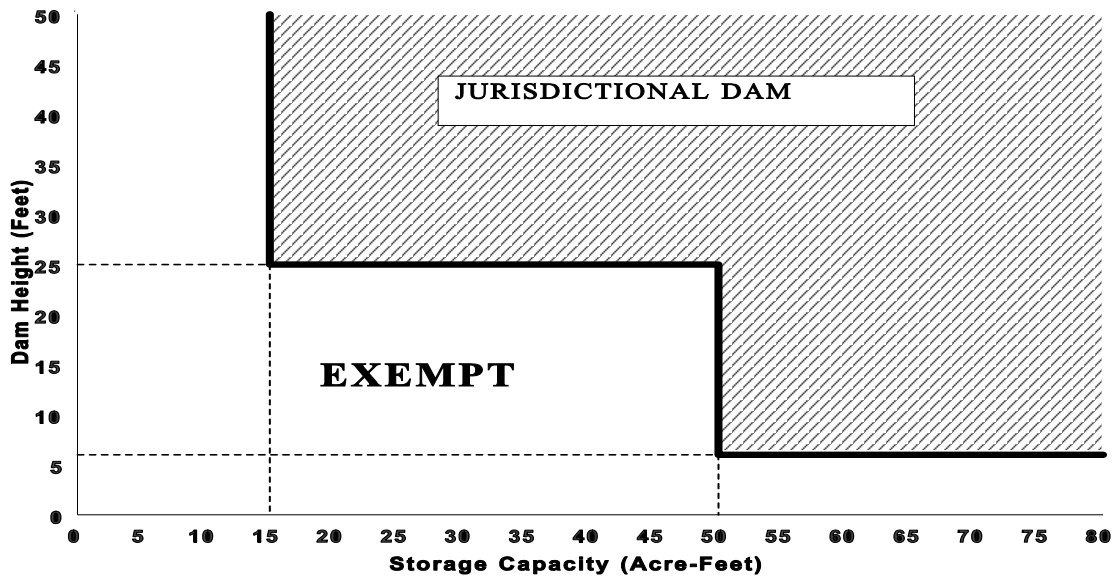
Adopted effective November 2, 1978 (Supp. 78-6). Former Section R12-15-02 renumbered without change as Section R12-15-1202 effective October 8, 1982 (Supp. 82-5). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2). Amended to correct typographical error under A.A.C. R1-1-109 (Supp. 01-2).

#### R12-15-1203. Exempt Structures

The following structures are exempt from regulation by the Department:

1. Any artificial barrier identified as exempt on Table 1 and defined as follows:
  - a. Less than 6 feet in height, regardless of storage capacity.
  - b. Between 6 and 25 feet in height with a storage capacity of less than 50 acre-feet.
  - c. Greater than 25 feet in height with 15 acre-feet or less of storage capacity.

Table 1. Exempt Structures



#### Historical Note

New Table adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

#### R12-15-1204. Provision for Guidelines

The Department may develop and adopt substantive policy statements that serve as dam safety guidelines to aid a dam owner or engineer in complying with this Article. The Department recommends that dam owners and engineers consult design guidelines published by agencies of the federal government, including the U.S.

2. A dam owned by the federal government. A dam designed by the federal government for any non-federal entity or person that will subsequently be owned or operated by a person or entity defined as an owner in A.R.S. § 45-1201 is subject to jurisdiction, beginning with design and construction of the dam.
3. A dam owned or operated by an agency or instrumentality of the federal government, if a dam safety program at least as stringent as this Article is applicable to and enforced against the agency or instrumentality.
4. A transportation structure such as a highway, road, or railroad fill that exists solely for transportation purposes. A transportation structure designed, constructed, or modified with the intention of impounding water on an intermittent or permanent basis and meeting the definition of dam in A.R.S. § 45-1201 is subject to jurisdiction.
5. A levee constructed adjacent to or along a watercourse, primarily to control floodwater.
6. A self-supporting concrete or steel water storage tank.
7. An impoundment for the purpose of storing liquid-borne material.
8. A release-contained barrier as defined by A.R.S. § 45-1201(5).

#### Historical Note

Adopted effective November 2, 1978 (Supp. 78-6). Former Section R12-15-03 renumbered without change as Section R12-15-1203 effective October 8, 1982 (Supp. 82-5). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

Bureau of Reclamation, the U.S. Army Corps of Engineers, the Natural Resources Conservation Service, and the Federal Energy Regulatory Commission, for the design of concrete, roller compacted concrete, stone masonry, timber, inflatable rubber, and mechanically-stabilized earth dams. The Director may require that other criteria be used or revise any of the specific criteria for the

purpose of dam safety. An owner shall obtain advance approval by the Director of design criteria.

#### Historical Note

Adopted effective November 2, 1978 (Supp. 78-6). Former Section R12-15-04 renumbered without change as Section R12-15-1204 effective October 8, 1982 (Supp. 82-5). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

#### R12-15-1205. General Responsibilities

- A. Each owner is responsible for the safe design, operation, and maintenance of a dam. The owner shall operate, maintain, and regularly inspect a dam so that it does not constitute a danger to human life or property. The owner of a high or significant hazard potential dam shall provide timely warning to the Department and all other persons listed in the emergency action plan of problems at the dam. The owner shall develop and maintain effective emergency action plans and coordinate those plans with local officials as prescribed in R12-15-1221.
- B. The owner shall conduct frequent observation of the dam, as prescribed in the emergency action plan and as follows:
  1. The owner shall increase the frequency of observation when the reservoir is full, during heavy rains or flooding, and following an earthquake.
  2. The owner shall report to the Director any condition that threatens the safety of the dam as prescribed in R12-15-1224(A). The owner shall make the report as soon as possible, but not later than 12 hours after discovery of the conditions.
  3. If dam failure appears imminent, the owner shall notify the county sheriff or other emergency official immediately.
  4. The owner is responsible for the safety of the dam and shall take action to lower the reservoir if it appears that the dam has weakened or is in danger of failing.
- C. The owner of a dam shall install, maintain, and monitor instrumentation to evaluate the performance of the dam. The Director deems necessary for monitoring the safety of the dam when failure may endanger human life and property. Conditions that may require monitoring include land subsidence, earth fissures, embankment cracking, phreatic surface, seepage, and embankment movements.
- D. The owner shall perform timely maintenance and ordinary repair of a dam. The owner shall implement an annual plan to inspect the dam and accomplish the maintenance and ordinary repairs necessary to protect human life and property.
- E. If a change of ownership of a dam occurs, the new owner shall notify the Department within 15 days after the date of the transaction and provide the mailing address and telephone number where the new owner can be contacted. Within 90 days after the date of the transaction, the new owner shall provide the name and telephone number of the individual or individuals who are responsible for operating and maintaining the dam.

#### Historical Note

Adopted effective November 2, 1978 (Supp. 78-6). Former Section R12-15-05 renumbered without change as Section R12-15-1205 effective October 8, 1982 (Supp. 82-5). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

#### R12-15-1206. Classification of Dams

- A. Size Classification. Dams are classified by size as small, intermediate, or large. Size is determined with reference to Table 2. An owner or engineer shall determine size by storage capacity or height, whichever results in the larger size.
- B. Hazard Potential Classification
  1. The Department shall base hazard potential classification on an evaluation of the probable present and future incremental adverse consequences that would result from the release of water or stored contents due to failure or improper operation of the dam or appurtenances, regardless of the condition of the dam. The evaluation shall include land use zoning and development projected for the affected area over the 10 year period following classification of the dam. The Department considers all of the following factors in hazard potential classification: probable loss of human life, economic and lifeline losses, and intangible losses identified and evaluated by a public resource management or protection agency.
    - a. The Department bases the probable incremental loss of human life determination primarily on the number of permanent structures for human habitation that would be impacted in the event of failure or improper operation of a dam. The Department considers loss of human life unlikely if:
      - i. Persons are only temporarily in the potential inundation area;
      - ii. There are no residences or overnight campsites; and
      - iii. The owner has control of access to the potential inundation area and provides an emergency action plan with a process for warning in the event of a dam failure or improper operation of a dam.
    - b. The Department bases the probable economic, lifeline, and intangible loss determinations on the property losses, interruptions of services, and intangible losses that would be likely to result from failure or improper operation of a dam.
  2. The 4 hazard potential classification levels are very low, low, significant, and high, listed in order of increasing probable adverse incremental consequences, as prescribed in Table 3. The Director shall classify intangible losses by considering the common or unique nature of features or habitats and temporary or permanent nature of changes.
    - a. Very Low Hazard Potential. Failure or improper operation of a dam would be unlikely to result in loss of human life and would produce no lifeline losses and very low economic and intangible losses. Losses would be limited to the 100 year floodplain or property owned or controlled by the dam owner under long-term lease. The Department considers loss of life unlikely because there are no residences or overnight camp sites.
    - b. Low Hazard Potential. Failure or improper operation of a dam would be unlikely to result in loss of human life, but would produce low economic and intangible losses, and result in no disruption of lifeline services that require more than cosmetic repair. Property losses would be limited to rural or agricultural property, including equipment, and isolated buildings.
    - c. Significant Hazard Potential. Failure or improper operation of a dam would be unlikely to result in loss of human life but may cause significant or high

economic loss, intangible damage requiring major mitigation, and disruption or impact on lifeline facilities. Property losses would occur in a predominantly rural or agricultural area with a transient population but significant infrastructure.

- d. High Hazard Potential. Failure or improper operation of a dam would be likely to cause loss of human life because of residential, commercial, or industrial development. Intangible losses may be major and potentially impossible to mitigate, critical lifeline services may be significantly disrupted, and property losses may be extensive.
3. An applicant shall demonstrate the hazard potential classification of a dam before filing an application to construct. The Department shall review the applicant's demonstration early in the design process at pre-application meetings prescribed in R12-15-1207(D).
4. The Department shall review the hazard potential classification of each dam during each subsequent dam safety inspection and revise the classification in accordance with current conditions.

**Historical Note**

Adopted effective November 2, 1978 (Supp. 78-6). Former Section R12-15-06 renumbered without change as Section R12-15-1206 effective October 8, 1982 (Supp. 82-5). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

**Exhibit A. Repealed**

**Historical Note**

Exhibit repealed by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000; a Historical Note for Exhibit A did not exist before this date (Supp. 00-2).

**Table 2. Size Classification**

Category	Storage Capacity (acre-feet)	Height (feet)
Small	50 to 1,000	25 to 40
Intermediate	greater than 1,000 and not exceeding 50,000	higher than 40 and not exceeding 100
Large	greater than 50,000	higher than 100

**Historical Note**

New Table adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

**Table 3. Downstream Hazard Potential Classification**

Hazard Potential Classification	Probable Loss of Human Life	Probable Economic, Life-line, and Intangible Losses
Very Low	None expected	Economic and lifeline losses limited to owner's property or 100-year flood-plain. Very low intangible losses identified.
Low	None expected	Low
Significant	None expected	Low to high
High	Probable - One or more expected	Low to high (not necessary for this classification)

**Historical Note**

New Table adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

**R12-15-1207. Application Process**

- A. An applicant shall obtain written approval from the Director before constructing, reconstructing, repairing, enlarging, removing, altering, or breaching a dam. Application requirements differ according to the hazard potential of the dam.
  1. To construct, reconstruct, repair, enlarge, or alter a high or significant hazard potential dam, the applicant shall comply with R12-15-1208.
  2. To breach or remove a high or significant hazard potential dam, the applicant shall comply with R12-15-1209.
  3. To construct, reconstruct, repair, enlarge, alter, breach, or remove a low hazard potential dam, the applicant shall comply with R12-15-1210.
  4. To construct, reconstruct, repair, enlarge, alter, breach, or remove a very low hazard potential dam, the applicant shall comply with R12-15-1211.
- B. An application shall not be filed with the Director under the following circumstances:
  1. The dam is exempt under R12-15-1203;
  2. A dam owner starts repairs to an existing dam that are necessary to safeguard human life or property and the Director is notified without delay;
  3. The owner performs general maintenance or ordinary repairs as prescribed in R12-15-1217(A) or (B); or
  4. Breach, removal, or reduction of a very low hazard dam as prescribed in R12-15-1211(C).
- C. An applicant is not required to comply with a requirement in this Article if the Director finds that, considering the site characteristics and the proposed design, the requirement is unduly burdensome or expensive and is not necessary to protect human life or property. The Director shall consider the size, hazard potential classification, physical site conditions, and applicability of a requirement to a proposed dam. The Director shall state in writing the reason or reasons the applicant is not required to comply with a requirement.
- D. An applicant shall schedule pre-application conferences with the Department to discuss the requirements of this Article and to resolve issues essential to the design of a dam while the design is in preliminary stages. The Director shall view the dam site during the pre-application process. The following are examples of issues for pre-application conferences: the hazard potential classification, the approximate inflow design flood, the basic design concepts, and any requirements that may be

found by the Director to be unduly burdensome or expensive and not necessary to protect human life or safety. In addition, the applicant may submit preliminary design calculations to the Department for review and comment. The Department shall comment as soon as practicable, depending on the size of the submittal and the current workload.

E. The Department shall review applications as follows:

1. Applications will be received by appointment. During this meeting the Department shall make a brief review of the application to determine that the application contains each of the items required by R12-15-1208, R12-15-1209, R12-15-1210, or R12-15-1211.
2. Following receipt of an application submitted under R12-15-1208, R12-15-1209, R12-15-1210, or R12-15-1211, the Director shall complete an administrative review as prescribed in R12-15-401(1) and notify the applicant in writing whether the application is administratively complete. If the application is not administratively complete, the notification shall include a list of additional information that is required to complete the application.
3. After finding the application submitted under R12-15-1208, R12-15-1209, R12-15-1210, or R12-15-1211 administratively complete, the Director shall complete a substantive review as prescribed in R12-15-401(3) and notify the applicant in writing of the Director's approval or disapproval. If during this review period, the Director determines that there are defects in the application that would impact human life and property, a written notice of the defects shall be sent to the applicant.
4. An applicant may request in writing that the Director expedite the review of an application by employing an expert consultant on a contract basis under A.R.S. § 45-104(D). The Director shall establish on-call contracts with expert consultants to facilitate the process of expediting review. The Director may retain a consultant to review all or a portion of the application as necessary to expedite the process in response to an owner's request or to comply with time-frame rules. Before conducting the review, the consultant shall provide the Director and the applicant with a proposed time schedule and cost estimate. If the applicant agrees to the consultant's proposal for an expedited review of an application and the Director employs the consultant, the applicant shall pay to the Department the cost of the consultant's services in addition to the application fees. The Director retains the authority to review and approve, disapprove, or modify the findings and recommendations of the consultant.
5. The Director shall not approve an application in less than 10 days from the date of receipt.
6. If the Director disapproves the application, the Director shall provide the applicant with a statement of the Director's objections.
7. If the Director approves an application, the applicant shall submit in triplicate revised drawings and specifications that incorporate any required changes.
  - a. The Director shall return to the applicant 1 set of final construction drawings and specifications with the Department's approval stamp to be retained onsite during construction;
  - b. The Director shall retain for permanent state record 1 set of final construction drawings and specifications with the Department's approval stamp; and
  - c. The Director shall retain for use by the Department during construction the 3rd set of final construction drawings and specifications with the Department's approval stamp.

8. The Director shall impose conditions and limitations that the Director deems necessary to safeguard human life and property. Examples of the conditions of approval include but are not limited to:
  - a. The applicant shall not cover the foundation or abutment with the material of the dam until the Department has been given notice and a reasonable time to inspect and approve them.
  - b. The applicant shall start construction within 1 year from the date of approval.
  - c. The applicant shall maintain a safe storage level for an existing dam being reconstructed, repaired, enlarged, altered, or breached.

F. An approval to construct a new dam or repair, enlarge, alter, breach, or remove an existing dam is valid for 1 year.

1. If construction does not begin within 1 year, the approval is void.
2. Upon written request and good cause shown by the owner, the time for commencing construction may be extended. An applicant shall not start construction before the Director reviews the application for changes and grants approval.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

#### **R12-15-1208. Application to Construct, Reconstruct, Repair, Enlarge, or Alter a High or Significant Hazard Potential Dam**

- A. An application package to construct, reconstruct, repair, enlarge, or alter a high or significant hazard potential dam shall include the following prepared by or under the supervision of an engineer as defined in R12-15-1202(11):
1. A completed application filed in duplicate on forms provided by the Director.
  2. A design information summary or checklist of items prepared in duplicate on forms provided by the Director.
  3. An initial application fee based on the total estimated project cost and computed in accordance with A.R.S. § 45-1204 and R12-15-104(A)(7).
  4. A detailed estimate of project costs. Project costs are all costs associated with construction of the dam and appurtenant works including preliminary investigations and surveys, engineering design, supervision of construction, and any other engineering costs.
  5. Two complete sets of construction drawings as prescribed in R12-15-1215(1).
  6. Two complete sets of construction specifications as prescribed in R12-15-1215(2).
  7. An engineering design report that includes information needed to evaluate all aspects of the design of the dam and appurtenances, including references with page numbers to support any assumptions used in the design, as prescribed in R12-15-1215(3). The engineering design report shall recommend a safe storage level for existing dams being reconstructed, repaired, enlarged, or altered.
  8. A construction quality assurance plan describing all aspects of construction supervision.
  9. A description of the use for the impounded or diverted water, proof of a right to appropriate, and a permit to store water as prescribed in A.R.S. §§ 45-152 and 45-161.
  10. A long-term budget plan and evidence of financing, prepared using customary accounting principles, that demonstrate that the applicant has the financial capability to construct, operate, and maintain the dam in a safe manner. If the applicant does not have evidence that can be verified by an independent audit of the financial capability,

ity to construct, operate, and maintain the dam in a safe manner, the Director may require a performance bond for the entire cost of the proposed construction work.

- B.** The following may be submitted with the application or during construction.
1. An emergency action plan as prescribed in R12-15-1221.
  2. An operation and maintenance plan to accomplish the annual maintenance.
  3. An instrumentation plan regarding instruments that evaluate the performance of the dam.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

#### **R12-15-1209. Application to Breach or Remove a High or Significant Hazard Potential Dam**

- A.** An applicant shall excavate the dam down to the level of the natural ground at the maximum section. Upon approval of the Director, additional breaches may be made. This provision shall not be construed to require more than total removal of the dam regardless of the flood magnitude. The breach or breaches shall be of sufficient width to pass the greater of:
1. The 100 year flood at a depth of less than 5 feet, or
  2. The 100 year flood at a normal flood depth of not more than 2 feet at a distance of 2,000 feet downstream of the dam.
- B.** The sides of each breach shall be excavated to a slope ratio that is stable and not steeper than 1 horizontal to 1 vertical.
- C.** Each breach shall be designed to prevent silt that has previously been deposited on the reservoir bottom and the excavated material from the breach from washing downstream.
- D.** Before breaching the dam, the reservoir shall be emptied in a controlled manner that will not endanger lives or damage downstream property. The applicant shall obtain approval from the Director for the method of breaching or removal.
- E.** An application package to breach or remove a high or significant hazard potential dam shall include the following prepared by or under the supervision of an engineer as defined in R12-15-1202(11).
1. The construction drawing or drawings for the breach or removal of a dam, including the location, dimensions, and lowest elevation of each breach.
  2. A long-term budget plan and evidence of financing, prepared using customary accounting principles, that demonstrate that the applicant has the financial capability to breach or remove the dam in a safe manner. If the applicant does not have evidence that can be verified by an independent audit of the financial capability to breach or remove the dam in a safe manner, the Director may require a performance bond for the entire cost of the proposed construction work.
  3. A construction quality assurance plan describing all aspects of construction supervision.
- F.** Reduction of a high or significant downstream hazard potential dam to nonjurisdictional size may be approved by letter under the following circumstances:
1. The owner shall submit a completed application form and construction drawings for the reduction and the appropriate specifications, prepared by or under the supervision of an engineer as defined in R12-15-1202(11).

2. The construction drawings and specifications shall contain sufficient detail to enable a contractor to bid on and complete the project.
3. The plans shall comply with all requirements of this Section except that the breach is not required to be to natural ground.
4. Upon completion of an alteration to nonjurisdictional size, the engineer shall file as constructed drawings and specifications with the Department.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

#### **R12-15-1210. Application to Construct, Reconstruct, Repair, Enlarge, Alter, Breach, or Remove a Low Hazard Potential Dam**

- A.** An application package to construct, reconstruct, repair, enlarge, or alter a low hazard potential dam shall include the following prepared by or under the supervision of an engineer as defined in R12-15-1202(11):
1. A completed application filed in duplicate on forms provided by the Director.
  2. An initial application fee based on the total estimated project cost, computed in accordance with A.R.S. § 45-1204 and R12-15-104(A)(7).
  3. A detailed estimate of project costs. Project costs are all costs associated with construction of the dam and appurtenant works, including preliminary investigations and surveys, engineering design, supervision of construction, and any other engineering costs.
  4. The seal and signature of the responsible engineer in accordance with A.A.C. R4-30-304.
  5. A statement by the responsible engineer that classifies the dam as low hazard in accordance with R12-15-1206(B). The responsible engineer shall submit a map of the area that would be inundated by failure or improper operation of the dam. The responsible engineer shall demonstrate that failure or improper operation of the dam would be unlikely to result in:
    - a. Loss of human life. The demonstration may be based on an emergency action plan for persons who may be in the area of inundation;
    - b. Significant incremental adverse consequences; or
    - c. Significant intangible losses, as defined in R12-15-1202(21) and identified and evaluated by a public natural resource management or protection agency.
  6. Two complete sets of construction drawings as prescribed by R12-15-1215(1).
  7. Two complete sets of construction specifications as prescribed by R12-15-1215(2).
  8. An engineering design report that includes information needed to evaluate all aspects of the design of the dam and appurtenances, including references with page numbers to support any assumptions used in the design, as prescribed in R12-15-1215(3).
  9. A description of the use for the impounded or diverted water, proof of a right to appropriate, and a permit to store water as prescribed in A.R.S. §§ 45-152 and 45-161.
  10. A construction quality assurance plan clearly describing all aspects of construction supervision.
  11. A long-term budget plan and evidence of financing, prepared using customary accounting principles, that demonstrate that the applicant has the financial capability to construct, operate, and maintain the dam in a safe manner. If the applicant does not have evidence that can be verified by an independent audit of the financial capability

- ity to construct, operate, and maintain the dam in a safe manner, the Director may require a performance bond for the entire cost of the proposed construction work.
- B.** An application package for the breach or removal of a low hazard potential dam shall include the following:
1. A completed application filed in duplicate on forms provided by the Director that contains the following information:
    - a. The name and address of the owner of the dam or the agent of the owner.
    - b. A description of the proposed removal.
    - c. The proposed time for beginning and completing the removal.
  2. An initial application fee based on the total estimated project cost and computed in accordance with A.R.S. § 45-1204 and R12-15-104(A)(7).
  3. A statement by the responsible engineer demonstrating both of the following:
    - a. That the dam will be excavated to the level of natural ground at the maximum section; and
    - b. That the breach or breaches will be of sufficient width to pass the greater of:
      - i. The 100 year flood at a depth of less than 5 feet, or
      - ii. The 100 year flood at a normal flood depth of not more than 2 feet at a distance of 2,000 feet downstream of the dam,
      - iii. Subsection (B)(3)(b) shall not be construed to require more than a total removal of the dam regardless of flood magnitude.
    - c. That the sides of the breach will be excavated to a slope ratio that is stable and not steeper than 1 horizontal to 1 vertical.
  4. A detailed estimate of project costs. Project costs are all costs associated with the removal of the dam and appurtenant works, including preliminary investigations and surveys, engineering design, supervision of removal, and any other engineering costs.
- C.** An applicant intending to reduce a low hazard potential dam to nonjurisdictional size shall submit a written notice to the Director at least no less than 60 days before the date that construction begins.
- D.** Within 45 days after receipt of a complete application package as prescribed by subsection (A) or (B), the Director shall either:
1. Determine that the dam falls within the low hazard potential classification, or
  2. Issue a written notice that the dam does not fall within the low hazard potential classification.
- E.** The Director's determination that the proposed dam does not fall within the low hazard classification is an appealable agency action and subject to administrative and judicial review under A.R.S. Title 41, Chapter 6, Article 10.
- F.** Upon completion of construction, the owner shall notify the Department in writing. The owner shall not use the dam or reservoir before issuance of a license unless the Director issues written approval.
- G.** Within 90 days after completing construction, reconstruction, repair, enlargement, or alteration of a low hazard potential dam, the owner shall file the following:
1. An affidavit showing the actual cost of construction, reconstruction, repair, enlargement, or alteration of the dam. The owner shall submit a detailed accounting of the costs, including all engineering costs.
  2. An additional fee or refund request computed in accordance with A.R.S. § 45-1209 and R12-15-104(A)(7), based on the actual cost of construction, reconstruction, repair, enlargement, or alteration.
- 3.** A brief completion report summarizing the salient features of the project, including a description of the causes for any changes or deviations from the approved application package prepared by the engineer who supervised the construction, in accordance with A.R.S. Title 32, Chapter 1. The engineer shall indicate:
- a. That the dam has been designed and constructed in compliance with basic principles of dam construction currently being practiced in the industry;
  - b. That the dam as constructed has structural integrity and flood routing capacity consistent with its hazard potential classification; and
  - c. That the as constructed drawings and the report accurately represent the construction of the dam.
- 4.** As constructed drawings prepared and sealed by the engineer who supervised the construction. The owner and the engineer shall maintain a record of the drawings.
- H.** Upon receiving the Director's written approval, the owner may operate the dam and appurtenant works. Within 30 days after receipt of the information in subsection (G), the Director shall issue to the owner either a license or a notice that the dam and appurtenant works shall not be operated because the dam and appurtenant works do not qualify as low hazard or were not built according to the submitted design. The license shall include conditions of operation, including:
1. The safe storage level of the reservoir,
  2. A requirement that the dam be operated and maintained so that it does not constitute a danger to human life and property,
  3. A requirement that the conditions resulting in the low hazard classification be maintained throughout the life of the dam, and
  4. A requirement that the owner demonstrate in writing the low hazard classification in the manner prescribed by subsection (A)(5) every five years.
- I.** Within 90 days after completing removal of a low hazard potential dam, the owner shall file the following. The Director shall remove the dam from jurisdiction upon approval of the submittal.
1. An affidavit showing the actual cost of removal of the dam. The owner shall submit a detailed accounting of the costs, including all engineering costs.
  2. An additional fee or refund request computed in accordance with A.R.S. § 45-1204 and R12-15-104(A)(7), based on the actual cost of removal.
  3. A brief completion report, including a description of the causes for any changes or deviations from the approved application package prepared by the engineer who supervised the construction, in accordance with A.R.S. Title 32, Chapter 1. The engineer shall certify that the as removed drawings and the report accurately represent the actual removal of the dam.
  4. As-removed drawings prepared and sealed by the engineer who supervised the removal. The owner and the engineer shall maintain a record of the drawings.
- J.** An owner shall immediately commence repairs necessary to safeguard human life and property and prevent failure and improper operation of a low hazard potential dam. The owner shall notify the Department as soon as reasonably possible and in all cases within 10 days of commencing the required repairs.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2). Amended by



final rulemaking at 13 A.A.R. 3022, effective October 6, 2007 (Supp. 07-3). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2).

Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

**R12-15-1211. Application to Construct, Reconstruct, Repair, Enlarge, Alter, Breach, or Remove a Very Low Hazard Potential Dam**

- A.** An application package to construct, reconstruct, repair, enlarge, or alter a very low hazard potential dam shall include the following prepared by an engineer or a person under the supervision of an engineer as defined in R12-15-1202(11):
1. A completed application filed in duplicate on forms provided by the Director that contains the following information:
    - a. The name and address of the owner of the dam or the agent of the owner.
    - b. The location, type, size, and height of the proposed dam and appurtenant works.
    - c. The storage capacity of the reservoir associated with the proposed dam.
    - d. The proposed time for beginning and completing construction.
    - e. A description of the use for the impounded or diverted water and proof of a right to impound that water.
  2. The means, plans, and specifications by which the stream or body of water is to be dammed, by-passed, or controlled during construction.
  3. Maps, drawings, and specifications of the proposed dam.
  4. An initial application fee based on the total estimated project cost and computed in accordance with A.R.S. § 45-1204 and R12-15-104(A)(7).
  5. A detailed estimate of project costs. Project costs are all costs associated with construction of the dam and appurtenant works, including preliminary investigations and surveys, engineering design, supervision of construction, and any other engineering costs.
  6. A statement by the responsible engineer that classifies the dam as very low hazard in accordance with R12-15-1206(B). The responsible engineer shall submit a map of the area that would be inundated by failure or improper operation of the dam. The responsible engineer shall demonstrate that failure or improper operation would be unlikely to result in:
    - a. Loss of human life. The demonstration may be based on an emergency action plan for persons who may be in the area of inundation;
    - b. Significant incremental adverse consequences; or
    - c. Significant intangible losses, as defined in R12-15-1202(21) and identified and evaluated by a public natural resource management protection agency, because the dam has a size classification of either small or intermediate under R12-15-1206(A) and any release would be limited to the 100 year floodplain or property owned or controlled by the dam owner under long-term lease.
  7. The seal and signature of the responsible engineer in accordance with A.R.S. Title 32, Chapter 1.
  8. The drawings required by subsection (A)(3) shall include a plan view and maximum section of the dam; the outlet works; and the spillway plan, profile, and cross section.
  9. The specifications required by subsection (A)(3) shall include the construction materials, testing criteria, and installation techniques.
- B.** The Director may make other requirements for drawings and specifications for the proposed repair or alteration of a very low hazard potential dam. In determining other requirements, the Director shall consider the size and extent of the repair or alteration, the portions of the dam that will be repaired or altered, and whether the requirements elicit a description of the proposed construction work that is adequate to allow the Director to evaluate the repair or alteration.
- C.** An owner intending to breach, remove, or reduce a very low hazard potential dam to nonjurisdictional size shall submit written notice to the Director at least 60 days before the date that construction begins.
- D.** After receipt of a complete application package as prescribed by subsection (A), the Director shall either:
1. Determine that the dam falls within the very low hazard classification and approve the application in writing; or
  2. Issue a written notice that the dam does not fall within the very low hazard classification.
- E.** The Director's determination that the proposed dam does not fall within the very low hazard classification is an appealable agency action and subject to administrative and judicial review under A.R.S. Title 41, Chapter 6, Article 10.
- F.** Upon completion of construction, the owner shall notify the Department in writing. The owner shall not use the dam and reservoir before receipt of a license unless the Director issues written approval.
- G.** Within 90 days after completion of the construction, reconstruction, repair, enlargement, or alteration of a very low hazard potential dam, the owner shall file the following:
1. An affidavit showing the actual cost of construction, reconstruction, repair, enlargement, or alteration of the dam. The owner shall submit a detailed accounting of the costs, including all engineering costs.
  2. An additional fee or refund request computed in accordance with A.R.S. § 45-1209 and R12-15-104(A)(7), based on the actual cost of construction, reconstruction, repair, enlargement, or alteration.
  3. A brief completion report summarizing the salient features of the project, including a description of the causes for any changes or deviations from the approved application package prepared by the engineer who supervised the construction in accordance with A.R.S. Title 32, Chapter 1. The report shall include:
    - a. That the dam has been designed and constructed in compliance with basic principles of dam construction currently being practiced in the industry;
    - b. That the dam as constructed has structural integrity and flood routing capacity consistent with its hazard potential classification; and
    - c. That the as constructed drawings and the report accurately represent the construction of the dam.
  4. As constructed drawings prepared by the engineer who supervised the construction. The owner and the engineer shall maintain a record of the drawings.
- H.** Within 30 days after receipt of the information in subsection (G), the Director shall issue to the owner either a license or a notice that the dam and appurtenant works shall not be operated because the dam and appurtenant works do not qualify as very low hazard or were not built according to the submitted design. Upon receiving the Director's written approval, the owner may operate the dam and appurtenant works. The license shall include conditions of operation, including:
1. The safe storage level of the reservoir,

2. A requirement that the conditions resulting in the very low hazard classification be maintained throughout the life of the dam, and
  3. A requirement that the owner demonstrate in writing the very low hazard classification in the manner prescribed by subsection (A)(6) every five years.
- I. An owner shall immediately commence repairs necessary to safeguard human life and property and prevent failure or improper operation of a very low hazard potential dam. The owner shall notify the Department as soon as reasonably possible and in all cases within 10 days of commencing the required repairs.
  - J. The Department may periodically inspect construction to confirm that it is proceeding according to the approved design and that proper construction quality assurance is being exercised by the owner's engineer. The owner, or the owner's engineer under the direction of the owner, shall remedy any unsatisfactory condition using the contractor.
  - K. The owner shall provide the Department access to the dam site for purposes of inspecting all phases of construction, including the foundation, embankment and concrete placement, inspection and test records, and mechanical installations.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

#### R12-15-1212. Construction of a High, Significant, or Low Hazard Potential Dam

- A. Before commencement of construction activities, the owner shall invite to a pre-construction conference all involved regulatory agencies, the prime contractor, and all subcontractors. At this meeting the Department shall identify, to the extent possible, the key construction stages at which an inspection will be made. At least 48 hours before each key construction stage identified for inspection, the owner or the owner's engineer shall provide notice to the Department.
- B. The owner and the owner's engineer shall oversee construction of a new dam or reconstruction, repair, enlargement, alteration, breach, or removal of an existing dam. Failure to perform the work in accordance with the construction drawings and specifications approved by the Director renders the approval revocable. The owner's engineer shall exercise professional judgment independent of the contractor.
- C. A professional engineer with proficiency in engineering and knowledge of dam technology shall supervise or direct the supervision of construction in accordance with the construction quality assurance plan.
- D. The owner's engineer shall submit summary reports of construction activities and test results according to a schedule approved by the Department.
- E. The owner shall immediately report to the Department any condition encountered during construction that requires a deviation from the approved plans and specifications.
- F. The owner shall promptly submit a written request for approval of any necessary change and sufficient information to justify the proposed change. The owner shall not commence construction without the written approval of the Director unless the change is a minor change. A minor change is a change that complies with the requirements of this Article and provides equal or better safety performance.

- G. Upon completion of construction, the owner shall notify the Department in writing. The Department shall make a final inspection. The owner shall correct any deficiencies noted during the inspection.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

#### R12-15-1213. Completion Documents for a Significant or High Hazard Potential Dam

Within 90 days after completion of the construction or removal work for a significant or high hazard potential dam and final inspection by the Department, the owner shall file the following:

1. An affidavit showing the actual cost of the construction. The owner shall submit a detailed accounting of the costs, including all engineering costs.
2. An additional fee or refund request based on the actual cost of the construction, computed in accordance with A.R.S. § 45-1209 and R12-15-104(A)(7).
3. One set of full sized as constructed drawings prepared and sealed by the engineer who supervised the construction. If changes were made during construction, the owner shall file supplemental drawings showing the dam and appurtenances as actually constructed.
4. Construction records, including grouting, materials testing, and locations and baseline readings for permanent bench marks and instrumentation, initial surveys, and readings.
5. Photographs of construction from exposure of the foundation to completion of construction.
6. A brief completion report summarizing the salient features of the project, including a description of the causes for any changes or deviations from the approved drawings and specifications that were made during the construction phase.
7. A schedule for filling the reservoir, specifying fill rates, water level elevations to be held for observation, and a schedule for inspecting and monitoring the dam. The owner shall monitor the dam monthly during the first filling.
8. An operating manual for the dam and its appurtenant structures. The operating manual shall include a process for safety inspections prescribed in R12-15-1219. The operating manual shall include schedules for surveillance activities and baseline information for any installed instrumentation as follows:
  - a. The frequency of monitoring,
  - b. The data recording format,
  - c. A graphical presentation of data, and
  - d. The person who will perform the work.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

#### R12-15-1214. Licensing

- A. Upon review and approval of the documents filed under R12-15-1213 and finding that the construction at the dam has been completed in accordance with the approved plans and specifications and finding that the dam is safe, the Director shall issue a license. The license shall specify the safe storage level for the reservoir and shall specify conditions for the safe oper-

ation of the dam. The dam and reservoir shall not be used before issuance of a license unless the Director issues written approval. Procedures for issuance of a license for low and very low hazard potential dams are prescribed in R12-15-1210(H) and R12-15-1211(H), respectively.

**B.** A new license shall be issued in the following instances:

1. Upon change of ownership of a dam.
2. Upon change of the safe storage level.
3. Upon expiration of time to appeal a notice issued under R12-15-1223(B).
4. Upon expiration of time to appeal an order issued by the Director under R12-15-1223(D).
5. Upon expiration of time to appeal an order of a court.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

**R12-15-1215. Construction Drawings, Construction Specifications, and Engineering Design Report for a High, Significant, or Low Hazard Potential Dam**

The owner and engineer are responsible for complete and adequate design of a dam and for including in the application all aspects of the design pertaining to the safety of the dam.

1. Construction Drawing Requirements. The construction drawings required by R12-15-1208(5), R12-15-1209(E)(1), and R12-15-1210(A)(6) shall include the following:
  - a. The seal and signature of the responsible engineer in accordance with A.A.C. R4-30-304.
  - b. One or more topographic maps of the dam, spillway, outlet works, and reservoir on a scale large enough to accurately locate the dam and appurtenances, indicate cut and fill lines, and show the property lines and ownership status of the land. Contour intervals shall be compatible with the height and size of the dam and its appurtenances and shall show design and construction details.
  - c. A reservoir area and capacity curve that reflect area in acres and capacity in acre-feet in relation to depth of water and elevation in the reservoir. The construction drawings shall show the spillway invert and top of dam elevations. The construction drawings shall also show the reservoir volume and space functional allocations. The construction drawings may include alternate scales as required for the owner's use.
  - d. Spillway and outlet works rating curves and tables at a scale or scales that allow determination of discharge rate in cubic feet per second at both low and high flows as measured by depth of water passing over the spillway control section.
  - e. A location map showing the dam footprint and all exploration drill holes, test pits, trenches, adits, borrow areas, and bench marks with elevations, reference points, and permanent ties. This map shall use the same vertical and horizontal control as the topographic map.
  - f. Geologic information including 1 or more geologic maps, profile along the centerline, and other pertinent cross sections of the dam site, spillway or spillways, and appurtenant structures, aggregate and material sources, and reservoir area at 1 or more scales compatible with the site and geologic complexity, showing logs of exploration drill holes, test pits, trenches, and adits.
  - g. One or more plans of the dam to delineate design and construction details.
- h. Foundation profile along the dam centerline at a true scale where the vertical scale is equal to the horizontal scale, showing the existing ground and proposed finished grade at cut and fill elevations, including anticipated geologic formations. The foundation profile shall include any proposed grout and drain holes.
- i. Profile and a sufficient number of cross sections of the dam to delineate design and construction details. The drawings shall illustrate and show dimensions of camber, details of the top, core zone, interior filters and drains, and other zone details. The profile of the dam may be drawn to different horizontal and vertical scales if required for detail. A maximum section of the dam shall be drawn to a true scale, where the vertical scale is equal to the horizontal scale. The outlet conduit may be shown on the maximum section if this is typical of the proposed construction.
- j. One or more dam foundation plans showing excavation grades and cut slopes with any proposed foundation preparation, grout and drain holes, and foundation dewatering requirements.
- k. Plan, profile, and details of the outlet works, including the intake structure, the gate system, conduit, trashrack, conduit filter diaphragm, conduit concrete encasement, and the downstream outlet structure. The drawings shall include all connection and structural design details.
- l. Plan, profile, control section, and cross sections of the spillway, including details of any foundation preparation, grouting, or concrete work that is planned. A complex control structure, a concrete chute, or an energy dissipating device for a terminal structure shall include both hydraulic and structural design details.
- m. Hydrologic data, drainage area and flood routing, and diversion criteria.
2. Construction Specification Requirements. The construction specifications required by R12-15-1208(6) and R12-15-1210(A)(7) shall include the following:
  - a. The seal and signature of the responsible engineer in accordance with A.A.C. R4-30-304.
  - b. The statement that the construction drawings and specifications shall not be materially changed without the prior written approval of the Director.
  - c. A detailed description of the work to be performed and a statement of the requirements for the various types of materials and installation techniques that will enter into the permanent construction.
  - d. The statement that construction shall not be considered complete until the Director has approved the construction in writing.
  - e. The statement that the owner's engineer shall control the quality of construction.
  - f. The following construction information:
    - i. All earth and rock material descriptions, placement criteria, and construction requirements for all elements of the dam and related structures.
    - ii. All concrete, grout, and shotcrete material and mix descriptions, placement and consolidation criteria, temperature controls, and construction requirements for all elements of the dam and related structures.
    - iii. Material criteria and material testing, cleaning, and treatment. If foundation or curtain grouting

- is required, the specifications shall describe the type of grout, grouting method, special equipment necessary, recording during grouting, and foundation monitoring to avoid disturbance from grouting.
- iv. All materials testing that will be performed by the contractor for pre-qualification of materials, including special performance testing, such as water pressure tests in conduits. The Director shall accept materials that are pre-tested successfully and constructed in-place in accordance with specifications.
  - v. A plan for control or diversion of surface water during construction. The design engineer may determine frequency of storm runoff to be controlled during construction, commensurate with the risk of economic loss during construction.
  - vi. Criteria for blast monitoring and acceptable blast vibration levels, including particle velocities for the dam and other critical appurtenances. Monitoring equipment and monitoring locations shall be specified.
  - vii. Instrumentation material descriptions, placement criteria, and construction requirements and a statement that instrumentation shall be installed by experienced specialty subcontractors.
3. Engineering Design Report Requirements. The engineering design report required by R12-15-1208(7) and R12-15-1210(A)(8) shall include the following:
    - a. The seal and signature of the responsible engineer in accordance with A.A.C. R4-30-304.
    - b. The classification under R12-15-1206 of the proposed dam, or for the proposed enlargement of an existing dam or reservoir.
    - c. Hydrologic considerations, including calculations and a summary table of data used in determining the required emergency spillway capacity and freeboard, and design of any diversion or detention structures. The design report shall include input and output listings on both hard copy and computer diskette.
    - d. Hydraulic characteristics, engineering data, and calculations used in determining the capacities of the outlet works and emergency spillway. The design report shall include input and output listings on both hard copy and computer diskette.
    - e. Geotechnical investigation and testing of the dam site and reservoir basin. Results and analysis of subsurface investigations, including logs of test borings and geologic cross sections.
    - f. Guidelines and criteria for blasting to be used by the contractor in preparing the blasting plan.
    - g. Details of the plan for control or diversion of surface water during construction.
    - h. Details of the dewatering plan for subsurface water during construction.
    - i. Testing results of earth and rock materials, including the location of test pits and the logs of these pits.
    - j. Discussion and design of the foundation blanket grouting, grout curtain, and grout cap based on foundation stability and seepage considerations.
    - k. Calculations and basic assumptions on loads and limiting stresses for reinforced concrete design. The design report shall include input and output listings on both hard copy and computer diskette.
    - l. A discussion and stability analysis of the dam including appropriate seismic loading, safety factors, and embankment zone strength characteristics. Analyses shall include both short-term and long-term loading on upstream and downstream slopes. The design report shall include input and output listings on both hard copy and computer diskette.
    - m. A discussion of seismicity of the project area and activity of faults in the vicinity. The design report shall use both deterministic and statistical methods and identify the appropriate seismic coefficient for use in analyses.
    - n. Discussion and design of the cutoff trench based on seepage and other considerations.
    - o. Permeability characteristics of foundation and dam embankment materials, including calculations for seepage quantities through the dam, the foundation, and anticipated in the internal drain system. The design report shall include input and output listings on both hard copy and computer diskette. The design report shall include copies of any flow nets used.
    - p. Discussion and design of internal drainage based on seepage quantity calculations. The design report shall include instrumentation necessary to monitor the drainage system and filter design calculations for protection against piping of foundation and embankment.
    - q. Erosion protection against waves and rainfall runoff for both the upstream and downstream slopes, as appropriate.
    - r. Discussion and design of foundation treatment to compensate for geological weakness in the dam foundation and abutment areas and in the spillway foundation area.
    - s. Post-construction vertical and horizontal movement systems.
    - t. Discussion of foundation conditions including the potential for subsidence, fissures, dispersive soils, collapsible soils, and sink holes.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

#### **R12-15-1216. Design of a High, Significant, or Low Hazard Potential Dam**

##### **A. General Requirements.**

1. Emergency Spillway Requirements. An applicant shall:
  - a. Construct each spillway in a manner that avoids flooding in excess of the flooding that would have occurred in the same location under the same conditions before construction. The owner of a dam shall demonstrate that a spillway discharge would not result in incremental adverse consequences. In determining whether a spillway discharge of a dam would result in incremental adverse consequences, the Director shall evaluate whether the owner has taken any or all of the following actions: issuing public notice to downstream property owners, complying with flood insurance requirements, adopting emergency action plans, conducting mock flood drills, acquiring flow easements or other acquisitions of real property, or other actions appropriate to safeguard the dam site and flood channel.
  - b. Include a control structure to avoid head cutting and lowering of the spillway crest for spillways exca-

4. Dam Site And Reservoir Area Requirements
  - a. An applicant shall demonstrate that reservoir storage during the inflow design flood will not result in incremental adverse consequences and that the design will not result in the inundation or wave damage of properties within the reservoir, except marina-type structures, during the inflow design flood. In determining whether a discharge will result in incremental adverse consequences, the Director shall evaluate whether the owner has taken any or all of the following actions: issuing public notice to upstream affected property owners, complying with flood insurance requirements, adopting emergency action plans, conducting mock flood drills, acquiring flood easements or other acquisitions of real property, or other actions appropriate to safeguard the dam site and reservoir. Permanent habitations are not allowed within the reservoir below the spillway elevation.
  - b. The applicant shall clear the reservoir storage area of logs and debris.
  - c. The applicant shall place borrow areas a safe distance from the upstream toe and the downstream toe of the dam to prevent a piping failure of the dam.
  - d. The applicant shall keep the top of the dam and appurtenant structures accessible by equipment and vehicles for emergency operations and maintenance.
5. Geotechnical Requirements
  - a. The applicant shall provide an evaluation of the static stability of the foundation, dam, and slopes of the reservoir rim and demonstrate that sufficient material is available to construct the dam as designed.

- b. The applicant shall not construct a dam on active faults, collapsible soils, dispersive soils, sink holes, or fissures, unless the applicant demonstrates that the dam can safely withstand the anticipated offset or other unsafe effects on the dam.
- 6. Seismic Requirements
  - a. The applicant shall submit a review of the seismic or earthquake history of the area around the dam within a radius of 100 miles to establish the relationship of the site to known faults and epicenters. The review shall include any known earthquakes and the epicenter locations and magnitudes of the earthquakes.
  - b. The applicant shall identify the location of active or potentially active faults that have experienced Holocene or Late Pleistocene displacement within a radius of 100 miles of the site.
  - c. For a high or significant hazard potential dam, the applicant shall design the dam to withstand the maximum credible earthquake.
  - d. For a low hazard potential dam, the applicant shall use probabilistic or deterministic methods to determine the design earthquake. The magnitude of the design earthquake shall vary with the size of the dam, site condition, and specific location.

**B. Embankment Dam Requirements.**

- 1. Geotechnical Requirements. Table 5 states minimum factors of safety for embankment stability under various loading conditions. For an embankment dam an applicant shall provide a written analysis of minimum factors of safety for stability.
  - a. The analysis of minimum factors of safety shall include the effects of anisotropy on the phreatic surface position by using a ratio of horizontal permeability to vertical permeability of at least 10. The Director may require ratios of up to 100 if the material types and construction techniques will cause excessive stratification.
  - b. The applicant shall use tests modeling the conditions being analyzed to determine the strengths used in the stability analysis. The stability analysis shall include total and effective stress strengths appropriate for the different material zones and conditions analyzed. The stability analysis shall use undrained strengths or strength parameters for all saturated materials.
  - c. The applicant shall perform an analysis of the upstream slope stability for a partial pool with steady seepage considering the reservoir level that provides the lowest factor of safety.
  - d. A stability analysis is not required for low hazard potential dams if the owner or the owner's engineer demonstrates that conservative slopes and competent materials are included in the design.
- 2. Seismic Requirements
  - a. The applicant shall determine the seismic characteristics of the site as prescribed in subsection (A)(6).
  - b. The applicant shall determine the liquefaction susceptibility of the embankment, foundation, and abutments. The applicant shall use standard penetration testing, cone penetration testing, shear wave velocity measurements, or a combination of these methods to make this determination. The applicant shall compute the minimum factor of safety against liquefaction at specific points and make a determination of whether the overall site is subject to liquefaction.
  - c. The applicant shall determine the safety of the dam under seismic loading using a pseudo static stability

analysis, computing the minimum factor of safety if the embankment, foundation or abutment is not subject to liquefaction and has a maximum peak acceleration of 0.2g or less, or a maximum peak acceleration of 0.35g or less, and consists of clay on a clay or bedrock foundation. The applicant shall use in the pseudo static stability analysis a pseudo static coefficient that is at least 60% of the maximum peak bedrock acceleration at the site.

- d. The applicant shall compute a minimum factor of safety against overtopping due to deformation and settlement in each of the following cases. The minimum factor of safety against overtopping can be no less than 2.5, determined by dividing the total pre-earthquake freeboard by the estimated vertical settlement in feet. The applicant shall determine the total vertical settlement by adding the settlement values of the upstream and downstream slopes.
  - i. The minimum factor of safety in a pseudo static analysis is less than 1.0;
  - ii. An embankment, foundation, or abutment is not subject to liquefaction, has a maximum peak acceleration of more than 0.2g or a maximum peak acceleration of more than 0.35g and consists of clay on a clay or bedrock foundation; or
  - iii. The embankment, foundation or abutment is subject to liquefaction.
- e. The applicant shall perform a liquefaction analysis to establish approximate boundaries of liquefiable zones and physical characteristics of the soil following liquefaction for an embankment, foundation, or abutment subject to liquefaction. The applicant shall perform an analysis of the potential for flow liquefaction.
- f. Other, more sophisticated analytical procedures may be required by the Director for sites with high seismicity or low strength embankment or foundation soils.
- 3. Miscellaneous Design Requirements
  - a. The design of any significant or high hazard potential dam shall provide seepage collection and prevent internal erosion or piping due to embankment cracking or other causes.
  - b. The Director shall review the filter and permeability design for a chimney drain, drain blanket, toe drain, or outlet conduit filter diaphragms on the basis of unique site characteristics.
    - i. The minimum thickness of an internal drain is 3 feet.
    - ii. The minimum width of a chimney drain is 6 feet.
    - iii. The applicant shall filter match an internal drain to its adjacent material.
    - iv. The applicant shall design internal drains with sufficient capacity for the expected drainage without the use of drainpipes using only natural granular materials.
  - c. The use of a geosynthetic is not permitted in a design if it serves as the sole defense against dam failure. The use of geotextiles and geonets as a filter or drain material or a geomembrane liner is permitted only in a location that is easily accessible for repair or if its excavation cannot create an unsafe condition at the dam. A geosynthetic liner is allowed under special conditions and in specific situations if

it is subject to monitoring and redundant safety controls. The Director may impose conditions, including monitoring appropriate to the hazard classification, inspection, and necessary repairs, each performed every 5 years.

- d. The applicant shall use armoring on any upstream slope of an embankment dam that impounds water for more than 30 days at a time. If the applicant uses rock riprap, it shall be well-graded, durable, sized to withstand wave action, and placed on a well-graded pervious sand and gravel bedding or geotextile with filtering capacity appropriate for the site.
- e. The applicant shall protect the downstream slopes and groins of an embankment dam from erosion.
- f. The minimum width of the top of an embankment dam is equal to the structural height of the dam divided by 5 plus an additional 5 feet. The required minimum width for any embankment dam is 12 feet. The maximum width for any embankment dam is 25 feet.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

**Table 4. Inflow Design Flood**

Dam Hazard Class	Dam Size Classification	IDF Magnitude
Very Low	All Sizes	100-year
Low	All Sizes	0.25 PMF
Significant	Small Intermediate Large	0.25 PMF 0.5 PMF 0.5 PMF
High*	All Sizes	*

\* For a high hazard potential dam, the applicant shall design the dam to withstand an inflow design flood that varies from .5 PMF to the full PMF, with size increasing based on persons at risk and potential for downstream damage. The applicant shall consider foreseeable future conditions.

**Historical Note**

New Table adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

**Table 5. Minimum Factors of Safety for Stability<sup>1</sup>**

Embankment Loading Condition	Minimum Factor of Safety
End of construction case – upstream and downstream slopes	1.3
End of construction case for embankments greater than 50 feet in height on weak foundations	1.4
Steady state seepage - upstream (critical partial pool) and downstream slope (full pool)	1.5
Instantaneous drawdown - upstream slope	1.2

<sup>1</sup> Not applicable to an embankment on a clay shale foundation.

**Historical Note**

New Table adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

**R12-15-1217. Maintenance and Repair; Emergency Actions**

- A. An owner shall perform general maintenance and ordinary repairs that do not impair the safety of the dam. General maintenance and ordinary repair activities listed under this subsection do not require prior approval of the Director. These repair activities include:
  1. Removing brush or tall weeds.
  2. Cutting trees and removing slash from the embankment or spillway. Small stumps may be removed provided no excavation into the embankment occurs.
  3. Exterminating rodents by trapping or other methods. Rodent damage may be repaired provided it does not involve excavation that extends more than 2 feet into the embankment and replacement materials are compacted as they are placed.
  4. Repairing erosion gullies less than 2 feet deep on the embankment or in the spillway.
  5. Grading the surface on the top of the dam embankment or spillway to eliminate potholes and provide proper drainage, provided the freeboard is not reduced.
  6. Placing additional riprap and bedding on the upstream slope, or in the spillway in areas that have sustained minor damage and restoring the original riprap protection where the damage has not yet resulted in erosion and weakening of the dam.
  7. Painting, caulking, or lubricating metal structures.
  8. Patching or caulking spalled or cracked concrete to prevent deterioration.
  9. Removing debris, rock, or earth from outlet conduits or spillway channels and basins.
  10. Patching to prevent deterioration within outlet works.
  11. Replacing worn or damaged parts on outlet valves or controls to restore them to original condition or its equivalent.
  12. Repairing or replacing fences intended to keep traffic or livestock off the dam or spillway.
- B. General maintenance and ordinary repair that may impair or adversely effect safety, such as excavation into or near the toe of the dam, construction of new appurtenant structures for the dam, and repair of damage that has already significantly weakened the dam shall be performed in accordance with this Article. The Director may approve maintenance performed according to a standard detail or method of repair on file with the Department upon submittal of a letter. The Director shall determine whether general maintenance and ordinary repair activities not listed in subsection (A) will impair safety.
- C. Emergency actions not impairing the safety of the dam may be taken before guidance can be provided by an engineer and do not require prior approval of the Director. Emergency actions do not excuse an owner's responsibility to promptly undertake a permanent solution. Emergency actions include:
  1. Stockpiling materials such as riprap, earth fill, sand, sandbags, and plastic sheeting.
  2. Lowering the reservoir level by making releases through the outlet or a gated spillway, by pumping, or by siphoning.
  3. Armoring eroded areas by placing sandbags, riprap, plastic sheeting, or other available material.
  4. Plugging leakage entrances on the upstream slope.
  5. Increasing freeboard by placing sandbags or temporary earth fill on the dam.
  6. Diverting flood waters to prevent them from entering the reservoir basin.
  7. Constructing training berms to control flood waters.

8. Placing sandbag ring dikes or reverse filter materials around boils at the downstream toe to provide back pressure.
9. Removing obstructions from outlet or spillway flow areas.
- D. Emergency actions impairing the safety of the dam require prior approval of the Director. An owner shall not lower the water level by excavating the spillway or embankment unless failure is imminent.
- E. For all high and significant hazard potential dams, the emergency action plan shall be implemented with any emergency actions taken at the dam.
- F. The owner shall notify the Director immediately of any emergency condition that exists and any emergency action taken.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

**R12-15-1218. Safe Storage Level**

The Director has the authority to determine the safe storage level for the reservoir behind each dam, including the storage level of an existing dam while it is being repaired, enlarged, altered, breached, or removed. The elevation of the safe storage level is stated on the license. The owner shall not store water in excess of the level determined by the Director to be safe. The owner shall not place flashboards or other devices in the emergency spillway without approval of an alteration of the dam in accordance with this Article.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

**R12-15-1219. Safety Inspections; Fees**

- A. Except as provided in subsection (E), the Director shall conduct a dam safety inspection annually or more frequently for each high hazard potential dam, triennially for each significant hazard potential dam, and once every five years for each low and very low hazard potential dam. An owner of a dam shall pay the inspection fee required by R12-15-105 for each inspection of the dam pursuant to this subsection.
- B. An engineer is considered qualified to provide information to the Director regarding the safe storage level of a reservoir if the engineer:
  1. Meets the criteria in R12-15-1202(11),
  2. Has three years of experience in the field of dam safety, and
  3. Has actual experience in conducting dam safety inspections.
- C. A dam safety inspection includes:
  1. Review of previous inspections, reports, and drawings;
  2. Inspection of the dam, spillways, outlet facilities, seepage control, and measurement systems;
  3. Inspection of any permanent monument or monitoring installations;
  4. Assessment of all parts of the dam that are related to the dam's safety; and
  5. A recommendation regarding the safe storage level of the reservoir.
- D. The engineer shall submit a safety inspection report that describes the findings and lists actions that will improve the safety of the dam. The report shall include the engineer's recommendation of the safe storage level. The engineer shall use a report form approved by the Director.
- E. Inspections by the Owner
  1. An owner may provide to the Director, at the owner's expense, a safety inspection report that complies with the requirements of subsections (B), (C), and (D) in place of

an inspection by the Department. The owner's engineer shall notify the Director and submit a written summary of the engineer's qualifications at least 14 days before the scheduled safety inspection.

2. The Director may refuse to accept an inspection that does not conform to this Article.
3. A safety inspection report submitted pursuant to this subsection shall include the fee required by R12-15-105(D).
- F. Inspections by the Department
  1. The Director may enter at reasonable times upon private or public property and the owner shall permit such entry, where a dam is located, including a dam under construction, reconstruction, repair, enlargement, alteration, breach, or removal, for any of the following purposes:
    - a. To enforce the conditions of approval of the construction drawings and specifications related to an application for construction, reconstruction, repair, enlargement, alteration, breach, or removal.
    - b. To inspect a dam that is subject to this Article.
    - c. To investigate or assemble data to aid review and study of the design and construction of dams, reservoirs, and appurtenances or make watershed investigations to facilitate decisions on public safety to fulfill the duties of A.R.S. § 45-1214.
    - d. To ascertain compliance with this Article and A.R.S. Title 45, Chapter 6.
  2. Upon receipt of a complaint that a dam is endangering people or property:
    - a. The Director shall inspect the dam unless there is substantial cause to believe the complaint is without merit.
    - b. If the complainant files a complaint in writing and deposits with the Director sufficient funds to cover the costs of the inspection, the Director shall make an inspection.
    - c. The Director shall provide a written report of the inspection to the complainant and the dam owner.
    - d. If an unsafe condition is found, the Director shall cause it to be corrected and return the deposit to the complainant. If the complaint was without merit the deposit shall be paid into the general fund.
  3. The Director may employ qualified on-call consultants to conduct inspections.
  4. Inspections under subsection (A) shall comply with the requirements of A.R.S. § 41-1009.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2). Amended by exempt rulemaking at 16 A.A.R. 1205, effective June 15, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1950, effective September 10, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 659, effective June 4, 2011 (Supp. 11-2).

**R12-15-1220. Existing Dams**

- A. The requirements of this Article apply to existing dams, except as provided in subsections (B) and (C).
- B. If the Director has determined that an existing dam is in a safe condition, the owner is not required to comply with R12-15-1216 unless the Director determines that it is cost effective to upgrade the dam to comply with the requirements of R12-15-1216 at the time a major alteration or major repair is planned. In determining whether it is cost effective to upgrade a dam, the Director shall consider:
  1. The hazard potential classification of the dam;



2. Whether the cost of the upgrade would exceed 25% of the total cost of the major alteration or major repair; and
  3. Whether there is a more cost effective alternative that would provide an equivalent increase in safety.
- C. If the Director has determined that a dam is in an unsafe condition, the owner shall comply with the requirements in R12-15-1216. The owner is not required to comply with a requirement in this Article if the Director finds that, considering the site characteristics and the proposed design, the requirement is unduly burdensome or expensive and is not necessary to protect human life or property. The Director shall consider the size, hazard potential classification, physical site conditions, and applicability of a requirement to the dam. The Director shall state in writing the reason or reasons the owner is not required to comply with a requirement.
- D. The owner shall ensure that installation of utilities beneath or through an existing dam is accomplished by open cuts or jacking and boring methods.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

**R12-15-1221. Emergency Action Plans**

- A. Each owner of a high or significant hazard potential dam shall prepare, maintain, and exercise a written emergency action plan for immediate defensive action to prevent failure of the dam and minimize any threat to downstream development. The emergency action plan shall contain a:
1. Notification chart showing the priority for notification in an emergency situation. The owner shall notify local emergency response agencies, affected downstream populations, county emergency management agencies, and affected flood control districts;
  2. Description of the demand reservoir and scope of the emergency action plan;
  3. Delineation of potentially unsafe conditions, evaluation procedures, and triggering events that require the initiation of partial or full emergency notification procedures, based on the urgency of the situation;
  4. Delineation of areas of responsibility of the owner and other parties. The emergency action plan shall clearly identify individuals responsible for notifications and declaring an emergency;
  5. Specific notification procedure for each emergency situation anticipated;
  6. Description of emergency supplies and resources, equipment access to the site, and alternative means of communication. The emergency action plan shall also identify specific preparedness activities required, such as annual full or partial mock exercises and updates of the emergency action plan; and
  7. Map showing the area that would be subject to flooding due to spillway flows and dam failures.
- B. The owner shall use the Director's model emergency action plan, which is available at no cost, or an equivalent model, for guidance in preparing the emergency action plan.
- C. The owner shall submit a copy of the proposed emergency action plan for review by the Arizona Division of Emergency Management and all local emergency coordinators involved in the plan. The owner shall incorporate appropriate recommendations generated by the reviews and submit the revised emergency action plan to the Department.
- D. The owner shall review and update the emergency action plan annually or more frequently to incorporate changes such as new personnel, changing roles of emergency agencies, emergency response resources, conditions of the dam, and informa-

tion learned from mock exercises. The owner shall send updated portions of the plan to persons and agencies holding copies of the plan within 15 days after preparation of an update.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

**R12-15-1222. Right of Review**

- A. An applicant or owner aggrieved by a decision of the Director regarding the determination of hazard classification, jurisdictional status, or the Director's application of this Article may seek review of an appealable agency action under A.R.S. Title 41, Chapter 6, Article 10.
- B. An applicant or owner aggrieved by a decision of the Director that requires the exercise of professional engineering judgment or discretion or the assessment of risk to human life or property, such as the adequacy of an applicant's project documentation, dam design, safe storage level, requirements for existing dams, or maintenance, may seek review by a board of review under A.R.S. §§ 45-1210 and 45-1211.
- C. The following actions are not subject to review:
1. Emergency measures taken under A.R.S. §§ 45-1212 or 45-1221.
  2. Agency decisions made under A.R.S. §§ 41-1009(E) or (F).
  3. Agency actions made exempt from review by law.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

**R12-15-1223. Enforcement Authority**

- A. The Department may exercise its discretion to take action necessary to prevent danger to human life or property. The Director may take any legal action that is proper and necessary for the enforcement of this Chapter.
- B. If the Director has cause to believe that a dam is unsafe or a person is violating or has violated a provision of this Article or A.R.S. Title 45, Chapter 6, Article 1, the Director may issue a notice directing the owner to remedy the safety deficiency or correct the violation. The owner may appeal a notice issued under this subsection as an appealable agency action in accordance with A.R.S. Title 41, Chapter 6, Article 10. If the owner does not appeal within 30 days after the date on the notice, the notice becomes final and may be incorporated as a condition of any license based on the duration of the requirement.
- C. If the Director has cause to believe that a dam is unsafe or a person is violating or has violated a provision of this Article or A.R.S. Title 45, Chapter 6, Article 1, the Director may proceed under A.R.S. § 45-1221 to initiate a contested case under A.R.S. Title 41, Chapter 6, Article 10 by requesting an administrative hearing.
- D. Following a written decision by an administrative law judge, the Director shall issue a decision and order accepting, rejecting, or modifying the administrative law judge's decision. Upon expiration of time to appeal, the decision and order becomes final and may be incorporated as a condition of any license based on the duration of the requirement.
- E. If the Director has cause to believe that a dam is unsafe or a person is violating or has violated a provision of this Article or A.R.S. Title 45, Chapter 6, Article 1 the Director may commence an action in a court of appropriate jurisdiction if:
1. The violation is an emergency requiring appropriate steps to be taken without delay; or
  2. The Director has cause to believe that use of the administrative procedure would be ineffective or that delay

would ensue and a deterioration in the safety of the dam would occur.

- F. If the Director commences an action it shall be brought in a court of appropriate jurisdiction in which:
  1. The cause or some part of the cause arose; or
  2. The owner or person complained of has his or her place of business; or
  3. The owner or person complained of resides.
- G. A person determined to be in violation of this Article; A.R.S. Title 45, Chapter 6; a license; or order may be assessed a civil penalty not exceeding \$1,000 per day of violation. The Director may offer evidence relating to the amount of the penalty in accordance with A.R.S. § 45-1222.
- H. A violation of A.R.S. Title 45, Chapter 6, Article 1 regarding Supervision of Dams, Reservoirs, and Projects is a class 2 misdemeanor, in accordance with A.R.S. § 45-1216.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

#### R12-15-1224. Emergency Procedures

- A. The owner of a dam shall immediately notify the Department and responsible authorities in adjacent and downstream communities, including emergency management authorities, of a condition that may threaten the safety of the dam. The owner shall take necessary actions to protect human life and property, including action required under an emergency action plan or order issued under this Article.
  1. A condition that may threaten the safety of a dam includes:
    - a. Sliding of upstream or downstream slopes or abutments contiguous to the dam;
    - b. Sudden subsidence of the top of the dam;
    - c. Longitudinal or transverse cracking of the top of the dam;
    - d. Unusual release of water from the downstream slope or face of the dam;
    - e. Other unusual conditions at the downstream slope of the dam;
    - f. Significant landslides in the reservoir area;
    - g. Increasing volume of seepage;
    - h. Cloudy seepage or recent deposits of soil at seepage exit points;
    - i. Sudden cracking or displacement of concrete in a concrete or masonry dam spillway or outlet works;
    - j. Loss of freeboard or dam cross section due to storm wave erosion;
    - k. Flood waters overtopping an embankment dam; or
    - l. Spillway backcutting that threatens evacuation of the reservoir.
  2. In case of an emergency, the owner shall telephone the Arizona Department of Public Safety's emergency numbers at (800) 411-2336 or (602) 223-2000.
- B. The Director shall issue an emergency approval to repair, alter, or remove an existing dam if the Director finds that immediate remedial action is necessary to alleviate an imminent threat to human life or property.
  1. The emergency approval shall be provided in writing on a form developed for this purpose.
  2. The emergency approval may contain conditions the Director determines are appropriate to protect human life or property.
  3. The emergency approval is effective immediately for 30 days after notice is issued unless extended in writing by the Director. The Director shall also send notice to the county flood control district of the county in which the

dam is located, all municipalities within 5 miles downstream of the dam, and any additional persons identified in the emergency action plan.

- 4. The Director may institute legal or administrative proceedings that the Director deems appropriate for violations of the emergency approval or conditions of the emergency approval.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

#### R12-15-1225. Emergency Repairs

- A. The Director shall use monies from the dam repair fund, established under A.R.S. § 45-1212.01 to employ any remedial measure necessary to protect human life and property resulting from a condition that threatens the safety of a dam if the dam owner is unable or unwilling to take action and there is not sufficient time to issue and enforce an order.
- B. The deputy director may authorize an expenditure not to exceed \$10,000 from the dam repair fund for remedial measures under A.R.S. § 45-1212. The expenditure of any additional funds shall be approved by the Director.
- C. The Director shall hold a lien against all property of the owner in accordance with A.R.S. § 45-1212.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

#### R12-15-1226. Non-Emergency Repairs; Loans and Grants

- A. If the Director determines that a dam represents a threat to human life and property but is not in an emergency condition, the Director may use the dam repair fund, established under A.R.S. § 45-1212.01, as prescribed in this Article to defray the costs of repair.
- B. Monies from the dam repair fund may be used for loans and grants to owners as provided in A.R.S. §§ 45-1218 and 45-1219.
- C. To qualify for a loan or grant from the dam repair fund, a dam shall be classified as unsafe by the Director.
- D. The Director may authorize grant funds for all or part of the cost of engineering studies or construction needed to mitigate the threat to human life and property created by a dam.
  1. The Director and the grantee shall execute a financial assistance agreement that includes terms of financial assistance, the work progress, and payment schedule.
  2. The Director shall disburse grant funds in accordance with the financial assistance agreement.
  3. The Director shall establish a priority ranking for grants based on factors including the potential for failure of a dam, the number of lives at risk, and the capability of the owner to pay a portion of the costs.
- E. The Director may loan funds for engineering studies or for all or part of construction as prescribed in A.R.S. § 45-1218.
  1. The Director and the dam owner shall execute a loan repayment agreement. The loan repayment agreement shall be delivered to and held by the Department.
  2. The Director shall establish a priority ranking for loans based on factors including the potential for failure of a dam, the number of human lives at risk, and the capability of the owner to pay a portion of the costs.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2558, effective June 12, 2000 (Supp. 00-2).

#### ARTICLE 13. WELL SPACING REQUIREMENTS; REPLACEMENT WELLS IN APPROXIMATELY THE

## SAME LOCATION

**R12-15-1301. Definitions**

In addition to the definitions in A.R.S. §§ 45-101, 45-402, and 45-591, the following words and phrases in this Article shall have the following meanings, unless the context otherwise requires:

1. "Abandoned well" means a well for which a well abandonment completion report has been filed pursuant to R12-15-816(E) or for which a notification of abandonment has been filed pursuant to R12-15-816(K).
2. "Additional drawdown" means a lowering in the water levels surrounding a well that is the result of the operation of the well and that is not attributable to existing regional rates of decline or existing impacts from other wells.
3. "Applicant" means any of the following:
  - a. A person who has filed an application for a permit to construct a new well or a replacement well in a new location under A.R.S. § 45-599;
  - b. A person who has filed an application for a recovery well permit under A.R.S. § 45-834.01 for a new well as defined in A.R.S. § 45-591 or, except as provided in A.R.S. § 45-834.01(B)(2) or (3), an existing well as defined in A.R.S. § 45-591;
  - c. A person who has filed an application for approval to use a well to withdraw groundwater for transportation to an active management area under A.R.S. § 45-559; or
  - d. A person, other than a city, town, private water company, or irrigation district, who has filed an application for a water exchange permit under A.R.S. § 45-1041.
4. "ADEQ" means the Arizona Department of Environmental Quality.
5. "Contaminated groundwater" means groundwater that has been contaminated by a release of a hazardous substance, as defined in A.R.S. § 49-201, or a pollutant, as defined in A.R.S. § 49-201.
6. "DOD" means the United States Department of Defense.
7. "EPA" means the United States Environmental Protection Agency.
8. "LCR plateau groundwater transporter" means a person transporting groundwater from the Little Colorado River plateau groundwater basin to another groundwater basin pursuant to A.R.S. § 45-544(B)(1).
9. "Notice of water exchange participant" means a person, other than a city, town, private water company, or irrigation district, named as a participant in a water exchange in a notice of water exchange filed under A.R.S. § 45-1051.
10. "Original well" means the well replaced by a replacement well in approximately the same location, except that if the replacement well is the latest in a succession of two or more wells drilled as replacement wells in approximately the same location under R12-15-1308 or temporary rule R12-15-840 adopted by the director on March 11, 1983, "original well" means the well replaced by the first replacement well in approximately the same location.
11. "Remedial action site" means any of the following:
  - a. The site of a remedial action undertaken pursuant to the comprehensive environmental response, compensation, and liability act ("CERCLA") of 1980, as amended, 42 U.S.C. 9601, et seq., commonly known as a "superfund" site;
  - b. The site of a corrective action undertaken pursuant to A.R.S. Title 49, Chapter 6, commonly known as a leaking underground storage tank ("LUST") site;
  - c. The site of a voluntary remediation action undertaken pursuant to A.R.S. Title 49, Chapter 1, Article 5;
  - d. The site of a remedial action undertaken pursuant to A.R.S. Title 49, Chapter 2, Article 5, commonly known as a water quality assurance revolving fund ("WQARF") site;
  - e. The site of a remedial action undertaken pursuant to the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6901, et seq.; or
  - f. The site of remedial action undertaken pursuant to the Department of Defense Environmental Restoration Program, 10 U.S.C. 2701, et seq., commonly known as a "Department of Defense site" or a "DOD site."
12. "Replacement well" means a well drilled for the purpose of replacing another well.
13. "Replacement well in a new location" means a replacement well that does not qualify as a replacement well in approximately the same location under R12-15-1308.
14. "Replacement well in approximately the same location" means a replacement well that qualifies as a replacement well in approximately the same location under R12-15-1308.
15. "Well" has the meaning prescribed in A.R.S. § 45-402. An abandoned well is not a well.
16. "Well of record" means, with respect to an applicant, an LCR plateau groundwater transporter, or a notice of water exchange participant, any well or proposed well not owned by the applicant, LCR plateau groundwater transporter, or notice of water exchange participant, or proposed to be drilled by the applicant, LCR plateau groundwater transporter, or notice of water exchange participant, to which any of the following apply:
  - a. The well is an existing well as defined in A.R.S. § 45-591 and the owner or operator has registered the well with the Department, unless the current well information on file with the Department identifies the sole purpose or purposes of the well as one or more of the following:
    - i. Cathodic protection;
    - ii. Use as a sump pump or heat pump;
    - iii. Air sparging;
    - iv. Injection of liquids or gasses into the aquifer or vadose zone, including injection wells that are part of an underground storage facility permitted under A.R.S. Title 45, Chapter 3.1;
    - v. Monitoring water levels or water quality, including a piezometer well;
    - vi. Obtaining geophysical, mineralogical, or geotechnical data;
    - vii. Grounding;
    - viii. Soil vapor extraction;
    - ix. Electrical energy generation pursuant to a temporary permit for electrical energy generation issued under A.R.S. § 45-517;
    - x. Dewatering pursuant to a dewatering permit issued under A.R.S. § 45-513 or a temporary dewatering permit issued under A.R.S. § 45-518;
    - xi. Drainage pursuant to a drainage water withdrawal permit issued under A.R.S. § 45-519; or
    - xii. Hydrologic testing pursuant to a hydrologic testing permit issued under A.R.S. § 45-519.01.
  - b. The well is a new well as defined in A.R.S. § 45-591 for which a notice of intention to drill was not filed

- pursuant to A.R.S. § 45-596 and for which a permit was not issued pursuant to A.R.S. §§ 45-599 or 45-834.01, and the owner or operator has registered the well with the Department, unless the current well information on file with the Department identifies the sole purpose or purposes of the well as one or more of the purposes in subsection (16)(a)(i) through (xii) of this Section;
- c. A filing has been made for the well pursuant to A.R.S. § 45-596(A) or (B), unless any of the following apply:
    - i. The filing has expired pursuant to A.R.S. § 45-596(E);
    - ii. The filing identifies the sole purpose or purposes of the well as one or more of the purposes in subsection (16)(a)(i) through (xii) of this Section; or
    - iii. The well is an exempt well and the director is prohibited by A.R.S. § 45-454(D)(4) from considering impacts on the well when determining whether to approve or reject a permit application filed under A.R.S. § 45-599.
  - d. An application for a permit to drill the well has been received by the Department pursuant to A.R.S. § 45-599, unless the application has been rejected after exhaustion of all administrative and judicial appeals or the permit issued pursuant to the application has been revoked or has expired according to its terms or for failure to complete the well in a timely manner pursuant to A.R.S. § 45-599(G);
  - e. An application for a permit pursuant to A.R.S. §§ 45-514 or 45-516 has been received by the Department pursuant to A.R.S. § 45-521, unless the application has been rejected after exhaustion of all administrative and judicial appeals or the permit issued pursuant to the application has been revoked or has expired according to its terms or for failure to complete the well before expiration of the drilling authority; or
  - f. An application for a permit to drill a recovery well has been received by the Department pursuant to A.R.S. § 45-834.01, unless the application has been rejected after exhaustion of all administrative and judicial appeals or the permit issued pursuant to the application has been revoked or has expired according to its terms or for failure to complete the well in a timely manner pursuant to A.R.S. § 45-834.01(F).

#### Historical Note

New Section made by final rulemaking at 12 A.A.R. 2193, effective August 7, 2006 (Supp. 06-2).

#### **R12-15-1302. Well Spacing Requirements - Applications to Construct New Wells or Replacement Wells in New Locations Under A.R.S. § 45-599**

- A. The director shall not approve an application for a permit to construct a new well or a replacement well in a new location under A.R.S. § 45-599 if the director determines that the withdrawals from the proposed well or wells will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells under subsection (B) of this Section.
- B. The director shall determine that the withdrawals from the proposed well or wells will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells if any of the following apply:
  1. Except as provided in subsection (D) of this Section, the director determines that the probable impact of the withdrawals from the proposed well or wells on any well of record in existence as of the date of receipt of the application will exceed 10 feet of additional drawdown after the first five years of operation of the proposed well or wells. To assist the director in making a determination under this subsection, the applicant may submit a hydrological study delineating those areas surrounding the proposed well or wells in which the projected impacts on water levels will exceed 10 feet of additional drawdown after the first five years of operation of the proposed well or wells. The director may require the applicant to submit such a hydrological study if the director determines that the study will assist the director in making a determination under this subsection;
  2. The director determines that the proposed well or wells will be located in an area of known land subsidence and the withdrawals from the proposed well or wells will likely cause unreasonably increasing damage from additional regional land subsidence. To assist the director in making a determination under this subsection, the applicant may submit a hydrological study, which may include a geophysical evaluation, demonstrating the impact of the withdrawals from the proposed well or wells on regional land subsidence. The director may require the applicant to submit such a hydrological study if the director determines that the study will assist the director in making a determination under this subsection; or
  3. Except as provided in subsection (E) of this Section, the director determines, after consulting with ADEQ, that withdrawals from the proposed well or wells will likely cause the migration of contaminated groundwater from a remedial action site to a well of record in existence as of the date of the receipt of the application, resulting in a degradation of the quality of the water withdrawn from the well of record so that the water will no longer be usable for the purpose for which it is currently being used without additional treatment, and that the damage to the owner of the well of record will not be prevented or adequately mitigated through the implementation of a program regulated under Title 49 of the Arizona Revised Statutes, or a program regulated by EPA or DOD. To assist the director in making a determination under this subsection, the applicant may submit a hydrological study demonstrating whether the withdrawals from the proposed well or wells will have the effect described in this subsection. The director may require the applicant to submit such a hydrological study if the director determines that the study will assist the director in making a determination under this subsection.
- C. In making a determination under subsection (B)(1), (B)(2), or (B)(3) of this Section, if the proposed well is a replacement well in a new location, the director shall take into account the collective effects of reducing or terminating withdrawals from the well being replaced combined with the proposed withdrawals from the replacement well if the applicant submits a hydrological study demonstrating those collective effects to the satisfaction of the director.
- D. If the director determines under subsection (B)(1) of this Section that the probable impact of the withdrawals from the proposed well or wells on one or more wells of record in existence as of the date of receipt of the application will exceed 10 feet of additional drawdown after the first five years of operation of the proposed well or wells, the director shall notify the applicant in writing of the location of the wells of record and

the names and addresses of the owners of the wells as shown in the Department's well registry. The director shall not determine that the withdrawals from the proposed well or wells will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells under subsection (B)(1) of this Section if within 60 days after the date on the notice, or a longer time period approved by the director, the applicant submits one of the following for each well of record identified in the notice:

1. A signed and notarized consent form from the owner of the well of record consenting to the withdrawals from the proposed well or wells. The applicant shall use the consent form furnished by the director; or
  2. Evidence satisfactory to the director that the address of the owner of the well of record as shown in the Department's well registry records is inaccurate and that the applicant made a reasonable attempt to locate the current owner of the well of record but was unable to do so.
- E. If the director determines that withdrawals from the proposed well or wells will have the effect described in subsection (B)(3) of this Section on one or more wells of record in existence as of the date of receipt of the application, the director shall notify the applicant in writing of the location of the wells of record and the names and addresses of the owners of the wells as shown in the Department's well registry. The director shall not determine that the withdrawals from the proposed well or wells will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells under subsection (B)(3) of this Section if within 60 days after the date on the notice, or a longer time period approved by the director, the applicant submits one of the following for each well of record identified in the notice:
1. A signed and notarized consent form from the owner of the well of record consenting to the withdrawals from the proposed well or wells. The applicant shall use the consent form furnished by the director; or
  2. Evidence satisfactory to the director that the address of the owner of the well of record as shown in the Department's well registry records is inaccurate and that the applicant made a reasonable attempt to locate the current owner of the well of record but was unable to do so.
- F. At any time before a final determination under this Section, the applicant may:
1. Amend the application to change the location of the proposed well or wells or the amount of groundwater to be withdrawn from the proposed well or wells to lessen the degree of impact on wells of record or regional land subsidence; or
  2. Agree to construct or operate the proposed well or wells in a manner that lessens the degree of impact on wells of record or regional land subsidence. The director shall indicate in the well permit that compliance with the agreement is a condition of the well permit.

#### Historical Note

New Section made by final rulemaking at 12 A.A.R. 2193, effective August 7, 2006 (Supp. 06-2).

#### **R12-15-1303. Well Spacing Requirements - Applications for Recovery Well Permits Under A.R.S. § 45-834.01**

- A. The director shall not approve an application for a recovery well permit under A.R.S. § 45-834.01 that is filed for a new well as defined in A.R.S. § 45-591 or, except as provided in A.R.S. § 45-834.01(B)(2) or (3), for an existing well as defined in A.R.S. § 45-591, if the director determines that the recovery of stored water from the proposed well or wells will cause unreasonably increasing damage to surrounding land or

other water users from the concentration of wells under subsection (B) of this Section.

- B. The director shall determine that the recovery of stored water from the proposed well or wells will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells if any of the following apply:
1. Except as provided in subsection (D) of this Section, the director determines that the probable impact of the recovery of stored water from the proposed well or wells on any well of record in existence as of the date of receipt of the application will exceed 10 feet of additional drawdown after the first five years of the recovery of stored water from the proposed well or wells. To assist the director in making a determination under this subsection, the applicant shall submit with the application a hydrological study delineating those areas surrounding the proposed well or wells in which the projected impacts on water levels will exceed 10 feet of additional drawdown after the first five years of the recovery of stored water from the proposed well or wells;
  2. The director determines that the proposed recovery well or wells will be located in an area of known land subsidence and the recovery of stored water from the proposed well or wells will likely cause unreasonably increasing damage from additional regional land subsidence. To assist the director in making a determination under this subsection, the applicant may submit a hydrological study, which may include a geophysical evaluation, demonstrating the impact of the recovery of stored water from the proposed recovery well or wells on regional land subsidence. The director may require the applicant to submit such a hydrological study if the director determines that the study will assist the director in making a determination under this subsection; or
  3. Except as provided in subsection (E) of this Section, the director determines, after consulting with ADEQ, that the recovery of stored water from the proposed well or wells will likely cause the migration of contaminated groundwater from a remedial action site to a well of record in existence as of the date of receipt of the application, resulting in a degradation of the quality of the water withdrawn from the well of record so that the water will no longer be usable for the purpose for which it is currently being used without additional treatment, and that the damage to the owner of the well of record will not be prevented or adequately mitigated through the implementation of a program regulated under Title 49 of the Arizona Revised Statutes, or a program regulated by EPA or DOD. To assist the director in making a determination under this subsection, the applicant may submit a hydrological study demonstrating whether the recovery of stored water from the proposed well or wells will have the effect described in this subsection. The director may require the applicant to submit such a hydrological study if the director determines that the study will assist the director in making a determination under this subsection.
- C. In making a determination under subsection (B)(1), (B)(2), or (B)(3) of this Section:
1. If the proposed recovery well is a replacement well in a new location, the director shall take into account the collective effects of reducing or terminating withdrawals from the well being replaced combined with the proposed recovery of stored water from the replacement well if the applicant submits a hydrological study demonstrating those collective effects to the satisfaction of the director.

2. If the proposed recovery well will be located within the area of impact, as defined in A.R.S. § 45-802.01, of an underground storage facility and the applicant will account for all of the water recovered from the well as water stored at the facility, the director shall take into account the effects of water storage at the facility on the proposed recovery of stored water from the recovery well if the applicant submits a hydrological study demonstrating those effects to the satisfaction of the director.
- D.** If the director determines under subsection (B)(1) of this Section that the probable impact of the recovery of stored water from the proposed recovery well or wells on any well of record in existence as of the date of receipt of the application will exceed 10 feet of additional drawdown after the first five years of operation of the proposed well or wells, the director shall notify the applicant in writing of the location of the wells of record and the names and addresses of the owners of the wells as shown in the Department's well registry. The director shall not determine that the recovery of stored water from the proposed recovery well or wells will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells under subsection (B)(1) of this Section if within 60 days after the date on the notice, or a longer time period approved by the director, the applicant submits one of the following for each well of record identified in the notice:
1. A signed and notarized consent form from the owner of the well of record consenting to the recovery of stored water from the proposed recovery well or wells. The applicant shall use the consent form furnished by the director; or
  2. Evidence satisfactory to the director that the address of the owner of the well of record as shown in the Department's well registry records is inaccurate and that the applicant made a reasonable attempt to locate the current owner of the well of record but was unable to do so.
- E.** If the director determines that the recovery of stored water from the proposed recovery well or wells will have the effect described in subsection (B)(3) of this Section on one or more wells of record in existence as of the date of receipt of the application, the director shall notify the applicant in writing of the location of the wells of record and the names and addresses of the owners of the wells as shown in the Department's well registry. The director shall not determine that the recovery of stored water from the proposed recovery well or wells will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells under subsection (B)(3) of this Section if within 60 days after the date on the notice, or a longer time period approved by the director, the applicant submits one of the following for each well of record identified in the notice:
1. A signed and notarized consent form from the owner of the well of record consenting to the recovery of stored water from the proposed recovery well or wells. The applicant shall use the consent form furnished by the director; or
  2. Evidence satisfactory to the director that the address of the owner of the well of record as shown in the Department's well registry records is inaccurate and that the applicant made a reasonable attempt to locate the current owner of the well of record but was unable to do so.
- F.** At any time before a final determination under this Section, the applicant may:
1. Amend the application to change the location of the proposed recovery well or wells or the amount of stored water to be recovered from the proposed recovery well or

wells to lessen the degree of impact on wells of record or regional land subsidence; or

2. Agree to construct or operate the proposed recovery well or wells in a manner that lessens the degree of impact on wells of record or regional land subsidence. The director shall indicate in the recovery well permit that compliance with the agreement is a condition of the recovery well permit.

#### Historical Note

New Section made by final rulemaking at 12 A.A.R. 2193, effective August 7, 2006 (Supp. 06-2).

#### **R12-15-1304. Well Spacing Requirements - Wells Withdrawing Groundwater From the Little Colorado River Plateau Groundwater Basin for Transportation to Another Groundwater Basin Under A.R.S. § 45-544(B)(1)**

- A.** An LCR plateau groundwater transporter may not withdraw groundwater from a well or wells drilled in the Little Colorado river plateau groundwater basin after January 1, 1991, except a replacement well in approximately the same location or a well drilled after that date pursuant to a notice of intention to drill filed on or before that date, for transportation away from the basin pursuant to A.R.S. § 45-544(B)(1) if the director determines that the withdrawals for that purpose will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells under subsection (B) of this Section.
- B.** The director shall determine that the withdrawals of groundwater from the well or wells will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells if any of the following apply:
1. Except as provided in subsection (D) of this Section, the director determines that the probable impact of the withdrawals of groundwater from the well or wells on any well of record in existence when the withdrawals commenced or are proposed to commence will exceed 10 feet of additional drawdown after the first five years of the withdrawals. To assist the director in making a determination under this subsection, the LCR plateau groundwater transporter may submit to the director a hydrological study delineating those areas surrounding the LCR plateau groundwater transporter's well or wells in which the projected impacts on water levels will exceed 10 feet of additional drawdown after the first five years of the withdrawals. The director may require the LCR plateau groundwater transporter to submit such a hydrological study if the director determines that the study will assist the director in making a determination under this subsection;
  2. The director determines that the well or wells from which the groundwater is withdrawn are located in an area of known land subsidence and the withdrawals of groundwater will likely cause unreasonably increasing damage from additional regional land subsidence. To assist the director in making a determination under this subsection, the LCR plateau groundwater transporter may submit to the director a hydrological study, which may include a geophysical evaluation, demonstrating the impact of the withdrawals on regional land subsidence. The director may require the LCR plateau groundwater transporter to submit such a hydrological study if the director determines that the study will assist the director in making a determination under this subsection; or
  3. Except as provided in subsection (E) of this Section, the director determines, after consulting with ADEQ, that the withdrawals of groundwater from the well or wells will

likely cause the migration of contaminated groundwater from a remedial action site to a well of record in existence when the groundwater withdrawals commenced or are proposed to commence, resulting in a degradation of the quality of the water withdrawn from the well of record so that the water will no longer be usable for the purpose for which it is currently being used without additional treatment, and that the damage to the owner of the well of record will not be prevented or adequately mitigated through the implementation of a program regulated under Title 49 of the Arizona Revised Statutes, or a program regulated by EPA or DOD. To assist the director in making a determination under this subsection, the LCR plateau groundwater transporter may submit to the director a hydrological study demonstrating whether the withdrawals of groundwater will have the effect described in this subsection. The director may require the LCR plateau groundwater transporter to submit such a hydrological study if the director determines that the study will assist the director in making a determination under this subsection.

- C. In making a determination under subsection (B)(1), (B)(2), or (B)(3) of this Section, if a well from which the groundwater is withdrawn is a replacement well in a new location, the director shall take into account the collective effects of reducing or terminating withdrawals from the well being replaced combined with the withdrawals from the replacement well if the LCR plateau groundwater transporter submits a hydrological study demonstrating those collective effects to the satisfaction of the director.
- D. If the director determines under subsection (B)(1) of this Section that the probable impact of the withdrawals of groundwater from the well or wells on any well of record in existence when the withdrawals commenced or are proposed to commence will exceed 10 feet of additional drawdown after the first five years of the withdrawals, the director shall notify the LCR plateau groundwater transporter in writing of the location of the wells of record and the names and addresses of the owners of the wells as shown in the Department's well registry. The director shall not determine that the withdrawals will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells under subsection (B)(1) of this Section if within 60 days after the date on the notice, or a longer time period approved by the director, the LCR plateau groundwater transporter submits one of the following for each well of record identified in the notice:
  1. A signed and notarized consent form from the owner of the well of record consenting to the withdrawals. The LCR plateau groundwater transporter shall use the consent form furnished by the director; or
  2. Evidence satisfactory to the director that the address of the owner of the well of record as shown in the Department's well registry records is inaccurate and that the LCR plateau groundwater transporter made a reasonable attempt to locate the current owner of the well of record but was unable to do so.
- E. If the director determines that the withdrawals of groundwater from the well or wells will have the effect described in subsection (B)(3) of this Section on one or more wells of record in existence when the groundwater withdrawals commenced or are proposed to commence, the director shall notify the LCR plateau groundwater transporter in writing of the location of the wells of record and the names and addresses of the owners of the wells as shown in the Department's well registry. The director shall not determine that the withdrawals will cause unreasonably increasing damage to surrounding land or other

water users from the concentration of wells under subsection (B)(3) of this Section if within 60 days after the date on the notice, or a longer time period approved by the director, the LCR plateau groundwater transporter submits one of the following for each well of record identified in the notice:

1. A signed and notarized consent form from the owner of the well of record consenting to the withdrawals. The LCR plateau groundwater transporter shall use the consent form furnished by the director; or
  2. Evidence satisfactory to the director that the address of the owner of the well of record as shown in the Department's well registry records is inaccurate and that the LCR plateau groundwater transporter made a reasonable attempt to locate the current owner of the well of record but was unable to do so.
- F. At any time before a final determination under this Section, the LCR plateau groundwater transporter may agree to construct or operate the well or wells in a manner that lessens the degree of impact on wells of record or regional land subsidence. Compliance with the agreement is a condition for the use of the well or wells to withdraw groundwater for transportation away from the basin pursuant to A.R.S. § 45-544(B)(1).

#### Historical Note

New Section made by final rulemaking at 12 A.A.R. 2193, effective August 7, 2006 (Supp. 06-2).

#### **R12-15-1305. Well Spacing Requirements - Applications to Use a Well to Withdraw Groundwater for Transportation to an Active Management Area Under A.R.S. § 45-559**

- A. The director shall not approve an application to use a well or wells constructed after September 21, 1991, to withdraw groundwater for transportation to an active management area under A.R.S. § 45-559 if the director determines that the withdrawals for that purpose will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells under subsection (B) of this Section.
- B. The director shall determine that the withdrawals of groundwater will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells if any of the following apply:
  1. Except as provided in subsection (C) of this Section, the director determines that the probable impact of the groundwater withdrawals on any well of record in existence as of the date of receipt of the application will exceed 10 feet of additional drawdown after the first five years of the withdrawals. To assist the director in making a determination under this subsection, the applicant may submit a hydrological study delineating those areas surrounding the proposed well or wells in which the projected impacts of the groundwater withdrawals on water levels will exceed 10 feet of additional drawdown after the first five years of the withdrawals. The director may require the applicant to submit such a hydrological study if the director determines that the study will assist the director in making a determination under this subsection;
  2. The director determines that the proposed well or wells will be located in an area of known land subsidence and the groundwater withdrawals will likely cause unreasonably increasing damage from additional regional land subsidence. To assist the director in making a determination under this subsection, the applicant may submit a hydrological study, which may include a geophysical evaluation, demonstrating the impact of the groundwater withdrawals on regional land subsidence. The director may require the applicant to submit such a hydrological study if the director determines that the study will assist

- the director in making a determination under this subsection; or
3. Except as provided in subsection (D) of this Section, the director determines, after consulting with ADEQ, that the groundwater withdrawals will likely cause the migration of contaminated groundwater from a remedial action site to a well of record in existence as of the date of receipt of the application, resulting in a degradation of the quality of the water withdrawn from the well of record so that the water will no longer be usable for the purpose for which it is currently being used without additional treatment, and that the damage to the owner of the well of record will not be prevented or adequately mitigated through the implementation of a program regulated under Title 49 of the Arizona Revised Statutes, or a program regulated by EPA or DOD. To assist the director in making a determination under this subsection, the applicant may submit a hydrological study demonstrating whether the groundwater withdrawals will have the effect described in this subsection. The director may require the applicant to submit such a hydrological study if the director determines that the study will assist the director in making a determination under this subsection.
- C. If the director determines under subsection (B)(1) of this Section that the probable impact of the groundwater withdrawals on any well of record in existence as of the date of receipt of the application will exceed 10 feet of additional drawdown after the first five years of the withdrawals, the director shall notify the applicant in writing of the location of the wells of record and the names and addresses of the owners of the wells as shown in the Department's well registry. The director shall not determine that the groundwater withdrawals will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells under subsection (B)(1) of this Section if within 60 days after the date on the notice, or a longer time period approved by the director, the applicant submits one of the following for each well of record identified in the notice:
1. A signed and notarized consent form from the owner of the well of record consenting to the withdrawals. The applicant shall use the consent form furnished by the director; or
  2. Evidence satisfactory to the director that the address of the owner of the well of record as shown in the Department's well registry records is inaccurate and that the applicant made a reasonable attempt to locate the current owner of the well of record but was unable to do so.
- D. If the director determines that the groundwater withdrawals will have the effect described in subsection (B)(3) of this Section on one or more wells of record in existence as of the date of receipt of the application, the director shall notify the applicant in writing of the location of the wells of record and the names and addresses of the owners of the wells as shown in the Department's well registry. The director shall not determine that the groundwater withdrawals will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells under subsection (B)(3) of this Section if within 60 days after the date on the notice, or a longer time period approved by the director, the applicant submits one of the following for each well of record identified in the notice:
1. A signed and notarized consent form from the owner of the well of record consenting to the withdrawals. The applicant shall use the consent form furnished by the director; or
  2. Evidence satisfactory to the director that the address of the owner of the well of record as shown in the Department's well registry records is inaccurate and that the applicant made a reasonable attempt to locate the current owner of the well of record but was unable to do so.
- E. At any time before a final determination under this Section, the applicant may:
1. Amend the application to change the location of the proposed well or wells or the amount of groundwater to be withdrawn from the proposed well or wells to lessen the degree of impact on wells of record or regional land subsidence; or
  2. Agree to construct or operate the proposed well or wells in a manner that lessens the degree of impact on wells of record or regional land subsidence. The director shall indicate in the permit that compliance with the agreement is a condition of the permit to use the well or wells to withdraw groundwater for transportation to an active management area under A.R.S. § 45-559.

#### Historical Note

New Section made by final rulemaking at 12 A.A.R.  
2193, effective August 7, 2006 (Supp. 06-2).

#### R12-15-1306. Well Spacing Requirements - Applications for Water Exchange Permits Under A.R.S. § 45-1041

- A. The director shall not approve an application for a water exchange permit filed under A.R.S. § 45-1041 by a person other than a city, town, private water company or irrigation district if the director determines that any new or increased pumping by the applicant from a well or wells within an active management area pursuant to the water exchange will cause unreasonably increasing damage to surrounding land or other water users under subsection (B) of this Section.
- B. The director shall determine that new or increased pumping by the applicant from a well or wells within an active management area will cause unreasonably increasing damage to surrounding land or other water users if any of the following apply:
1. Except as provided in subsection (C) of this Section, the director determines that the probable impact of the new or increased pumping on any well of record in existence as of the date of receipt of the application will exceed 10 feet of additional drawdown after the first five years of the pumping. To assist the director in making a determination under this subsection, the applicant may submit a hydrological study delineating those areas surrounding the proposed well or wells in which the projected impacts of the new or increased pumping on water levels will exceed 10 feet of additional drawdown after the first five years of the pumping. The director may require the applicant to submit such a hydrological study if the director determines that the study will assist the director in making a determination under this subsection;
  2. The director determines that the new or increased pumping will occur in an area of known land subsidence and the pumping will likely cause unreasonably increasing damage from additional regional land subsidence. To assist the director in making a determination under this subsection, the applicant may submit a hydrological study, which may include a geophysical evaluation, demonstrating the impact of the new or increased pumping on regional land subsidence. The director may require the applicant to submit such a hydrological study if the director determines that the study will assist the director in making a determination under this subsection; or



3. Except as provided in subsection (D) of this Section, the director determines, after consulting with ADEQ, that the new or increased pumping will likely cause the migration of contaminated groundwater from a remedial action site to a well of record in existence as of the date of receipt of the application, resulting in a degradation of the quality of the water withdrawn from the well of record so that the water will no longer be usable for the purpose for which it is currently being used without additional treatment, and that the damage to the owner of the well of record will not be prevented or adequately mitigated through the implementation of a program regulated under Title 49 of the Arizona Revised Statutes, or a program regulated by EPA or DOD. To assist the director in making a determination under this subsection, the applicant may submit with the application a hydrological study demonstrating whether the new or increased pumping will have the effect described in this subsection. If the applicant does not submit such a hydrological study with the application, the director may require the applicant to submit the study if the director determines that the study will assist the director in making a determination under this subsection.
- C. If the director determines under subsection (B)(1) of this Section that the probable impact of the new or increased pumping on any well of record in existence as of the date of receipt of the application will exceed 10 feet of additional drawdown after the first five years of the pumping, the director shall notify the applicant in writing of the location of the wells of record and the names and addresses of the owners of the wells as shown in the Department's well registry. The director shall not determine that the new or increased pumping will cause unreasonably increasing damage to surrounding land or other water users under subsection (B)(1) of this Section if within 60 days after the date on the notice, or a longer time period approved by the director, the applicant submits one of the following for each well of record identified in the notice:
  1. A signed and notarized consent form from the owner of the well of record consenting to the new or increased pumping. The applicant shall use the consent form furnished by the director; or
  2. Evidence satisfactory to the director that the address of the owner of the well of record as shown in the Department's well registry records is inaccurate and that the applicant made a reasonable attempt to locate the current owner of the well of record but was unable to do so.
- D. If the director determines that the new or increased pumping will have the effect described in subsection (B)(3) of this Section on one or more wells of record in existence as of the date of receipt of the application, the director shall notify the applicant in writing of the location of the wells of record and the names and addresses of the owners of the wells as shown in the Department's well registry. The director shall not determine that the new or increased pumping will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells under subsection (B)(3) of this Section if within 60 days after the date on the notice, or a longer time period approved by the director, the applicant submits one of the following for each well of record identified in the notice:
  1. A signed and notarized consent form from the owner of the well of record consenting to the new or increased pumping. The applicant shall use the consent form furnished by the director; or
  2. Evidence satisfactory to the director that the address of the owner of the well of record as shown in the Department's well registry records is inaccurate and that the applicant made a reasonable attempt to locate the current owner of the well of record but was unable to do so.
- E. At any time before a final determination under this Section, the applicant may:
  1. Amend the application to change the location of the proposed well or wells or the amount of the new or increase pumping to lessen the degree of impact on wells of record or regional land subsidence; or
  2. Agree to construct or operate the proposed well or wells in a manner that lessens the degree of impact on wells of record or regional land subsidence. The director shall indicate in the water exchange permit that compliance with the agreement is a condition of the water exchange permit.

#### Historical Note

New Section made by final rulemaking at 12 A.A.R.  
2193, effective August 7, 2006 (Supp. 06-2).

#### R12-15-1307. Well Spacing Requirements - Notices of Water Exchange Under A.R.S. § 45-1051

- A. A notice of water exchange participant may not participate in a water exchange for which a notice is filed under A.R.S. § 45-1051 if the director determines that any new or increased pumping by the person from a well or wells within an active management area pursuant to the water exchange will cause unreasonably increasing damage to surrounding land or other water users under subsection (B) of this Section.
- B. The director shall determine that new or increased pumping from the well or wells in an active management area will cause unreasonably increasing damage to surrounding land or other water users if any of the following apply:
  1. Except as provided in subsection (C) of this Section, the director determines that the probable impact of the new or increased pumping on any well of record in existence when the pumping commenced or is proposed to commence will exceed 10 feet of additional drawdown after the first five years of the pumping. To assist the director in making a determination under this subsection, the notice of water exchange participant may submit to the director a hydrological study delineating those areas surrounding the notice of water exchange participant's well or wells in which the projected impacts of the new or increased pumping on water levels will exceed 10 feet of additional drawdown after the first five years of the pumping. The director may require the notice of water exchange participant to submit such a hydrological study if the director determines that the study will assist the director in making a determination under this subsection;
  2. The director determines that the new or increased pumping is in an area of known land subsidence and the pumping will likely cause unreasonably increasing damage from additional regional land subsidence. To assist the director in making a determination under this subsection, the notice of water exchange participant may submit to the director a hydrological study, which may include a geophysical evaluation, demonstrating the impact of the pumping on regional land subsidence. The director may require the notice of water exchange participant to submit such a hydrological study if the director determines that the study will assist the director in making a determination under this subsection; or
  3. Except as provided in subsection (D) of this Section, the director determines, after consulting with ADEQ, that the new or increased pumping will likely cause the migration of contaminated groundwater from a remedial action site to a well of record in existence when the pumping com-

menced or is proposed to commence, resulting in a degradation of the quality of the water withdrawn from the well of record so that the water will no longer be usable for the purpose for which it is currently being used without additional treatment, and that the damage to the owner of the well of record will not be prevented or adequately mitigated through the implementation of a program regulated under Title 49 of the Arizona Revised Statutes, or a program regulated by EPA or DOD. To assist the director in making a determination under this subsection, the notice of water exchange participant may submit to the director a hydrological study demonstrating whether the new or increased pumping will have the effect described in this subsection. The director may require the notice of water exchange participant to submit such a study if the director determines that the study will assist the director in making a determination under this subsection.

- C. If the director determines under subsection (B)(1) of this Section that the probable impact of the new or increased pumping on any well of record in existence when the pumping commenced or is proposed to commence will exceed 10 feet of additional drawdown after the first five years of the pumping, the director shall notify the notice of water exchange participant in writing of the location of the wells of record and the names and addresses of the owners of the wells as shown in the Department's well registry. The director shall not determine that the new or increased pumping will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells under subsection (B)(1) of this Section if within 60 days after the date on the notice, or a longer time period approved by the director, the notice of water exchange participant submits one of the following for each well of record identified in the notice:
1. A signed and notarized consent form from the owner of the well of record consenting to the new or increased pumping. The notice of water exchange participant shall use the consent form furnished by the director; or
  2. Evidence satisfactory to the director that the address of the owner of the well of record as shown in the Department's well registry records is inaccurate and that the notice of water exchange participant made a reasonable attempt to locate the current owner of the well of record but was unable to do so.
- D. If the director determines that the new or increased pumping will have the effect described in subsection (B)(3) of this Section on one or more wells of record in existence when the pumping commenced or is proposed to commence, the director shall notify the notice of water exchange participant in writing of the location of the wells of record and the names and addresses of the owners of the wells as shown in the Department's well registry. The director shall not determine that the new or increased pumping will cause unreasonably increasing damage to surrounding land or other water users from the concentration of wells under subsection (B)(3) of this Section if within 60 days after the date on the notice, or a longer time period approved by the director, the notice of water exchange participant submits one of the following for each well of record identified in the notice:
1. A signed and notarized consent form from the owner of the well of record consenting to the new or increased pumping. The notice of water exchange participant shall use the consent form furnished by the director; or
  2. Evidence satisfactory to the director that the address of the owner of the well of record as shown in the Department's well registry records is inaccurate and that the notice of water exchange participant made a reasonable

attempt to locate the current owner of the well of record but was unable to do so.

- E. At any time before a final determination under this Section, the notice of water exchange participant may agree to construct or operate the well or wells in a manner that lessens the degree of impact on wells of record or regional land subsidence. Compliance with the agreement is a condition for the use of the well to pump water for the water exchange.

#### Historical Note

New Section made by final rulemaking at 12 A.A.R. 2193, effective August 7, 2006 (Supp. 06-2).

#### R12-15-1308. Replacement Wells in Approximately the Same Location

- A. For purposes of A.R.S. §§ 45-544, 45-596, and 45-597, a replacement well in approximately the same location is a proposed well to which all of the following apply:
1. The proposed well will be located no greater than 660 feet from the original well, and the location of the original well can be determined at the time the notice of intention to drill the proposed well is filed;
  2. Except as provided in subsections (A)(3) and (A)(4) of this Section, the proposed well will not annually withdraw an amount of water in excess of the maximum annual capacity of the original well. The director shall determine the maximum annual capacity of the original well by multiplying the maximum pump capacity of the original well in gallons per minute by 525,600, and then converting the result into acre-feet by dividing the result by 325,851 gallons. The director shall presume that the maximum pump capacity of the original well is the maximum pump capacity of the well in gallons per minute as shown in the Department's well registry records, except that:
    - a. If the director has reason to believe that the maximum pump capacity as shown in the Department's well registry records is inaccurate, or if the applicant submits evidence demonstrating that the maximum pump capacity as shown in the Department's well registry records is inaccurate, the director shall determine the maximum pump capacity by considering all available evidence, including the depth and diameter of the well and any evidence submitted by the applicant; or
    - b. If the Department's well registry records do not show the maximum pump capacity of the original well, the director shall not approve the proposed well as a replacement well in approximately the same location unless the applicant demonstrates to the director's satisfaction the maximum pump capacity of the original well;
  3. If a well permit was issued for the original well under A.R.S. § 45-599, the proposed well will not annually withdraw an amount of groundwater in excess of the maximum annual volume set forth in the well permit;
  4. If a recovery well permit was issued for the well to be replaced pursuant to A.R.S. § 45-834.01(B) and the permit sets forth a maximum annual volume of stored water that may be recovered from the well, the proposed well will not annually recover an amount of stored water in excess of the maximum annual volume set forth in the recovery well permit;
  5. If the well to be replaced has been physically abandoned in accordance with R12-15-816, a notice of intention to drill the proposed well is filed no later than 90 days after the well to be replaced was physically abandoned; and

6. If the proposed well will be used to withdraw groundwater from the Little Colorado river plateau groundwater basin for transportation away from the basin pursuant to A.R.S. § 45-544(B)(1), one of the following applies:
  - a. The original well was drilled on or before January 1, 1991, or was drilled after that date pursuant to a notice of intention to drill that was on file with the Department on that date; or
  - b. The director previously determined that the withdrawal of groundwater from the original well for transportation away from the Little Colorado river plateau groundwater basin complies with R12-15-1304.
- B. After a replacement well in approximately the same location is drilled, the replacement well may be operated in conjunction with the original well and any other wells that replaced the original well if the total annual withdrawals from all wells do not exceed the maximum amount allowed under subsection (A)(2), (A)(3), or (A)(4) of this Section, whichever applies.
- C. A proposed well may be drilled as a replacement well in approximately the same location for more than one original well if the criteria in subsections (A)(1), (A)(5), and (A)(6) of this Section are met with respect to each original well and if the total annual withdrawals from the proposed well will not exceed the combined maximum annual amounts allowed for each original well under subsections (A)(2), (A)(3), or (A)(4) of this Section, whichever apply.
- D. The director may include conditions in the approval of the notice of intention to drill the replacement well to ensure that the drilling and operation of the replacement well meets the requirements of this Section.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R.  
2193, effective August 7, 2006 (Supp. 06-2).

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**Supplement to the**

**Arizona Administrative Code**

The official compilation of Arizona Rules

**Arizona Secretary of State's Office**

Public Services Division

1700 W. Washington Street, Fl 7.

Phoenix, AZ 85007

***Replacement Check List***

For rules filed within the

Third

July 1, 2014 - September 30, 2014

**Code Release Number: Supp. 14-3**

Within the stated calendar quarter, this Title contains all rules made, amended, repealed, renumbered, and recodified; or rules that have expired or were terminated due to an agency being eliminated under sunset law. These rules were either certified by the Governor's Regulatory Review Council or the Attorney General's Office; or exempt from the rulemaking process, and filed with the Office of the Secretary of State. Refer to the historical notes for more information. Please note that some rules you are about to remove may still be in effect after the publication date of this Supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

**Follow the instructions to replace the updated Chapters.**

**TITLE 13. Public Safety**

**Chapter 13. Department of Public Safety - School Buses**

Sections, Parts, Exhibits, Tables or Appendices modified

Recodifying the School Bus rules from Department of Transportation - Administration (17 A.A.C. 9) to  
Department of Public Safety (13 A.A.C. 13)

REMOVE Supp. 08-2  
Pages: 1 - 37

REPLACE with Supp. 14-3  
Pages: 1 - 35

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## TITLE 13. PUBLIC SAFETY

CHAPTER 13. DEPARTMENT OF PUBLIC SAFETY  
SCHOOL BUSES

*Editor's Note: This Chapter was recodified from 17 A.A.C. 9 under A.R.S. § 41-1011(C) at 20 A.A.R. 2083. Section cross-references were revised to conform to this Chapter's numbering scheme (Supp. 14-3). Original rules filed under 17 A.A.C. 9 were adopted by the Department of Administration in consultation with the Department of Public Safety and the School Bus Advisory Council at 2 A.A.R. 1141 (Supp. 96-1).*

## ARTICLE 1. SCHOOL BUS MINIMUM STANDARDS

*Article 1, consisting of new Sections R13-13-101 through R13-13-108, recodified from 17 A.A.C. 9, Article 1, R17-9-101 through R17-9-108, at 20 A.A.R. 2083, effective July 25, 2014 (Supp. 14-3).*

## Section

- R13-13-101. Definitions
- R13-13-102. Certification of School Bus Drivers
- R13-13-103. Qualification of Classroom and Behind-the-wheel Instructors
- R13-13-104. Minimum Standards for School Bus Operation
- R13-13-105. Special Needs Standards
- R13-13-106. Minimum Standards for School Bus Chassis
- R13-13-107. Minimum Standards for School Bus Body
- R13-13-108. Inspection, Maintenance, and Alterations
- R13-13-109. Time-frames for Making Certification Determinations
- R13-13-110. First-aid Equipment
- R13-13-111. Rehearing or Review of Decision
- R13-13-112. Enforcement Audits
  - Exhibit A. Repealed
  - Exhibit B. Renumbered

## ARTICLE 2. MINIMUM STANDARDS FOR SCHOOL BUSES OPERATED ON ALTERNATIVE FUEL

*Article 2, consisting of new Sections R13-13-201 and R13-13-202, recodified from 17 A.A.C. 9, Article 2, R17-9-201 through R17-9-208, at 20 A.A.R. 2083, effective July 25, 2014 (Supp. 14-3).*

## Section

- R13-13-201. Minimum Standards for Compressed Natural Gas Fuel Systems
- R13-13-202. Inspection and Maintenance of Compressed Natural Gas Fuel Systems

## ARTICLE 1. SCHOOL BUS MINIMUM STANDARDS

## R13-13-101. Definitions

In this Chapter, unless otherwise specified:

“Accident” means any unexpected occurrence involving a moving or non-moving school bus that results in any bodily injury or fatality to a passenger or non-passenger, damage to personal or real property outside the school bus, or damage to the school bus that affects the integrity of the school bus or results in a major defect as described in R13-13-108(B).

“Alternately flashing signal lamps” means a system of red or red and amber lamps that are mounted horizontally to both the front and rear of the school bus body and used to inform the public that the school bus is preparing to stop or has stopped to load or unload passengers. Alternately flashing signal lamps can be either a four-lamp system as described in R13-13-107(17)(c)(i) or an eight-lamp system as described in R13-13-9-107(c)(ii).

“Alteration” means any addition, modification, or removal of any equipment or component after a school bus is inspected by the Department, which may affect the operations of the school

bus; compliance with the statutes or rules applicable to school buses; or the health, safety, or welfare of any individual.

“Applicant” means an individual who submits an application to the Department to obtain a certificate to operate a school bus.

“ASE” means National Institute of Automotive Service Excellence.

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

“Behind-the-wheel instructor” means an individual qualified under R13-13-103 to provide behind-the-wheel training to applicants.

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

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

“Certificate” means a written authorization issued by the Department to operate a school bus in Arizona.

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

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

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

“Classroom instructor” means an individual qualified under R13-13-103 to provide classroom training to:

Applicants to operate a school bus,

Individuals becoming qualified to teach classroom training,

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

School bus drivers taking refresher training.

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

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

“Controlled substances and alcohol testing” means a determination of an applicant's or school bus driver's use of marijuana, cocaine, phencyclidine, opiates, amphetamines, and alcohol

prescribed by 49 CFR 382, October 2006 (no later amendments or editions), and conducted in accordance with the procedures at 49 CFR 40, October 2006 (no later amendments or editions), both published by the U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D.C. 20402-9328, incorporated by reference, and on file with the Department; and a determination of an applicant's or school bus driver's use of marijuana, cocaine, phencyclidine, opiates, amphetamines, barbiturates, benzodiazepines, methadone, and propoxphene as required by these rules and conducted in accordance with a procedure that is generally accepted in the scientific community to be accurate and reliable.

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

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

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

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

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

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

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

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

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

“Gross vehicle weight rating” means the value specified by the manufacturer as the maximum total loaded weight of a school bus, calculated in accordance with R13-13-106(27).

“Health care professional” means:

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

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

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

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

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

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

“Identification” means the signs, lettering, or numbers placed on the interior or exterior of a school bus body, including the glass areas, but does not include the lettering, numbers, or

logos of a manufacturer or distributor of the manufacturer's product.

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

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

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

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

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

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

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

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

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

All time at an employer's place of business, waiting to be dispatched;

All time performing an operations check of a school bus in accordance with R13-13-108, or servicing or conditioning a school bus;

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

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

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

All time preparing required reports and records;

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

All time performing any other work for the employer; and

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



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

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

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

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

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

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

“Physical examination form” means the Arizona Department of Transportation, Motor Vehicle Division, Medical Examination Report, which is used to record the results of a physical examination and may be obtained from the Department or Arizona Department of Transportation, Motor Vehicle Division.

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

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

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

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

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

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

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

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

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

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

“School bus driver” means an individual who is certified by the Department as meeting the requirements at A.R.S. § 28-3228 and R13-13-102 to operate a school bus in Arizona.

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

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

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

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

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

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

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

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

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

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

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

“Type A school bus” means a conversion bus constructed utilizing a cutaway front section vehicle with a left side driver's door. This definition includes two classifications: Type A-1, with a Gross Vehicle Weight Rating (GVWR) of 14,500 pounds or less; and Type A-2, with a GVWR greater than 14,500 pounds and less than or equal to 21,500 pounds.

“Type B school bus” means a school bus constructed utilizing a stripped chassis. The entrance door is behind the front wheels. This definition includes two classifications: Type B-1, with a GVWR of 10,000 pounds or less, and Type B-2, with a GVWR greater than 10,000 pounds.

“Type C school bus,” also known as a conventional style school bus, means a school bus constructed utilizing a chassis with a hood and front fender assembly. The entrance door is behind the front wheels. A Type C school bus may have a cutaway truck chassis or truck chassis with cab with or without a left side door and with a GVWR greater than 21,500 pounds.

“Type D school bus,” also known as a rear engine or front engine transit-style school bus, means a school bus constructed utilizing a stripped chassis. The entrance door is ahead of the front wheels.

“Van” means a covered or enclosed truck.

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

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

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

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

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

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

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

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

#### Historical Note

Adopted effective February 16, 1996 (Supp. 96-1).  
Amended by final rulemaking at 7 A.A.R. 2906, effective June 13, 2001 (Supp. 01-2). Amended by final rulemaking at 11 A.A.R. 557, effective March 5, 2005 (Supp. 05-1). Amended by final rulemaking at 14 A.A.R. 2110, effective May 8, 2008 (Supp. 08-2). New Section R13-13-101 recodified from R17-9-101 with Section cross-references revised, at 20 A.A.R. 2083, effective July 25, 2014 (Supp. 14-3).

#### R13-13-102. Certification of School Bus Drivers

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

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

**B.** Physical examination

1. An applicant or school bus driver shall submit to a physical examination that is conducted by a health care professional in accordance with the physical examination form. An applicant or school bus driver is qualified to be certified as a school bus driver only if the health care professional conducts the physical examination in accordance with the physical examination form and concludes that the applicant or school bus driver has no condition that would interfere with the applicant's or school bus driver's ability to:
    - a. Operate a school bus safely,
    - b. Evacuate a school bus during an emergency or during a drill required under R13-13-104(D), and
    - c. Perform the operations checks required under R13-13-108(D).
  2. An applicant or school bus driver who is insulin dependent shall obtain the waiver described in A.A.C. R17-5-208.
  3. An applicant shall submit the completed physical examination form and, if applicable, a copy of the waiver required under subsection (B)(2), to the Department through the employer.
  4. The initial physical examination of an applicant, conducted in accordance with the physical examination form, expires 24 months from the date of the physical examination unless a shorter time is specified by the health care professional who administers the physical examination. A school bus driver shall submit to a physical examination before the expiration date of the previous physical examination and send the completed physical examination form to the Department through the employer before the end of the month in which the previous physical examination expires.
  5. If a health care professional determines that further testing of an applicant or school bus driver is needed by an ophthalmologist or optometrist, the health care professional shall refer the applicant or school bus driver to:
    - a. An ophthalmologist licensed under A.R.S. § 32-1401 et seq.,
    - b. An optometrist licensed under A.R.S. § 32-1701 et seq.,
    - c. An ophthalmologist licensed to practice ophthalmology or optometrist licensed to practice optometry by a state contiguous to Arizona, or
    - d. An ophthalmologist licensed to practice ophthalmology or optometrist licensed to practice optometry by any state or territory of the United States and employed by the United States government.
  6. In addition to the physical examinations required by this Article, the Department or the employer may require a physical examination of an applicant or school bus driver for an impairment that would affect the ability to perform the activities listed in subsection (B)(1). The Department or employer shall base its decision to require an additional physical examination upon consideration of the appearance or actions of the applicant or school bus driver or of medical information received by the Department regarding the applicant or school bus driver. The applicant or school bus driver shall submit results of a physical examination conducted under this subsection to the Department through the employer within 30 days of the date of the physical examination.
- C.** Controlled substances and alcohol testing
1. An applicant or school bus driver shall submit to alcohol and controlled substances testing as required by A.R.S. § 28-3228(C)(2) and as prescribed by this Article and 49

CFR 382 October 2006 (no later amendments or editions). The testing shall be conducted in accordance with the procedures at 49 CFR 40 October 2006 (no later amendments or editions), both published at the U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D.C. 20402-9328, incorporated by reference and on file with the Department, except for the changes in 49 CFR 40 and 49 CFR 382 listed in subsections (C)(1)(a) through (C)(1)(i).

- a. 49 CFR 40.3
  - i. "Employee," means an applicant or a school bus driver as defined at R13-13-101.
  - ii. "Employer" has the same meaning as at R13-13-101.
- b. 49 CFR 382.107
  - i. "Commercial motor vehicle" has the same meaning as at A.R.S. § 28-3001(3).
  - ii. "Driver" means a school bus driver as defined at R13-13-101.
  - iii. "Employer" has the same meaning as at R13-13-101.
  - iv. "Performing a safety-sensitive function" means any time during which a school bus driver is on-duty except when the school bus driver is being compensated by an entity other than the employer.
  - v. "Safety-sensitive function" means any activity for which a school bus driver is on-duty except when the school bus driver is performing an activity for and being compensated by an entity other than the employer.
- c. 49 CFR 382.207. In both sentences, the word "four" is changed to "eight."
- d. 49 CFR 382.301(b), (c), and (d): Delete these subsections.
- e. 49 CFR 382.303(a) and (b): Change the word "occurrence" to "accident," as defined in R13-13-101, and delete the words "operating on a public road in commerce."
- f. 49 CFR 382.303(a)(1) and (b)(1): Delete the words "if the accident involved the loss of human life"
- g. 49 CFR 382.303(a)(2) and (b)(2): Delete the words "if the accident involved:"
- h. 49 CFR 382.303(a)(2)(i) and (ii) and (b)(2)(i) and (ii): Delete these subsections.
- i. 49 CFR 382.303(c): In the table, in the column headed "Test must be performed by employer," change "No" to "Yes."
2. In addition to the testing required by 49 CFR 382, an applicant shall submit to testing for the use of marijuana, cocaine, opiates, amphetamines, phencyclidine, benzodiazepines, barbiturates, methadone, and propoxyphene by a procedure that is generally accepted in the scientific community to be accurate and reliable.
3. In addition to the testing required by 49 CFR 382, a school bus driver shall submit annually to testing for the use of marijuana, cocaine, opiates, amphetamines, phencyclidine, benzodiazepines, barbiturates, methadone, and propoxyphene by a procedure that is generally accepted in the scientific community to be accurate and reliable.
4. The employer shall ensure that a school bus driver is tested for use of marijuana, cocaine, opiates, amphetamines, phencyclidine, benzodiazepines, barbiturates, methadone, or propoxyphene or alcohol when required to

do so by these rules or when requested by the Department.

5. The employer shall submit any and all negative results of testing done under subsection (C) to the Department within 30 days of the date of testing or within 12 months of the school bus driver's previous test, whichever is sooner, by providing the Department a copy of the report submitted to the employer by the entity that conducted the testing.
  6. The employer shall immediately notify the Department by telephone of any and all positive results of testing done under subsection (C) and shall submit to the Department within five days a copy of the report submitted to the employer by the entity that conducted the testing.
- D. Physical performance test**
1. An applicant shall pass a physical performance test that consists of the following eight standards:
    - a. Climbing and descending the steps of a school bus three times in 30 seconds;
    - b. Alternately activating the throttle and the service-brake system of a school bus 10 times in 10 seconds;
    - c. Depressing and holding the clutch, if applicable, and service-brake system of a school bus for three seconds, five consecutive times;
    - d. Opening and closing a manually operated service door three times without stopping. If the school bus has an automatic service door, operate the manual override of the service door;
    - e. Operating at least two hand controls, one on each side of the steering wheel, within eight seconds while maintaining control of a moving school bus;
    - f. Starting in a seat-belted position, exit a school bus from the rear-most floor-level emergency exit within 20 seconds;
    - g. Carrying or dragging a 125-pound object 30 feet in 30 seconds; and
    - h. Lowering a 30-pound object from a floor-level emergency exit to the ground and lifting the same object from the ground to the school bus floor.
  2. A school bus driver who is certified on the effective date of this subsection shall pass the physical performance test within one year from the effective date of this subsection.
  3. A school bus driver shall pass the physical performance test again no later than 24 months after previously passing the physical performance test.
  4. An applicant or school bus driver who fails the physical performance test may take the test again after 24 hours. An applicant or school bus driver may take the physical performance test no more than three times in 90 days. If an applicant fails the physical performance test on the third attempt, the Department shall not further consider the applicant for certification unless the applicant complies again with the requirements of this Section.
  5. The employer shall ensure that a school bus driver who fails the physical performance test does not operate a school bus until the school bus driver passes the physical performance test.
  6. If a school bus driver takes and fails the physical performance test three times, the Department shall cancel the school bus driver's certification.
  7. An employer shall ensure that the physical performance test is administered by a person who has completed Department-authorized training, using the largest type of school bus that an applicant or school bus driver may be required to operate.

8. A person who administers the physical performance test shall either pass or fail the applicant or school bus driver taking the test, complete the physical performance test form, and submit the completed form to the Department and the employer within seven days of the physical performance test.
- E. Driving record
  1. During the 24 months before the date of application or during any 24-month period while certified as a school bus driver, an applicant or school bus driver shall not accumulate eight or more points against a driving record in this state using the point system contained in A.A.C. R17-4-404.
  2. During the 10 years before the date of application, an applicant shall not have repeatedly received citations for violation of traffic law.
- F. Training requirements of a school bus driver
  1. Before being certified by the Department as a school bus driver, an applicant shall complete a minimum of 14 hours of classroom training in the following:
    - a. State and federal traffic laws,
    - b. Behind-the-wheel driving operations,
    - c. School bus driver's responsibilities to passengers and school,
    - d. Inspections and operations checks,
    - e. Records and reports,
    - f. Special needs transportation, and
    - g. Accidents and emergencies.
  2. An employer shall ensure that classroom training is taught by a classroom instructor who is qualified under R13-13-103.
  3. At least seven days before classroom training, the classroom instructor shall notify the Department in writing of the date, time, and location of classroom training. The classroom instructor shall notify the Department by any means available at least 24 hours before the date, time, or location of classroom training is changed or canceled.
  4. After completion of classroom training, the classroom instructor shall administer to the applicant a written examination standardized by the Department.
    - a. The written examination shall consist of a combination of 50 true or false, multiple choice, and fill-in-the-blank questions. The examination questions shall cover the topics listed in subsection (F)(1).
    - b. Each question has a value of two points. To pass the examination an applicant shall receive a score that equals or exceeds 80% of the total possible score.
    - c. If an applicant is unable to read or speak English, the employer shall arrange to have the examination administered orally to the applicant in the language with which the applicant is most familiar.
    - d. If an applicant does not pass the examination on the first attempt, the applicant may take an examination two more times within 12 months of the first attempt. A different examination shall be administered to an applicant who is taking an examination for the second or third time. The period between examinations shall be a minimum of 24 hours. If the applicant fails the examination on the third attempt, the applicant shall be considered further only if the applicant complies again with the requirements in this Section.
  5. The classroom instructor shall submit the following information in a written report to the Department and the employer within seven days from the date of the conclusion of a classroom training course:
    - a. Instructor's name,
    - b. Instructor's identification number,
    - c. Date of training,
    - d. Location of training,
    - e. Number of hours of training taught by the classroom instructor,
    - f. Each applicant's name, and
    - g. Each applicant's examination score.
6. In addition to the report required under subsection (F)(5), the classroom instructor shall maintain and submit to the employer within seven days from the conclusion of a classroom training course, a classroom-training course log that includes:
  - a. Instructor's name,
  - b. Instructor's identification number,
  - c. Date of the training course,
  - d. Name of each applicant attending the training course,
  - e. Subject matter taught in each hour, and
  - f. Which hours of training were attended by each applicant.
7. In addition to the classroom training, an applicant shall complete behind-the-wheel training consisting of a minimum of 20 hours operating a school bus in Arizona.
  - a. An employer shall ensure that behind-the-wheel training is taught by a behind-the-wheel instructor who is qualified under R13-13-103.
  - b. During behind-the-wheel training, a behind-the-wheel instructor shall be present and observing the applicant while the applicant is operating the school bus.
  - c. The employer shall ensure that no one except the applicant, behind-the-wheel instructor, employer, and Department employees are aboard the school bus while the applicant actually operates the school bus.
  - d. The behind-the-wheel instructor shall maintain and submit to the employer within seven days from the conclusion of the applicant's behind-the-wheel training, a behind-the-wheel training log that includes:
    - i. Instructor's name,
    - ii. Instructor's identification number,
    - iii. Applicant's name,
    - iv. Date of each behind-the-wheel training session, and
    - v. Actual number of hours at each training session that the applicant operates a school bus.
  - e. At the conclusion of behind-the-wheel training, the behind-the-wheel instructor shall use a copy of the Proof of Completion of Behind-the-wheel Training and Driving Test form to administer to the applicant the driving test described on the form. The driving test shall measure the applicant's ability to operate a school bus safely and in a manner consistent with state law. The behind-the-wheel instructor shall either pass or fail the applicant and submit the completed form to the Department and the employer within seven days of the driving test.
- G. First aid and cardiopulmonary resuscitation
  1. Before being certified, an applicant shall complete classroom instruction in cardiopulmonary resuscitation and basic first aid. The instruction in cardiopulmonary resuscitation shall include performing cardiopulmonary resuscitation on adults, children, and infants.
  2. The instruction shall be conducted by an individual currently certified as an instructor in first aid and cardiopul-

monary resuscitation by a program approved by a nationally recognized organization such as the American Heart Association, American Red Cross, National Safety Council, American Safety and Health Institute, or Arizona Bureau of Mines; by an emergency medical technician licensed in Arizona; or by an agency of the U.S. government.

3. An applicant shall submit to the Department, through the employer, a copy of the front and back of the first-aid card and cardiopulmonary resuscitation card issued to the applicant or other written documentation as proof of completion of the first-aid and cardiopulmonary resuscitation training.
  4. A school bus driver shall renew first-aid and cardiopulmonary resuscitation training before expiration of the current training. Renewal instruction shall be provided by an individual described in subsection (G)(2). The school bus driver shall submit to the Department, through the employer, a copy of the front and back of the first-aid card and cardiopulmonary resuscitation card or other written documentation as proof of renewal of training.
- H.** The Department shall process an application for certification as a school bus driver under R13-13-109.
- I.** Refresher training
1. A school bus driver shall have refresher training no later than 24 months following completion of the training required by subsection (F). Refresher training shall consist of a minimum of 6 1/2 hours of classroom training in the topics listed in subsection (F)(1).
  2. After completing the first refresher training, the school bus driver shall complete a minimum of 6 1/2 hours of classroom training in the topics listed in subsection (F)(1) every 24 months following the last refresher training.
  3. An employer shall ensure that refresher training is taught by a classroom instructor who is qualified under R13-13-103.
  4. A classroom instructor shall teach refresher training and shall submit the following information in a written report to the Department and the employer within seven days from completion of the refresher training:
    - a. Instructor's name,
    - b. Instructor's identification number,
    - c. Date of training,
    - d. Location of training,
    - e. Number of hours of training taught by the classroom instructor,
    - f. Each school bus driver's name, and
    - g. Each school bus driver's certification number.
  5. In addition to the report required under subsection (I)(4), the classroom instructor shall maintain and submit to the employer within seven days from the conclusion of a refresher training course, a refresher-training course log that includes:
    - a. Instructor's name,
    - b. Instructor's identification number,
    - c. Date of the refresher training course,
    - d. Name and certification number of each school bus driver attending the refresher training course,
    - e. Subject matter taught in each hour, and
    - f. Which hours of refresher training were attended by each school bus driver.
- J.** Records
1. The employer shall maintain qualification and training records of an applicant who is certified and of a school bus driver who terminates employment, and qualification records of an applicant who is denied certification, for 24

months from the date of certification, termination of employment, or denial of certification.

2. The employer shall maintain records of testing required under subsection (C) in accordance with 49 CFR 382.401, October 2006 (no later amendments or editions), published at the U. S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D.C. 20402-9328, incorporated by reference, and on file with the Department. In this subsection, "controlled substances," as used in 49 CFR 382.401, means marijuana, cocaine, opiates, amphetamines, phencyclidine, benzodiazepines, barbiturates, methadone, and propoxyphene.
  3. The employer shall transfer the records of a school bus driver to a subsequent employer upon written request by the subsequent employer or school bus driver.
  4. Qualification records include:
    - a. Application,
    - b. Driving record,
    - c. Copy of physical examination form, and
    - d. Physical performance test form.
  5. Training records include:
    - a. A copy of the classroom-training course log required under subsection (F)(6) that shows the applicant's attendance,
    - b. A copy of the refresher-training course log required under subsection (I)(5) that shows the school bus driver's attendance,
    - c. The classroom training examination score,
    - d. The applicant's behind-the-wheel training log,
    - e. The Proof of Completion of Behind-the-wheel Training and Driving Test form,
    - f. A copy of the first-aid card and cardiopulmonary resuscitation card or other written documentation of completion of first-aid and cardiopulmonary resuscitation training, and
    - g. A copy of the school bus driver certification card issued by the Department.
- K.** Denial, cancellation, or suspension of certificate
1. Based on an assessment of the totality of the circumstances, the Department may deny a certificate to an applicant or may cancel or suspend a certificate of a school bus driver for:
    - a. Failing to meet or comply with the requirements of this Article;
    - b. Being convicted of or subject to an outstanding warrant for any felony;
    - c. Being convicted of or subject to an outstanding warrant for any misdemeanor reasonably related to the occupation of a school bus driver including, but not limited to:
      - i. Citation for any moving motor vehicle violation, including but not limited to, violations of A.R.S. § 28-1591 et seq.;
      - ii. Driving under the influence (A.R.S. § 28-1381 et seq.);
      - iii. Any sexual offense (A.R.S. § 13-1401 et seq.);
      - iv. Any abuse of a child (A.R.S. § 13-3623); or
      - v. Use, sale, or possession of a controlled substance (A.R.S. § 13-3401 et seq.).
    - d. Demonstrating behavior that endangers the educational welfare or personal safety of students, teachers, or school bus drivers or other co-workers;
    - e. Providing false, incomplete, or misleading information to the Department;

- f. Driving or being in actual physical control of a school bus under a circumstance listed in A.R.S. § 28-1381(A);
  - g. Under A.R.S. §§ 28-3301 through 28-3322, having a commercial driver license canceled, suspended, revoked, or denied; or
  - h. Having a verified positive result to any controlled substance or alcohol test required by subsections (C)(1), (2), or (3), at any time.
2. Any conviction, violation, warrant, or other misconduct described in this Section shall be considered, whether or not the school bus driver was operating a school bus at the time of the conviction, violation, warrant, or other misconduct.
  3. An applicant who is denied a certificate or a school bus driver whose certificate is canceled or suspended may request a hearing within 30 days from the date of receipt of the notice of the denial, cancellation, or suspension. The hearing shall be conducted according to the procedures contained in A.R.S. Title 41, Chapter 6, Article 10.
  4. The Department shall inform an applicant who is denied a certificate or a school bus driver whose certificate is canceled or suspended of the amount of time that must elapse before the applicant or the school bus driver may reapply for certification. The Department shall include this information in the notice of denial, cancellation, or suspension and the notice of final order, if any, served on the applicant or school bus driver. In determining the amount of time that must elapse before reapplication, the Department shall consider:
    - a. The seriousness of the offense leading to denial, cancellation, or suspension;
    - b. The frequency with which the offense occurred; and
    - c. The amount of time required to correct the offense.
- L.** If a school bus driver is terminated from or leaves employment, the employer shall provide written notice to the Department within 30 days of the termination or leaving. If a school bus driver transfers employment from one employer to a second employer, within 14 days of the transfer the second employer shall provide written notice to the Department of the:
1. School bus driver's name,
  2. School bus driver's certification number,
  3. Name of the transferring employer, and
  4. Effective date of the transfer.
- Historical Note**
- Adopted effective February 16, 1996 (Supp. 96-1).  
 Amended by final rulemaking at 7 A.A.R. 2906, effective June 13, 2001 (Supp. 01-2). Amended by final rulemaking at 11 A.A.R. 557, effective March 5, 2005 (Supp. 05-1). Amended by final rulemaking at 14 A.A.R. 2110, effective May 8, 2008 (Supp. 08-2). New Section R13-13-102 recodified from R17-9-102 with Section cross-references revised, at 20 A.A.R. 2083, effective July 25, 2014 (Supp. 14-3).
- R13-13-103. Qualification of Classroom and Behind-the-wheel Instructors**
- A.** To be qualified as a classroom instructor, an individual shall:
1. Submit to the Department through the employer, the following two letters:
    - a. A letter from, signed, and dated by the individual that states the individual's:
      - i. Name, home address, and home phone number;
      - ii. Social Security number;
- iii. Date of birth;
- iv. Current employer's name, address, and phone number;
- v. Dates of all previous letters submitted under this subsection; and
- b. A letter from the current employer recommending that the individual be considered as a classroom instructor; and
- 2.** Pass a written examination standardized by the Department:
- a. The written examination shall consist of a combination of 50 true or false, multiple choice, and fill-in-the-blank questions. The examination questions shall cover the topics listed in R13-13-102(F)(1).
  - b. Each question has a value of two points. To pass the examination, an individual shall receive a score that equals or exceeds 90% of the total possible score.
  - c. If an individual taking the written examination is unable to read or speak English, the employer shall arrange to have the examination administered orally in the language with which the individual is most familiar.
  - d. If an individual does not pass the examination, the individual may take a second examination that is different from the first examination.
  - e. If an individual fails to pass the second examination, the individual may receive further consideration by submitting again the letters required by subsection (A)(1) and taking the written examination required by this subsection.
  - f. The employer shall submit each individual's examination score to the Department within seven days from the date of the examination.
- B.** To remain qualified as a classroom instructor, a classroom instructor shall teach a minimum of 12 hours of classroom or refresher training every 24 months from the date the classroom instructor is first recognized by the Department as qualified.
- C.** To be qualified as a behind-the-wheel instructor, an individual shall:
1. Be certified continuously as a school bus driver in Arizona for the 12 months immediately before submitting the letters described in subsection (C)(2) and be employed as a certified school bus driver at the time of qualification as a behind-the-wheel instructor;
  2. Submit to the Department through the employer, the following two letters:
    - a. A letter from, signed, and dated by the individual that states the individual's:
      - i. Name, home address, and home phone number;
      - ii. Social Security number;
      - iii. Commercial driver license number;
      - iv. Current employer's name, address, and phone number;
      - v. Dates of all previous letters submitted under this subsection; and
    - b. A letter from the current employer recommending that the individual be considered as a behind-the-wheel instructor; and
  3. Pass a written examination standardized by the Department:
    - a. The written examination shall consist of a combination of 50 true or false, multiple choice, and fill-in-the-blank questions. The examination questions shall cover the topics listed in R13-13-102(F)(1).

- b. Each question has a value of two points. To pass the examination, an individual shall receive a score that equals or exceeds 80% of the total possible score.
  - c. If an individual is unable to read or speak English, the employer shall arrange to have the examination administered orally in the language with which the individual is most familiar.
  - d. If an individual does not pass the examination, the individual may take a second examination that is different from the first examination.
  - e. If an individual fails to pass the second examination, the individual may receive further consideration by submitting again the letters required by subsection (C)(2) and taking the written examination required by this subsection.
  - f. The employer shall submit each individual's examination score to the Department within seven days from the date of the examination.
- D.** To remain qualified as a behind-the-wheel instructor, a behind-the-wheel instructor shall maintain certification as a school bus driver in this state and teach a minimum of 12 hours of behind-the-wheel training every 24 months from the date the behind-the-wheel instructor is first recognized by the Department as qualified.
- E.** Records
- 1. The employer shall maintain the following records for each classroom and behind-the-wheel instructor for 24 months from the date the instructor is first recognized by the Department as qualified.
    - a. Letter submitted under subsection (A)(1)(a) or (C)(2)(a),
    - b. Letter of recommendation submitted under subsection (A)(1)(b) or (C)(2)(b), and
    - c. Examination score.
  - 2. The Department shall maintain the documents required under R13-13-102(F)(5) and (I)(4) for 24 months.
- F.** The Department shall not recognize an individual as qualified to be a classroom or behind-the-wheel instructor if the individual:
- 1. Fails to meet or comply with the requirements of this Article;
  - 2. Is convicted of or subject to an outstanding warrant for a felony;
  - 3. Is convicted of or subject to an outstanding warrant for a misdemeanor reasonably related to the occupation of a school bus driver, including:
    - a. Civil traffic violation (A.R.S. § 28-1591 et seq.);
    - b. Driving under the influence (A.R.S. § 28-1381 et seq.);
    - c. Any sexual offense (A.R.S. § 13-1401 et seq.);
    - d. Any abuse of a child (A.R.S. § 13-3623); or
    - e. Use, sale, or possession of a controlled substance (A.R.S. § 13-3401 et seq.);
  - 4. Provides false, incomplete, or misleading information to the Department;
  - 5. Drives or is in actual physical control of a school bus under a circumstance listed in A.R.S. § 28-1381(A); or
  - 6. Under A.R.S. §§ 28-3301 through 28-3322, has a commercial driver's license canceled, suspended, revoked, or denied.
- G.** If a classroom or behind-the-wheel instructor is terminated from or leaves employment, the employer shall provide written notice to the Department within 30 days of the termination or leaving. If a classroom or behind-the-wheel instructor transfers employment from one employer to a second employer,

within seven days of the transfer the second employer shall provide written notice to the Department of the:

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

#### Historical Note

Adopted effective February 16, 1996 (Supp. 96-1). Amended by final rulemaking at 7 A.A.R. 2906, effective June 13, 2001 (Supp. 01-2). Amended by final rulemaking at 11 A.A.R. 557, effective March 5, 2005 (Supp. 05-1). Amended by final rulemaking at 14 A.A.R. 2110, effective May 8, 2008 (Supp. 08-2). New Section R13-13-103 recodified from R17-9-103 with Section cross-references revised, at 20 A.A.R. 2083, effective July 25, 2014 (Supp. 14-3).

#### R13-13-104. Minimum Standards for School Bus Operation

- A.** A school bus driver shall perform operations checks of a school bus as required by R13-13-108.
- B.** Loading or unloading of passengers:
- 1. As of February 16, 1996, an eight-lamp system as described in R13-13-107(17) shall be installed on a school bus before it is introduced into Arizona. When preparing to stop a school bus on a street or highway, the school bus driver shall activate the alternately flashing amber lamps of an eight-lamp system or the alternately flashing red lamps of a four-lamp system for a minimum distance of 100 feet, in accordance with A.R.S. § 28-930(B). Whenever the school bus is stopped on a street or highway to load or unload passengers, the school bus driver shall deactivate the alternately flashing amber lamps and activate the alternately flashing red lamps of an eight-lamp system, and extend the stop arm and open the service door.
  - 2. When a school bus driver stops the school bus to load or unload passengers, the school bus driver shall set the parking brake and place the transmission in neutral.
  - 3. The distance between stops for the purpose of loading or unloading passengers shall be no less than 600 feet, unless the school determines that more frequent stops are necessary for safety. The school bus driver shall stop the school bus as near the right edge of the traveled portion of the street or highway as possible.
  - 4. A school bus driver shall not load or unload passengers on the traffic side of the bus.
  - 5. When a school bus driver loads or unloads passengers who must cross a street or highway at a location other than an intersection, the passengers shall cross at least 10 feet in front of the front bumper of the school bus. The school bus driver shall not permit passengers who must cross a street or highway to be unloaded from the school bus until all traffic to the front and rear of the school bus is stopped. The school bus driver shall not move the school bus until all passengers have crossed the street or highway.
  - 6. In intersections that use lighted traffic control signals, a school bus driver shall load or unload passengers no closer than 100 feet of the traffic control signal so the passengers may cross with the traffic control signal, either before or after the school bus proceeds.
  - 7. In intersections without lighted traffic control signals, a school bus driver shall load or unload passengers no closer than 50 feet of the intersection so the passengers

- may cross at the intersection, either before or after the school bus proceeds.
8. A school bus driver shall not stop a school bus on an interstate highway for the purpose of loading or unloading passengers, except that:
    - a. A school bus stop may be established on a frontage road that parallels an interstate highway if no passenger is allowed to cross a divided highway.
    - b. A school bus may stop in a safety rest area as defined by A.R.S. § 28-7901(8) that is part of or adjacent to an interstate highway.
  9. A school bus driver shall load or unload passengers on school grounds only in an area designated by the school and marked with a sign as a school bus loading area.
  10. During loading or unloading of passengers at a designated school bus loading area at a school, the school shall restrict the loading area to school buses, passengers, and school employees assisting in the loading or unloading of passengers.
  11. A school shall allow passengers in a designated school bus loading area only when the passengers are being loaded on or unloaded from a school bus.
  12. A school shall designate all school bus loading areas at locations that prevent backing of the school bus.
  13. In areas at a school not designated as a school bus loading area, a school bus driver shall not back upon or adjacent to the school grounds unless an individual authorized by the school bus driver directs the backing procedure while standing at the rear of the school bus in a position visible to the school bus driver. This provision does not apply to a school bus garage or school bus storage area where passengers are not allowed.
  14. Immediately before a school bus driver engages in backing a school bus, the school bus driver shall sound the horn to warn motorists and pedestrians of the backing procedure. This provision does not apply if the school bus is equipped with an alarm that operates automatically when the school bus is backing.
  15. In addition to the requirements for railroad grade crossings contained in A.R.S. § 28-853, a school bus driver shall comply with the following:
    - a. Use hazard warning lights as described in A.R.S. § 28-947(D) within a minimum of 100 feet of a railroad grade crossing to warn motorists of an intended stop.
    - b. Shut off any radio, compact-disc player, and other source of sound within 50 feet of a railroad grade crossing.
    - c. Stop the school bus, with or without passengers aboard, at a railroad grade crossing when traffic at the railroad grade crossing is not directed by a police officer.
    - d. While stopped at a railroad grade crossing at which traffic is not directed by a police officer, activate the noise suppression switch, completely open the service door and the window to the left of the driver and, by hearing and sight, determine that it is safe to cross. Before proceeding, close the service door. Deactivate the noise suppression switch after crossing the tracks.
    - e. Do not stop to load or unload passengers within 200 feet of a railroad grade crossing. This provision does not prohibit stops at a railroad station or on a highway that parallels the railroad tracks.
  16. When a school bus driver loads a wheelchair passenger on a school bus, the school bus driver shall secure both the wheelchair and the wheelchair passenger using the systems described in R13-13-105(E).
- C. An employer shall not allow or require a school bus driver to drive a school bus nor shall a school bus driver drive a school bus:
    1. For more than 10 hours after having been off-duty for a minimum of eight consecutive hours;
    2. For any period after having been on-duty for 15 hours after having been off-duty for a minimum of eight consecutive hours;
    3. After having been on-duty 60 hours in any seven consecutive days if the employer does not operate school buses for seven consecutive days; or
    4. After having been on-duty 70 hours in any eight consecutive days if the employer operates school buses every day of the week.
  - D. Other requirements:
    1. A school bus driver shall wear a seat belt whenever the school bus is in motion.
    2. While operating a school bus, a school bus driver shall wear closed-toe, closed-heel shoes that will not interfere with driving the school bus safely or performing other duties of the school bus driver.
    3. A school bus driver shall comply with all state traffic laws while operating a school bus except that the school bus driver shall not exceed 65 miles per hour or the posted speed limit, whichever is less, when operating the school bus on an interstate highway.
    4. Any person boarding or attempting to board a school bus, whether or not a passenger, shall comply with all instructions given by a school bus driver. If a passenger or a non-passenger boards or attempts to board a school bus and refuses to comply with the school bus driver's instructions, the school bus driver may seek emergency assistance to remove the passenger or non-passenger from the school bus, or prevent the passenger or non-passenger from boarding.
    5. All passengers shall sit with their backs against the seat backs, their legs facing towards the front of the school bus, and all parts of their bodies clear of all aisles whenever the school bus is in motion.
    6. A school bus driver shall not transport in a school bus more passengers than the rated capacity stated by the school bus manufacturer.
    7. A school bus driver shall close the service doors of a school bus before operating the school bus. The service doors shall remain closed whenever the school bus is in motion.
    8. A school bus driver shall not place the transmission in neutral or coast with the clutch disengaged on a downhill grade.
    9. The driver of a school bus equipped with a two-speed axle shall not shift the axle while descending any hill posted with grade warning signs.
    10. A school bus driver shall ensure that a school bus is not fueled in a closed building, while the school bus engine is running or while passengers are on board.
    11. A school bus driver or passenger shall not use tobacco in any form on a school bus.
    12. A school bus driver shall not carry on a school bus or consume any beverage containing any alcohol while on-duty with the employer or within eight hours before going on-duty with the employer.
    13. A school bus driver shall not eat or drink on a school bus unless the school bus is completely stopped.



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14. A school bus driver shall not at any time carry on a school bus or use a controlled substance.
  15. A passenger shall not carry on a school bus or consume while being transported in a school bus, any beverage containing any alcohol.
  16. A passenger shall not carry on a school bus or consume while being transported in a school bus, any dangerous or narcotic drug, as defined in A.R.S. § 13-3401, unless:
    - a. A medical practitioner authorized by the state to write a prescription for the dangerous or narcotic drug has prescribed the dangerous or narcotic drug for the passenger who is carrying or consuming it;
    - b. The school district governing board establishes written policies and procedures regarding the administration of a dangerous or narcotic drug by a trained district employee to a passenger who is being transported in a school bus; and
    - c. The parent or legal guardian of a passenger to whom a dangerous or narcotic drug is administered while being transported in a school bus provides prior written authorization for the dangerous or narcotic drug to be administered to the passenger by a trained district employee.
  17. A school bus driver shall not assume responsibility for transporting any medication, whether prescription or over-the-counter, that belongs to a passenger.
  18. A school bus driver shall not transport animals, insects, or reptiles in a school bus with the exception of service animals, as defined at A.R.S. § 11-1024(J), which assist disabled passengers.
  19. Except for eyeglasses, a passenger or school bus driver shall not carry or transport glass objects on a school bus.
  20. A school bus driver or passenger shall not carry on or transport in a school bus an explosive device, gun, knife, or other weapon as defined by school-district policy.
  21. A passenger shall not place any part of the passenger's body out of a school bus window or door except when exiting the school bus.
  22. When instruments or equipment related to musical or athletic events are transported on a school bus, the school bus driver shall transport them as follows:
    - a. Instruments or equipment shall not occupy seating space if needed for a passenger,
    - b. Instruments or equipment shall not be placed in the school bus driver's compartment or step-well of the school bus,
    - c. Instruments or equipment shall be under the passenger's control at all times or secured in the school bus, and
    - d. Instruments or equipment shall not block an aisle or emergency exit of the school bus at any time.
  23. A passenger who carries onto a school bus an object other than an instrument or equipment related to musical or athletic events shall control the object at all times or secure the object in the school bus. If the passenger is not able to control or secure the object in the school bus, the passenger shall not carry the object onto the school bus.
  24. A school bus driver shall ensure that all objects inside the school bus are under a passenger's control or secured in a manner that prevents the objects from causing physical injury to others or affecting the safe operation of the school bus.
  25. A school bus driver shall not drive a school bus with a trailer or other vehicle attached to the school bus.
  26. A school bus driver shall stop the school bus and check the wheels and tires for wear, damage, and inflation after every two continuous hours of driving.
  27. All school buses shall have and school bus drivers shall use a two-way voice communication system. The two-way voice communication system shall only be used to assist the school bus driver with passenger transportation.
  28. Except as provided in subsection (D)(27), a school bus driver shall not use audio headsets, earphones, earplugs, Bluetooth devices, cellular phones, personal digital assistants, or other interactive wireless devices, whether or not hands-free, when the school bus is in operation.
  29. Except when complying with R13-13-108(D), if a school bus driver leaves the driver's compartment, the school bus driver shall set the parking-brake system, place a standard transmission in either first or reverse gear, place an automatic transmission in park or neutral, and turn off the ignition and remove the ignition key from an ignition that uses a key, or set the ignition power-deactivation switch of an ignition that does not use a key.
  30. Each time a school bus driver unloads passengers and it appears that no passengers remain on the school bus, the school bus driver shall inspect the interior of the school bus for passengers remaining and objects left on the school bus. If the school bus is equipped with a child alert notification system as described in R13-13-106(6), the school bus driver shall complete all procedures required by the child alert notification system, in addition to the school bus driver's inspection of the interior of the school bus.
  31. At least twice during every school year, a school shall conduct an evacuation drill of a school bus at the school that includes every passenger who rides a school bus and is in school on the day of the evacuation drill. At least 14 days before an evacuation drill, a school shall submit to the Department a written notice stating the date, time, and location of the evacuation drill. Each school bus driver shall participate in a minimum of two evacuation drills during every school year. Evacuation drills shall include:
    - a. Practice and instruction in the location, use, and operation of the emergency exits, fire extinguishers, first aid equipment, windows as a means of escape, and communication systems;
    - b. Practice and instruction in when and how to approach, load, unload, and move away from the school bus a minimum of 100 feet;
    - c. Instructions on how weather-related hazards affect emergency procedures; and
    - d. Instructions on the importance of orderly conduct.
  32. A white, flashing, strobe lamp as described in R13-13-107(17)(f) may be used only during conditions that produce low visibility or that are hazardous.
  33. An owner shall ensure that no lock, except as provided in R13-13-107(10)(h), is installed on any school bus emergency exit or service door.
  34. A school bus driver shall ensure that nothing obstructs or interferes with the use of any school bus emergency exit or service door.
  35. A school bus driver, passenger, or school administrator shall immediately report to the employer any violation of these rules or state statutes that the school bus driver, passenger, or school administrator reasonably believes threatens the health, safety, or welfare of a passenger.
- E. Reports and recordkeeping:

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

#### Historical Note

Adopted effective February 16, 1996 (Supp. 96-1). Amended by final rulemaking at 7 A.A.R. 2906, effective June 13, 2001 (Supp. 01-2). Amended by final rulemaking at 11 A.A.R. 557, effective March 5, 2005 (Supp. 05-1). Amended by final rulemaking at 14 A.A.R. 2110, effective May 8, 2008 (Supp. 08-2). New Section R13-13-104 recodified from R17-9-104 with Section cross-references revised, at 20 A.A.R. 2083, effective July 25, 2014 (Supp. 14-3).

#### R13-13-105. Special Needs Standards

##### A. General requirements:

1. As of February 16, 1996, before being introduced into Arizona, a school bus used for transporting disabled passengers shall comply with the minimum standards applicable to school buses and the specifications contained in this Section. A school bus used for transporting disabled passengers that was introduced into Arizona before that date shall comply with the minimum standards in these rules, including this Section, or those at A.A.C. R17-4-608.
  2. Any school bus that is used for transporting a passenger who uses a wheelchair shall be equipped with a wheelchair lift.
  3. A wheelchair lift shall be located on the side of the bus body opposite the school bus driver. The wheelchair lift shall not be attached to the exterior sides of the school bus and shall be confined within the school bus body when not extended.
  4. Any school bus that is used for transporting disabled passengers shall be equipped with a belt cutter that is accessible only to the school bus driver. The belt cutter shall be secured in a location within reach of the school bus driver while belted into the driver's seat. The school bus may be equipped with additional belt cutters. Additional belt cutters shall be accessible only to the school bus driver or adult aides or attendants.
- ##### B. Special-service entrance:
1. A school bus used for transporting disabled passengers shall have a special-service entrance of a width and depth to accommodate a wheelchair lift. The special-service entrance shall have a minimum clear opening of 30 inches horizontally to allow for the passage of a wheelchair.
  2. The special-service entrance shall be located on the side of the bus opposite the school bus driver and far enough to the rear of the school bus to prevent the special-service entrance door from obstructing the service door when the special-service entrance door is open.
  3. A drip molding shall be installed above the special-service entrance to divert water from the special-service entrance.
  4. The frame surrounding the special-service entrance shall provide support and strength at least equal to at the conventional service and emergency doors.
- ##### C. Special-service entrance doors:
1. A school bus used for transporting passengers in wheelchairs shall provide a special-service entrance door not to exceed 50 inches in width.
  2. Two doors may be used for a special-service entrance on a school bus, if the doors are equipped with a positive latching mechanism to prevent accidental opening.
  3. The special-service entrance door shall be constructed to open toward the exterior of the school bus. A Type A school bus is exempt from this provision if its special-service entrance door is provided by the school bus chassis manufacturer.
  4. The special-service entrance door shall have a fastening device attached to the school bus body to hold the special-service entrance door in an open position.
  5. The special-service entrance door shall be weather-sealed by a waterproof cushion affixed to the door or door frame.
  6. Door materials, panels, and structural strength of a special-service entrance door shall be equivalent to the standards contained in R13-13-107 for a service door and an emergency door. Color, rub rail extensions, if installed, lettering, and all exterior features shall match adjacent sections of the school bus body.
  7. The window in the special-service entrance door shall be made of safety glass, mounted in a waterproof manner that is equal to the mounting of the other windows, and aligned with the side windows of the school bus.
  8. A pressure switch shall be installed in the special-service entrance door frame that will actuate a visible signal located in the school bus driver's compartment when the ignition is in the "on" position to warn the school bus driver when the special-service entrance door is not closed.
  9. A switch shall be installed in the special-service entrance door frame so the wheelchair lift will not operate when the special-service entrance door is closed.
- ##### D. Wheelchair lift:

1. A wheelchair lift shall be capable of lifting a minimum load of 800 pounds.
  2. When the wheelchair-lift platform is raised to the maximum position, it shall be held in position by the wheelchair lift.
  3. Controls shall be provided that enable an individual authorized by the school bus driver to activate the wheelchair lift from either inside or outside the school bus.
  4. The wheelchair lift shall be equipped so it may be manually raised or lowered in the event of a power failure to the wheelchair lift.
  5. The wheelchair lift shall contain a safety device to prevent the wheelchair-lift platform from falling.
  6. The wheelchair lift shall be constructed so it allows the wheelchair-lift platform to rest completely on the ground.
  7. All edges of the wheelchair-lift platform shall be designed to restrain the wheelchair and prevent the feet of an individual in the wheelchair from becoming caught during the raising or lowering process.
  8. A barrier shall be attached along the outer non-loading edges of the wheelchair-lift platform that will prevent the wheelchair from rolling off the wheelchair-lift platform when the wheelchair-lift platform is placed in any position other than completely extended on ground level.
  9. A self-adjusting, skid-resistant plate shall be installed on the loading edge of the wheelchair-lift platform to reduce the incline from the wheelchair-lift platform to ground level. This plate shall be used as a restraining barrier on the loading edge of the wheelchair-lift platform. The wheelchair-lift platform shall be skid-resistant.
  10. A school bus may be provided with a battery to be used exclusively to operate the wheelchair lift. If a battery is installed for this purpose, an appropriate size circuit breaker meeting the wheelchair lift manufacturer's specifications shall be installed between the battery and the wheelchair lift motor. The circuit breaker shall be located as close to the power source as possible, but not within the school bus driver's compartment.
  11. The wheelchair lift shall be equipped with an adjustable switch that limits the electrical power to the wheelchair-lift motor and a bypass valve to prevent pressure from building in the hydraulic system when the wheelchair-lift platform reaches the maximum up or down position.
  12. A ramp may be carried on a school bus for use during an occurrence that requires evacuating the school bus. The ramp shall not be stored within the passenger compartment of the school bus.
- E. Wheelchair and wheelchair-passenger securement:**
1. Each wheelchair in a school bus shall be secured in a forward-facing position. Medical equipment and supplies required to accommodate a disabled passenger shall be secured in a school bus by means of alterations approved by the Department in accordance with R13-13-108(G).
  2. Each wheelchair-securement system location in a school bus shall have a minimum clear floor area of 30 inches in width from the interior school bus wall to the aisle and a minimum of 48 inches in length. A wheelchair shall not be placed in a position that prevents passage through the special-service entrance.
  3. Each wheelchair-securement system shall have four full-length tracks, with an L-track four-point tie-down configuration.
  4. The wheelchair-securement system shall provide a minimum of four wheelchair-securement anchorages attached to the school bus floor with a minimum of two anchorages located at the rear of the space designated for a wheelchair and a minimum of two anchorages located at the front of the space.
- F. Dome light:** A dome light shall be placed in the interior ceiling of the school bus to illuminate the wheelchair lift area. The dome light shall be activated by a pressure switch located in the special-service entrance door or by a manually operated switch located in the interior of the school bus no more than one foot from the special-service entrance door. This switch shall be used exclusively for the dome light.
- G. Aisles:** All aisles leading to an emergency door from any wheelchair space shall be a minimum of 30 inches in width. The emergency door opening shall be a minimum of 30 inches in width.
- H. Seating arrangements:** All fixed seats in a special-needs school bus shall be forward facing.
- I. Emblems:** A school bus used for transporting disabled passengers shall display two International Symbol of Accessibility emblems. One emblem shall be placed below the upper window on the emergency door or below the window on the special-service entrance door, and the second emblem shall be placed below the windshield on the side of the bus or on the bumper opposite the school bus driver. The emblems shall be made of blue, reflective material and be a minimum of 6 inches and a maximum of 12 inches in width and height and shall contain a reflective white wheelchair impression with a minimum of 1/8 inch reflective white border around the outer edges of the emblems.
- J. Types A and B school buses used to transport disabled passengers shall comply with the specifications contained in this Section except:**
1. A ramp may be installed in place of a wheelchair lift;
  2. If a ramp is used, it shall be of a strength and rigidity to support a wheelchair, passenger, and an individual attending the wheelchair passenger. The ramp shall be equipped with a barrier on each longitudinal side to prevent the wheelchair from leaving the ramp;
  3. The floor of the ramp shall be covered with nonskid material; and
  4. A ramp shall not be carried in the passenger compartment of a school bus.

#### Historical Note

Adopted effective February 16, 1996 (Supp. 96-1).  
Amended by final rulemaking at 7 A.A.R. 2906, effective June 13, 2001 (Supp. 01-2). Amended by final rulemaking at 14 A.A.R. 2110, effective May 8, 2008 (Supp. 08-

2). New Section R13-13-105 recodified from R17-9-105 with Section cross-references revised, at 20 A.A.R. 2083, effective July 25, 2014 (Supp. 14-3).

### **R13-13-106. Minimum Standards for School Bus Chassis**

As of February 16, 1996, the chassis of a school bus shall meet the requirements of this Section when the school bus is introduced into Arizona. The chassis of a school bus introduced into Arizona before that date shall meet the requirements of this Section or those at A.A.C. R17-4-609.

1. Air cleaner: An engine intake air cleaner shall be installed in the school bus that meets engine specifications defined by the school bus manufacturer.
2. Axles: The front and rear axles and suspension assemblies shall have a gross axle weight rating consistent with that stated by the chassis manufacturer on a notice located in the school bus driver's compartment.
3. Back-up alarm: If installed, an alarm that emits a warning sound when the school bus is backing shall conform to the following:
  - a. The alarm-signaling device shall be of electronic, solid state design and shall emit an audible sound of a minimum of 97 dB(A) measured at 4 feet, 0° access from the source of the sound.
  - b. The alarm-signaling device shall be wired into the backup light circuits and shall emit sound automatically when the gear shift lever is in "reverse" position.
  - c. The alarm-signaling device shall be attached to the school bus chassis or body behind the rear axle.
4. Brakes:
  - a. A school bus with a manufacturer-designed passenger capacity of 60 or less shall be equipped with a service-brake system that uses compressed air or hydraulic assist.
  - b. A school bus with a manufacturer-designed passenger capacity greater than 60 shall be equipped with a service-brake system that uses compressed air.
  - c. In addition to the service-brake system, a school bus shall be equipped with a parking-brake system to keep the school bus from moving when parked.
  - d. The service brakes in a compressed-air system shall be adjusted using the following criteria:

Type	Outside Diameter of Air Chamber	Brake Adjustment Limit
6	4 1/2 inches	1 1/4 inches
9	5 1/4 inches	1 3/8 inches
12	5 11/16 inches	1 3/8 inches
16	6 3/8 inches	1 3/4 inches
20	6 25/32 inches	1 3/4 inches
24	7 7/32 inches	1 3/4 inches
30	8 3/32 inches	2 inches
36	9 inches	2 1/4 inches

- e. The service brakes in a "long stroke" clamp type brake system shall be adjusted using the following criteria:

Type	Outside Diameter of Air Chamber	Brake Adjustment Limit
12	5 11/16 inches	1 3/4 inches
16	6 3/8 inches	2 inches
20	6 25/32 inches	2 inches

24	7 7/32 inches	2 inches
24*	7 7/32 inches	2 1/2 inches
30	8 3/32 inches	2 1/2 inches

\*For 3" maximum stroke type 24 chambers

- f. The service-brake system in a compressed-air system shall contain an emergency-brake system that will activate when the air loss in the service-brake system reaches 20 to 40 pounds per square inch.
- g. A school bus using a compressed-air or hydraulic-assist service-brake system shall be equipped with a signal located in the school bus driver's compartment that emits a continuous audible or visible warning to the school bus driver when:
  - i. The air pressure available in a compressed-air braking system is 60 pounds per square inch or less, or
  - ii. There is a loss of fluid flow from the main hydraulic pump or loss of electric source powering the back-up system in a hydraulic-assist system.
- h. A school bus using a compressed-air service-brake system shall be equipped with one or two illuminated gauges located in the school bus driver's compartment that show the pounds per square inch of compressed air available for the operation of the brake.
- i. A compressed-air brake system with a dry reservoir shall have a one-way valve that will prevent the loss of compressed air between the dry reservoir and the source of compressed air.
- j. A brake system with a wet reservoir shall have a valve located at the bottom of the wet reservoir that operates automatically or can be operated remotely or manually to eject the moisture from the reservoir.
- k. Compressed-air or hydraulic-assist brake lines and booster-assist lines shall be installed in a manner that prevents heat, vibration, and chafing damage.
- l. The brake systems of Types C and D school buses shall be installed so the chassis components can be visually inspected to detect brake lining wear without removal of any of the chassis components.
5. Front bumper: The front bumper shall be positioned at the forward-most part of the school bus and extend to the outer edges of the school bus.
6. Child alert notification system: A school bus may be equipped with an electronic or mechanical child alert notification system. If a school bus is equipped with a child alert notification system, the device shall be installed in a manner that does not interfere with any other existing operating or electrical component. A child alert notification system in a school bus shall not have an override or bypass capability.
7. Clutch: The clutch torque capacity shall be equal to or greater than the engine torque output.
8. Color: The chassis, including wheels and front bumper, shall be painted black. The hood and fenders shall be painted National School Bus Yellow as described in R13-13-107(6).
9. Cooling system: A school bus shall be equipped with a cooling system that maintains the engine temperature operating range required to prevent damage to the school bus engine.
10. Drive shaft: Each section of the drive shaft to the rear driving axle shall be protected by a metal guard around its

circumference to reduce the possibility of the drive shaft penetrating through the school bus floor or dropping to the ground.

11. Electrical system:

a. Battery:

- i. The battery shall have a minimum cold-cranking capacity rating equal to the cranking current required by the engine for 30 seconds at 0° F. and a minimum reserve capacity rating of 120 minutes at 25 amperes.
- ii. The battery shall have a higher capacity than specified in subsection (11)(a)(i) if optional equipment installed on the school bus requires the higher capacity.
- iii. Because all batteries are to be secured in a sliding tray in the bus body as required by R13-13-107, chassis manufacturers shall mount batteries temporarily on the chassis frame, except that a van conversion or cutaway front-section chassis may be secured in accordance with the manufacturer's standard configuration. However, in all cases the battery cable provided with the chassis shall have sufficient length to allow some slack, and shall be of sufficient gauge to carry the required amperage.

b. Alternator:

- i. All alternators shall conform to the recommended practices of Standard J180, January 2002 (no later amendments or editions) published by the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096-0001, which is incorporated by reference and on file with the Department.
- ii. All Type A-2 and Type B buses with a GVWR of 15,000 pounds or less shall have an alternator with a minimum of 130 amps.
- iii. All Type A-2 and Type B buses with a GVWR over 15,000 pounds, and all Type C and D buses shall be equipped with a heavy-duty truck or bus-type alternator meeting Standard J180, which is incorporated by reference in subsection (b)(i), having a minimum output rating of 130 amps, and shall produce a minimum current output of 50% of the rating at engine idle speed. The alternator may be either pad-mounted or hinge-mounted.
- iv. Buses equipped with an electrically powered wheelchair lift or air conditioning may be equipped with a device that monitors the electrical system voltage and advances the engine idle speed when the voltage drops to, or below, a pre-set level.
- v. A belt-driven alternator shall be capable of handling the rated capacity of the alternator with no detrimental effect on any other driven components.
- vi. A direct-drive alternator may be installed instead of a belt-driven alternator.
- vii. If the school bus is equipped with an air conditioning system, the alternator shall have a minimum charging rate of 160 amperes per hour.

- viii. The alternator on a school bus shall contain a regulator to control the voltage to the battery.

c. Wiring:

- i. All wiring shall conform to the recommended practices of Standard J1292, October 1981 (no later amendments or editions), published by the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096-0001, incorporated by reference and on file with the Department.
- ii. All wiring shall use a standard color or number coding and each chassis shall contain a wiring diagram that details the wiring of the chassis.
- iii. The chassis shall be equipped with a connection to provide electrical power to the school bus. The connection shall be located on the chassis cowl or on the engine compartment of a school bus designed without a chassis cowl. The connection shall contain terminals for the main 100 ampere body circuit, tail lamps, right-turn signal, left-turn signal, stop lamps, backup lamps, and instrument panel lights. The instrument panel lights shall have a rheostat control.

12. Engine horsepower: The gross vehicle weight rating of a school bus shall not exceed 185 pounds for each engine horsepower as published by the manufacturer on a notice located on the school bus engine.

13. Exhaust system:

- a. The exhaust pipe, muffler, and tailpipe shall be located under the school bus body and attached to the chassis.
- b. The tailpipe shall be constructed of a corrosion-resistant tubing material at least equal in strength and durability to 16-gauge steel tubing.
- c. The exhaust system on a gasoline-powered chassis shall be insulated from the fuel tank and fuel tank connections by a shield at any point where the exhaust system is 12 inches or less from the fuel tank or fuel tank connections.

14. Frame:

- a. A school bus frame shall be of a design and strength capable of supporting the gross vehicle weight of the school bus.
- b. A school bus frame shall not be altered for any purpose.
- c. Holes in top or bottom flanges of frame rails are not permitted except as provided by the manufacturer. There shall be no welding to the frame rails except by the chassis or body manufacturer or the manufacturer's certified agent.
- d. The school bus frame shall not be cracked, loose, sagging, or broken.
- e. Brackets securing the cab or the body of the school bus to the frame shall not be loose, broken, or missing.
- f. The frame rail flanges shall not be bent, cut, or notched, except as specified by the manufacturer.
- g. All accessories mounted to the school bus shall be secured as specified by the manufacturer.
- h. Holes shall not be drilled in the top or bottom rail flanges, except as specified by the manufacturer.

15. Front fenders of a Type C school bus: The outer edges of the front fenders shall be wider than the outer edges of the

- front tires when the front wheels are in the straight-ahead position.
16. Fuel system:
    - a. A school bus shall contain a fuel tank with a minimum 30-gallon capacity, with a minimum dispersion of 25 gallons of fuel to the engine. The fuel tank shall be vented to the outside of the school bus body so fuel spillage will not contact any part of the exhaust system.
    - b. On a Type B, Type C, or Type D school bus, no portion of the fuel system that is located outside of the engine compartment, except the filler tube, shall extend above the top of the chassis frame.
    - c. A fuel filter with replaceable element shall be installed between the fuel tank and engine.
    - d. The fuel line that supplies fuel to the engine shall be located at the top of the fuel tank.
  17. Horn: A school bus shall be equipped with at least one horn capable of producing a sound level between 82 and 102 dB(A) when tested according to the Standard J377, March 2001 (no later amendments or editions) published by the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096-0001, incorporated by reference and on file with the Department.
  18. Instruments and instrument panel:
    - a. The chassis shall be equipped with the following instruments:
      - i. Speedometer;
      - ii. Odometer that will give accrued mileage to seven digits, including tenths of miles;
      - iii. Voltmeter or ammeter;
      - iv. Oil pressure gauge;
      - v. Water temperature gauge;
      - vi. Fuel gauge;
      - vii. Upper beam head lamp indicator;
      - viii. Brake system signal as required by R13-13-106(4)(f);
      - ix. Turn signal indicator; and
      - x. Air pressure or hydraulic gauge.
    - b. The instruments shall be mounted on the instrument panel in the school bus driver's compartment and visible to the school bus driver while seated in the driver's seat.
    - c. The instrument panel shall be equipped with a rheostat switch that controls the illumination to the instrument panel and the gear shift selector indicator.
  19. Oil filter: A replaceable element or cartridge-type oil filter shall be provided with a minimum capacity that meets or exceeds the capacity recommended by the manufacturer of the school bus engine.
  20. Openings: All openings in the floorboard and in the fire wall between the chassis and passenger compartment shall be sealed.
  21. Splash guards:
    - a. A school bus shall be equipped with rear fender splash guards constructed of flexible rubberized material.
    - b. The splash guards shall be wide enough to cover the tire tread width, installed close enough to the tire tread surface to control side-throw of road surface material, and extend to within 8 inches of ground level.
  22. Steering system:
    - a. Power steering is required on all school buses manufactured after January 1, 1984.
    - b. Bracing extending from the center of the steering wheel to the steering wheel ring shall not be cracked or missing.
    - c. The distance of movement of the steering wheel between two points of resistance shall not be greater than the following when measured with the engine running:
 

Steering wheel diameter	Power steering	Manual steering
16 in. or less	6 3/4 inches	4 1/2 in.
18 in.	7 1/8 inches	4 3/4 in.
20 in.	7 7/8 inches	5 1/4 in.
22 in.	8 5/8 inches	5 3/4 in.
    - d. There shall be clearance of at least 2 inches between the steering wheel and any object in the driver's compartment.
    - e. A non-adjustable steering column shall be fastened in a fixed position. An adjustable steering column shall be equipped with a locking mechanism.
    - f. The steering gear housing shall not have loose or missing mounting bolts. There shall not be cracks in the gear housing or its mounting brackets.
    - g. The connecting arm on the steering gear power source shall not be loose.
    - h. The steering wheel shall turn freely in both directions.
    - i. The steering system shall have a means for lubrication of all wear-points.
  23. Suspension:
    - a. Shock absorbers:
      - i. A school bus shall be equipped with front and rear double-acting shock absorbers. Replacements to shock absorbers shall be made according to the specifications of the manufacturer's part number as stamped on the shock absorber.
      - ii. If a school bus is manufactured with tandem rear axles, rear shock absorbers are not required.
    - b. Suspension system:
      - i. Capacity of suspension assemblies shall be commensurate with the chassis manufacturer's gross vehicle weight rating.
      - ii. If leaf-type rear springs are used, they shall be a progressive rate or multi-stage design.
  24. Tires and wheels:
    - a. Tires and wheels shall have an accumulated load rating at least equal to the gross vehicle weight rating.
    - b. Dual rear tires shall be provided on all school buses that have a gross vehicle weight rating of more than 10,000 pounds.
    - c. Each tire on a particular axle shall be the same size.
    - d. All tires on a school bus shall be bias or all tires on a school bus shall be radial and shall not differ more than one size between front and rear axles.
    - e. On a Type C or D school bus, a spare tire, if present, shall be in a carrier mounted outside the passenger compartment.
  25. Transmission: The school bus transmission shall have no fewer than three forward speeds and one reverse speed.
  26. Turning radius:

- a. A chassis with a wheelbase of 264 inches or less shall have a right and left turning radius of not more than 42 1/2 feet, as measured to the edge of the front tire at the outside of a circle as the school bus moves within the circle.
  - b. A chassis with a wheelbase of more than 264 inches shall have a right and left turning radius of not more than 44 1/2 feet, as measured to the edge of the front tire at the outside of a circle as the school bus moves within the circle.
27. Weight:
- a. The gross vehicle weight of a school bus shall not exceed the chassis manufacturer's gross vehicle weight rating for the chassis as recorded on a notice located in the school bus driver's compartment.
  - b. To calculate the gross vehicle weight of a school bus, add the chassis weight, the school bus body weight, the school bus driver's weight, and the total seated passenger weight.
    - i. For the purpose of calculation, the school bus driver's weight is 150 pounds.
    - ii. For the purpose of calculation, the passenger weight is 120 pounds per seated passenger.
  - c. The weight distribution of a school bus on a level surface that is fully loaded according to the gross vehicle weight rating shall not exceed the front axle gross weight rating or rear axle gross weight rating as recorded on a notice located in the school bus driver's compartment.

#### Historical Note

Adopted effective February 16, 1996 (Supp. 96-1).  
 Amended by final rulemaking at 7 A.A.R. 2906, effective June 13, 2001 (Supp. 01-2). Amended by final rulemaking at 14 A.A.R. 2110, effective May 8, 2008 (Supp. 08-2). New Section R13-13-106 recodified from R17-9-106 with Section cross-references revised, at 20 A.A.R. 2083, effective July 25, 2014 (Supp. 14-3).

#### R13-13-107. Minimum Standards for School Bus Body

As of February 16, 1996, the body of a school bus shall meet the requirements of this Section when the school bus is introduced into Arizona. The body of a school bus introduced into Arizona before that date shall meet the requirements of this Section or those at A.A.C. R17-4-610.

1. Air conditioning system: The school bus may be installed with an air conditioning system. If installed, the air conditioning system shall:
  - a. Be of a mechanical vapor compression refrigeration type;
  - b. Be manufactured to conform to the requirements of Standard J639, June 2005 (no later amendments or editions) published by the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096-0001, incorporated by reference and on file with the Department;
  - c. Have sufficient power for simultaneous cooling, circulating, and dehumidifying the air;
  - d. Be provided with refrigerant that is nontoxic, non-flammable, and non-explosive;
  - e. Have all power and grounding installed according to the manufacturer's specifications; and
  - f. Have exhaust system exit from the rear of the vehicle, and extend to, but not more than 2 inches beyond the outer edge of the rear bumper.
2. Aisle:

- a. The center aisle of a school bus shall have a clearance of not less than 12 inches at the bottom of the seat cushion, increasing to 15 inches at the top of the seat backs.
  - b. Aisles to side emergency doors shall have a minimum clearance of 12 inches which may be achieved by using flip-up type seats.
3. Auxiliary fan:
- a. An auxiliary fan, if installed, shall be placed in a location that does not obstruct the school bus driver's view of any mirror located on the school bus.
  - b. An auxiliary fan, if installed, shall have a 6-inch nominal diameter, with the fan blades covered by a protective cage.
  - c. Each installed auxiliary fan shall be controlled by a switch that is independent of any other electrical system.
4. Battery:
- a. A battery shall be secured to a slide-out or swing-out tray in a vented compartment in the school bus body, so the battery is accessible to the outside for servicing. If the battery compartment has a door that is not removable, the door shall be secured by a fastening device when the door is in a closed position. If the battery compartment has a removable cover, the cover shall be secured by a fastening device when the cover is in place.
  - b. The word "Battery" shall be printed in unshaded black letters that are no more than 2 inches in height on the battery-compartment door or cover or immediately above the battery-compartment door or cover.
  - c. Buses with a battery located under the engine hood are exempt from these provisions.
5. Belt cutter: A school bus with passenger seat belts shall be equipped with a belt cutter having a full width hand-grip and a protected, replaceable or non-corrodible blade. The belt cutter shall be mounted in a location accessible to the seated driver, and in an easily detachable manner. The belt cutter shall be accessible only to the school bus driver.
6. Color:
- a. A school bus body shall be painted National School Bus Yellow according to the following specifications and tolerances:
 

Description	Reflectance	Chromaticity	
	Y	X	Y
Centroid	41.5%	.5139	.4434
V+ Light Limit	42.9%	.5139	.4427
V- Dark Limit	39.8%	.5133	.4422
H+ Green Limit	41.6%	.5123	.4368
H- Red Limit	41.7%	.5168	.4489
C+ Vivid Limit	41.5%	.5188	.4457
C- Weak Limit	41.5%	.5095	.4405
  - b. The bumpers, lamp hoods, lettering, and rub rails on a school bus body shall be black.
7. Crossing control arm:
- a. A school bus may be equipped with a crossing control arm. If installed, all components and all connections of the crossing control arm shall:
    - i. Meet the requirements set forth in Standard J1133, November 2004 (no later amendments

- or editions) published by the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096-0001, incorporated by reference and on file with the Department;
- ii. Be mounted on the right side of the front bumper;
  - iii. When opened, extend in a line parallel to the body side and aligned with the right side wheel;
  - iv. Be weatherproofed;
  - v. Incorporate system connectors (electrical, vacuum, or air) at the gate and be easily removable to allow for towing of the school bus;
  - vi. Be constructed of non-corrodible or nonferrous material, or treated in accordance with the school bus body sheet metal specification;
  - vii. Have no sharp edges or projections that could cause injury or be a hazard to students;
  - viii. Be rounded at the end of the crossing control arm;
  - ix. Extend approximately 70 inches (measured from the bumper at the arm assembly attachment point) when in the extended position;
  - x. Not extend past the end of the bumper when in the stowed position;
  - xi. Extend simultaneously with the stop signal arm, activated by the stop signal arm control; and
  - xii. Include a device attached to the bumper near the end of the arm to automatically retain the arm while in the stowed position. The device shall not interfere with the normal operations of the crossing control arm.
- b. An automatic recycling interrupt switch may be installed for temporarily disabling the crossing control arm.
8. Defrosters:
    - a. Defrosting and defogging equipment shall direct a flow of heated air onto the windshield, the window to the left of the driver, and the glass in the viewing area directly to the right of the driver to eliminate frost, fog, and snow.
    - b. The defrosting system shall conform to Standards J381 September 2000 (no later amendments or editions) and J382, September 2000 (no later amendments or editions), both published by the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096-0001 incorporated by reference and on file with the Department.
    - c. An auxiliary fan shall not be used in place of a defrosting and defogging system.
    - d. A portable heater shall not be used in place of a defrosting or defogging system.
  9. Electrical wiring:
    - a. All electrical wiring on a school bus shall conform to the standards contained in Standard J1292, October 1981 (no later amendments or editions), published by the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096-0001 and incorporated by reference and on file with the Department.
    - b. Electrical wiring that is coded by color shall be coded as follows:
      - i. Left Rear Directional Light: Yellow
      - ii. Right Rear Directional Light: Dark Green
      - iii. Stoplights: Red
      - iv. Back-up Lights: Blue
      - v. Taillights: Brown
      - vi. Ground: White
      - vii. Ignition Feed, Primary Feed: Black
    - c. Circuits: Electrical wiring circuits shall be protected by a fuse, circuit breaker, or Field Effect Transistor and shall be coded by number or color on an electrical wiring diagram located in the driver's compartment or the electrical access panel door. There shall be at least seven circuits as follows:
      - i. Head, tail, stop, and instrument panel lamps;
      - ii. Clearance and step-well lamps;
      - iii. Dome lamps;
      - iv. Ignition and emergency door signal;
      - v. Turn signal lamps;
      - vi. Alternately flashing signal lamps; and
      - vii. Heaters and defrosters.
    - d. All electrical wires passing through metal openings shall be protected by a non-metal grommet.
    - e. Electrical wires not enclosed within the school bus body shall be fastened at intervals of not more than 18 inches.
  10. Emergency exits: A door, push-out window, or roof hatch used as an emergency exit shall conform to the following:
    - a. On the inside and outside of a school bus, the words "EMERGENCY EXIT" or "EMERGENCY DOOR" shall be printed in black, unshaded letters at least 2 inches high above an emergency door or push-out window and at least 1 inch high on a roof hatch.
    - b. Each emergency exit shall open toward the exterior of the school bus and shall be labeled within 6 inches of the interior release mechanism with black lettering at least 3/8 of an inch high instructing how the exit is to be opened.
    - c. On a Type A school bus with double rear doors used as emergency exits, the rear doors shall be secured with upper, center, and lower latches to the door frame.
    - d. The upper portion of each door used as an emergency exit shall be equipped with a window made of safety glass with an area not less than 400 square inches. A door located in the rear end of the school bus used as an emergency exit shall also contain a lower window panel of safety glass of not less than 350 square inches. A Type A school bus that contains double rear doors used as emergency exits is exempt from this provision.
    - e. There shall be no steps on the outside of the school bus leading to an emergency exit.
    - f. A header pad filled with a material to protect against injury shall be attached to the top edge of the frame of a door used as an emergency exit. The header pad shall be a minimum of 3 inches wide and 1 inch thick and extend the full width of the door opening.
    - g. Each emergency exit shall be equipped with a latch that opens from the inside of the school bus and is connected to an electrical buzzer audible in the driver's compartment that actuates when the latch is being released.
    - h. Except for interlock/barrel bolt devices, if a lock is installed on an emergency exit, the lock shall be secured only by using a key and shall deactivate the ignition system of the school bus when locked.
  11. Emergency equipment:



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- a. All emergency equipment shall be mounted in the driver's compartment or adjacent to either side of the service entrance and shall be readily accessible. If the emergency equipment is mounted within a closed compartment, the compartment shall be clearly labeled as containing the emergency equipment.
  - b. Fire extinguisher:
    - i. A school bus shall be equipped with a minimum of one 5-pound pressurized, dry, chemical fire extinguisher of a type rated not less than 2A-10-BC by the Underwriter's Laboratories, Inc., as described by the National Fire Protection Association, Inc., One Batterymarch Park, Quincy, MA 02269, in NFPA 10: Standard for Portable Fire Extinguishers, published in 2006 (no later amendments or editions), incorporated by reference and on file with the Department.
    - ii. A pressure gauge shall be mounted on the fire extinguisher to be readable in its mounted position.
    - iii. The operating mechanism of the fire extinguisher shall be sealed with a type of seal that will not interfere with the use of the fire extinguisher.
  - c. Warning devices: A school bus shall have a minimum of three reflective triangle road-warning devices that comply with the standards at 49 CFR 571.125, October 2006 (no later amendments or editions), published by the U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D.C. 20402-9328, incorporated by reference and on file with the Department.
12. Floor:
- a. The floor beneath the seats, including the tops of the wheel housings and the floor in the driver's compartment, shall be covered with fire-resistant floor-covering material having a minimum overall thickness of .10 inch.
  - b. The aisle floor shall be covered with a fire-resistant ribbed or non-skid floor-covering material with a minimum thickness of .10 inch.
  - c. The floor-covering material shall be bonded to the floor with a waterproof adhesive and shall not crack when subjected to changes in air temperature.
13. Handrail: A handrail at a school bus service entrance shall be secured to the school bus wall in a manner that causes the crevice formed by the distance between the handrail and the wall to pass the inspection procedure described by the National Highway Traffic Safety Administration, Washington, D.C. 20590, in School Bus Safety Assurance Program Recall Listing: January 1991 Through June 1996 (no later amendments or editions), incorporated by reference and on file with the Department.
14. Heating system:
- a. Heaters shall be of the hot-water type.
  - b. The heating system shall be capable of maintaining bus interior temperatures as specified in the procedure set forth in Standard J2233, June 2002 (no later amendments or editions), published by the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096-0001, incorporated by reference and on file with the Department.
  - c. A minimum of one heater shall be a fresh-air or combination fresh-air and recirculating-air type.
  - d. If more than one heater is used, additional heaters may be of recirculating-air type.
  - e. All heater hoses shall be secured in all areas of the school bus body and chassis to prevent wear due to vibration. Heater lines in the interior of the bus shall be covered by a protective shield to prevent scalding of the driver or passengers.
  - f. Except on Type A school buses, the heater system shall include shutoff valves installed at the engine in the water pressure lines and return lines.
15. Identification:
- a. Only signs, lettering, and objects approved by state law or these rules shall appear on the interior or exterior of a school bus, including all glass areas.
  - b. Each school bus owned by a school or a private company shall display either the name of the school and school number, if any, or the name of the private company on each exterior side of the school bus between the rub rails at the center line and seat cushion levels in black unshaded letters that are at least 5 inches in height. Additionally, a school bus owned by a private company that displays the name of the school and school number as described above, may display the company's name on each exterior side of the school bus below the floor line in black unshaded letters that are a maximum of 2 inches in height.
  - c. An identification number assigned to a school bus by an owner shall be placed on the front and rear bumpers of the school bus and on each exterior side of the school bus below the floor line rub rail and forward of the centerline of the school bus. The identification number on each bumper shall be National School Bus Yellow. The identification number on each exterior side shall be black. Each identification number shall be a minimum of 5 inches in height.
  - d. In addition to an identification number, a school bus may be identified by an emblem placed on the loading side of the front bumper or the exterior wall of the loading side below the floor line rub rail and forward of the center line of the school bus, or both. The emblem shall be painted or decaled on or attached to a magnetic backing.
  - e. In addition to an identification number, a school bus may display a route identification sign. If displayed, the route identification sign shall:
    - i. Be installed with a heavy duty Velcro, magnetic, screw-type or similar fixture;
    - ii. Be a minimum of 5 inches in height; and
    - iii. Be located on a flat surface of the bus body, excluding glass.
16. Interior: If the ceiling is constructed with overlapping panels, the first panel placed in the ceiling shall be overlapped by the following panel and each panel shall consecutively overlap to the rear end of the school bus. Exposed edges in the interior of the school bus shall be beaded, hemmed, flanged, or rounded to eliminate sharp edges.
17. Lamps and signals:
- a. All lamps on the exterior of a school bus shall conform to the provisions contained in 49 CFR 393.9 et seq. of the Federal Motor Carrier Safety Regulations, October, 2006 (no later amendments or editions) published at the U.S. Government Printing Office, Superintendent of Documents, Mail Stop:

- SSOP, Washington, D.C. 20402-9328, incorporated by reference and on file with the Department.
- b. Interior lamps shall be provided that illuminate the center aisle and step well.
  - c. Alternately flashing signal lamps:
    - i. When a school bus is equipped with a four-lamp system, the system shall consist of two red alternately flashing signal lamps located one on the left and one on the right above the rear windows of the school bus and two red alternately flashing signal lamps located one on the left and one on the right above the windshield.
    - ii. When a school bus is equipped with an eight-lamp system, the four red alternately flashing signal lamps shall be installed as described in subsection (14)(c)(i) and the four amber alternately flashing signal lamps shall be installed as follows: one amber alternately flashing signal lamp shall be located adjacent to each red alternately flashing signal lamp, at the same level, but closer to the vertical centerline of the school bus. The system of red and amber alternately flashing signal lamps shall be wired so the amber alternately flashing signal lamps are activated manually and the red alternately flashing signal lamps are activated automatically or manually.
    - iii. Except for LED lamps, each alternately flashing signal lamp shall be covered by a lamp hood.
  - d. Turn signal and stop lamps:
    - i. Except as provided in subsections (17)(d)(iii) and (17)(d)(iv), all school buses shall be equipped with amber side-mounted turn signals. The turn signal lamp on the left side of the bus may be mounted rearward of the stop signal arm and the turn signal lamp on the right side may be mounted rearward of the entrance door.
    - ii. Except on Type A school buses, a school bus body shall be equipped with rear turn signal lamps that are at least 7 inches in diameter, or if the lamp shape is other than round, a minimum of 38 square inches of illuminated area. The lens area of the rear turn signal lamps on Type A school buses shall be at least 21 square inches. The rear turn signal lamps shall be connected to the hazard warning switch located in the driver's compartment to allow the school bus driver to activate simultaneous flashing of turn signal lamps when needed as a traffic hazard warning. The rear turn signal lamps shall be located to the far left and right sides of the flat surface of the rear of the school bus body and below the rear window.
    - iii. A Type C school bus may have a double-faced turn signal lamp that is visible from the front and rear of the school bus and mounted on the tops or sides of both front fenders or may have a turn signal lamp mounted on the left and right sides of the grill and may have a turn signal lamp mounted on each side of the school bus body between the window line and the second rub rail and forward of the vertical centerline.
    - iv. A Type D school bus may have a turn signal lamp mounted at the front of the school bus body above each head lamp and may have a turn signal lamp mounted on each side of the school bus body between the window line and second rub rails and forward of the vertical centerline of the school bus.
    - v. A 7 inch diameter stop lamp, or if the lamp shape is other than round, a stop lamp with a minimum of 38 square inches of illuminated area shall be located toward the centerline and adjacent to each of the rear turn signal lamps.
    - e. Backup lamps: A school bus shall be equipped with two backup lamps with clear lenses, located one on the right and one on the left rear panels below the rear windows.
    - f. White flashing strobe lamp: If used on a school bus, a strobe lamp shall have a single clear lens that emits light 360 degrees around its vertical axis and shall be located on the longitudinal centerline of the school bus roof 1/3 to 1/2 of the distance forward from the rear of the school bus body unless this placement restricts the view of the strobe lamp.
      - i. If the view of the strobe lamp is restricted when the strobe lamp is located 1/3 to 1/2 of the distance forward from the rear of the school bus body, the strobe lamp may be mounted immediately to the rear of the roof hatch.
      - ii. The strobe lamp shall be controlled by a manual switch located in the driver's compartment.
      - iii. A pilot lamp shall be located in the driver's compartment to show the school bus driver that the strobe lamp is activated.
18. Mirrors:
    - a. Interior mirror: The interior mirror shall be made of either laminated glass or glass bonded to a backing that will retain the glass in the event of breakage. The interior mirror in Types B, C, and D school buses shall be a minimum of 6 inches in height and 30 inches in length surrounded by a frame with rounded corners. The interior mirror in Type A buses shall be a minimum of 6 inches in height and 16 inches in length.
    - b. Exterior mirrors: A school bus shall comply with the requirements contained in 49 CFR 571.111, October 2006 (no later amendments or editions), published at the U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D.C. 20402-9328, incorporated by reference and on file with the Department.
  19. Noise suppression switch: A school bus shall be equipped with a manual noise suppression switch. Identification shall be provided on or adjacent to the switch, in order to clearly state its purpose and distinguish it from other controls. This switch shall be an on-off type that deactivates body equipment that produces noise, including, at least, the AM-FM radio, heaters, air conditioners, fans, and defrosters. This switch shall not deactivate safety systems, such as windshield wipers or lighting systems.
  20. Overall length: The overall length of a school bus shall not exceed 45 feet including accessories.
  21. Overall width: The overall width of a school bus shall not exceed 102 inches excluding mirrors.
  22. Rear bumper:
    - a. The rear bumper shall be made of a minimum of 3/16 inch thick pressed steel that is a minimum of 8 inches in total height.

- b. The rear bumper shall be wrapped around the back corners of the bus and shall extend toward the front of the school bus for at least 12 inches as measured from the rear-most point of the school bus body at the floor line.
  - c. The rear bumper shall be attached to the chassis frame and braced to support the rear corners of the bumper.
  - d. The rear bumper shall extend at least 1 inch beyond the rear-most part of the school bus body as measured at the floor line.
  - e. The rear bumper shall not be equipped with foot-holds or handles.
  - f. A Type A school bus equipped with the chassis manufacturer's rear bumper is exempt from subsections (22)(a) through (22)(c).
23. Restraining barrier:
- a. The restraining barrier shall be a minimum of 38 inches high as measured from the interior floor of the school bus to the top of the restraining barrier.
  - b. The restraining barrier shall be the same width as the seat directly behind the restraining barrier.
24. Rub rails:
- a. There shall be no fewer than two rub rails located on a school bus as follows:
    - i. One rub rail shall be located on each side of the school bus approximately at seat cushion level and shall extend from the rear post of the service door frame completely around the school bus body, excluding the emergency door, to the front post of the school bus driver's window.
    - ii. One rub rail shall be located on each side of the school bus approximately at the floor line and shall extend from the rear post of the service door frame to the rear corner post of the school bus body and from the front post of the school bus driver's window to the rear corner post on the driver's side
  - b. Rub rails are not required on emergency doors, special-service entrance door, access panels and compartment doors, and wheel well openings.
  - c. Each rub rail shall be attached on the outside of the school bus body at each structural post in the school bus body.
  - d. Each rub rail shall be a minimum of 4 inches in width and constructed of corrugated or ribbed 16-gauge steel.
25. Seat belt for school bus driver: A seat belt for the school bus driver shall be installed in the driver's compartment. The seat belt shall be equipped with a retractor on each side of the school bus driver's seat to keep the seat belt retracted and off the floor when not in use.
26. Seats:
- a. Each seat shall have a minimum depth of 15 inches measured from the front of the seat cushion to the seat back.
  - b. Each seat shall be a minimum of 38 inches in height measured from the interior floor of the school bus to the top of the back cushion.
  - c. Seat spacing shall meet the requirements of 49 CFR 571.222, October 2006 (no later amendments or editions), published at the U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D. C. 20402-9328, incorporated by reference and on file with the Department. Seat spacing shall not be less than 24 inches between the front of a seat back cushion to the back surface of the cushion on the preceding seat. Seat spacing shall be measured at cushion height, at the center of the seat, on a plane parallel to the center line of the bus. The seat upholstery may be placed against the seat cushion padding, but without compressing the padding, before measurement is taken.
  - d. The school bus driver's seat shall be adjustable, without the use of tools, both vertically and horizontally for a minimum of 4 inches. Seats with vertical adjustments are not required on Types A and B school buses.
27. Service door:
- a. The service door shall be located on the right side of the school bus opposite the school bus driver and within direct view of the school bus driver when seated in the school bus driver's seat. Types A and B school buses are exempt from this provision.
  - b. The service door shall have a minimum horizontal opening of 24 inches and a minimum vertical opening of 68 inches. Type A school buses shall have a service door with a minimum opening of 1200 square inches.
  - c. Windows in the upper and lower panels of the service door shall be made of safety glass. The bottom of each lower window panel shall be no more than 10 inches from the top surface of the lower step of the service entrance. The top of each upper window panel shall be no more than 6 inches below the top of the service door. Type A buses are exempt from this provision.
  - d. To protect passengers' fingers, a flexible rubber material shall be attached by number 10 3/4 inch metal screws to the opening and closing edges of the service door. Type A school buses are exempt from this provision.
  - e. The service door shall open towards the exterior of the school bus. A Type A school bus is exempt from this provision if the service door is provided by the school bus chassis manufacturer.
  - f. A header pad, filled with a material to protect against injury, shall be attached to the top edge of the frame of the service door. The header pad shall be at least 3 inches wide and 1 inch thick and extend the full width of the service entrance.
  - g. A Type A school bus with the chassis manufacturer's standard service entrance is exempt from subsections (27)(a) through (27)(d).
28. Steps:
- a. The risers of the steps in the service entrance shall be equal. When plywood is laid over the steel floor of the school bus, the height of the top step may be increased by the thickness of the plywood.
  - b. The first step at the service entrance shall be no less than 10 inches and no more than 16 inches from the ground.
  - c. Steps shall be enclosed in the school bus body.
  - d. Steps shall not extend beyond the side of the school bus body.
  - e. A handrail not less than 10 inches in length shall be provided inside the doorway.
29. Step treads:
- a. All steps, including the floor-line platform area, shall be covered with ribbed or non-skid floor-covering material that is mounted on a metal plate.

- b. The metal back of the step tread shall be a minimum 24-gauge cold rolled steel and shall be permanently bonded to the ribbed or non-skid material.
  - c. If ribbed material is used, the ribbed design shall run from the risers toward the service entrance. Each step tread shall have a 1 1/2 inch white nosing.
- 30. Stirrup steps: There shall be a handle and at least one folding stirrup step or recessed foothold located on each side of the front of a school bus for accessibility for cleaning the windshield and lamps. Type A school buses are exempt from this provision.
- 31. Stop signal arm:
  - a. School buses shall be equipped with a stop signal arm on the left side of the school bus body that extends 90° from the school bus body when opened.
  - b. The stop signal arm shall be either air or electrically driven, and meet the requirements of Standard J1133, November 2004 (no later amendments or editions) published by the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096-0001, incorporated by reference and on file with the Department.
  - c. The stop signal arm shall be an 18-inch octagon, constructed of a red material that reflects light, with the word "STOP" printed on both sides in white letters not less than 5 inches high. Additionally, the word "STOP" may be illuminated by a light-emitting diode system on both sides of the stop signal arm.
- 32. Sun shield: An interior adjustable transparent sun shield or visor not less than 6 inches x 30 inches with a finished edge shall be installed over the windshield in the driver's compartment. School buses with a gross vehicle weight rating of 10,000 pounds or less are exempt from this provision.
- 33. Tailpipe:
  - a. The tailpipe shall extend to, but not more than 2 inches beyond, the outer edge of the rear bumper;
  - b. The tailpipe shall exit in the rear of the vehicle behind the rear drive axle, and shall be placed according to the manufacturer's specifications; and
  - c. The tailpipe shall not exit beneath any fuel filler location or beneath any emergency door.
- 34. Undercoating:
  - a. The entire underside of the school bus body, including floor sections, cross member and below-floor-line side panels, shall be coated with rust-proofing material for which the material manufacturer has issued to the bus body manufacturer notarized certification that materials meet or exceed all performance and qualitative requirements of paragraph 3.4 of Federal Specification TT-C-520B, Coating Compound, Bituminous, Solvent Type, Underbody (For Motor Vehicles), February 2, 1973 (no later amendments or editions), published by the General Services Administration acting as an agent for the Superintendent of Documents, Washington D.C. 20402, and incorporated by reference and on file with the Department. Modified test procedures shall be used for the following requirements:
    - i. Salt spray resistance – test modified to 5% salt and 1,000 hours,
    - ii. Abrasion resistance, and
    - iii. Fire resistance.
  - b. Test panels shall be prepared in accordance with paragraph 4.6.12 of Federal Specification TT-C-520B, with a modified procedure requiring that the test shall be made on a 48-hour air-cured film at a thickness recommended by the material manufacturer.
  - c. Undercoating is not required if the underside of the school bus is constructed of noncorrosive material.
  - d. The undercoating material shall be applied with suitable airless or conventional spray equipment to the recommended film thickness and shall show no evidence of voids in the cured film.
- 35. Ventilation: An immovable, non-closing exhaust ventilator shall be installed in the school bus roof.
- 36. Wheel housing:
  - a. The wheel-housing opening shall be large enough to allow for the removal of the tire and wheel.
  - b. The wheel housing shall be constructed of 16-gauge steel or fiberglass of equal strength and sealed to the school bus floor.
  - c. The wheel housing shall not extend more than 12 inches above the floor inside the school bus body and shall not extend into the emergency door opening.
  - d. The wheel housing shall provide clearance for tire chains installed on the tires of the driving wheels.
- 37. Windows: Each side window in the passenger compartment of a school bus body shall provide an unobstructed opening of at least 190 square inches when the window is open.
- 38. Windshield washer system: A windshield washer system that provides an application of cleaning solution to the windshield shall be installed.
- 39. Windshield wipers:
  - a. A windshield wiping system with a minimum of two speeds shall be provided.
  - b. The windshield wipers shall be operated by one or more air or electric motors.

#### Historical Note

Adopted effective February 16, 1996 (Supp. 96-1).  
 Amended by final rulemaking at 7 A.A.R. 2906, effective June 13, 2001 (Supp. 01-2). Amended by final rulemaking at 14 A.A.R. 2110, effective May 8, 2008 (Supp. 08-2). New Section R13-13-107 recodified from R17-9-107 at 20 A.A.R. 2083, effective July 25, 2014 (Supp. 14-3).

#### R13-13-108. Inspection, Maintenance, and Alterations

- A. A school bus shall be inspected by the Department before the school bus is introduced into Arizona to transport passengers.
  - 1. After inspecting a school bus, the Department shall place a decal that contains a number used by the Department to identify the school bus above the school bus driver's side window in the driver's compartment. This decal shall not be removed from the school bus while it is operated in Arizona except by the Department. Before the school bus is transferred or retired from service, the school bus owner shall contact the Department to have this decal removed.
  - 2. If the Department finds that no major defect exists on a school bus, the Department shall place a safety inspection decal that contains the month and year of inspection on the right side of the centerline of the windshield of the school bus in a position that does not interfere with the school bus driver's line of vision.
  - 3. If the Department finds a major defect on the school bus, the Department shall place the school bus out of service. Before the school bus may be placed back into service, the Department shall reinspect the school bus to deter-

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mine that the major defect has been corrected. If the major defect has been corrected, the Department shall place a safety inspection decal on the school bus in accordance with subsection (A)(2).

4. If the Department finds a minor defect on a school bus, the Department shall issue an inspection order, but the school bus may be operated to transport passengers while the minor defect is being corrected. A copy of the inspection order shall be returned to the Department within 15 working days from the date of inspection and shall show that the minor defect has been corrected unless, in accordance with the provisions of subsection (A)(5), the school bus owner obtains an extension of time to correct the minor defect.
5. Upon receipt of a written request from the school bus owner, the Department shall grant one or more extensions of time to correct a minor defect if:
  - a. The school bus owner submits to the Department written documentation that the:
    - i. School bus owner's action or inaction did not cause or contribute to the delay in completing the repair;
    - ii. School bus owner has secured a written estimated expedited delivery or completion date from the provider of the materials or services required to complete the repair; and
    - iii. School bus owner made reasonable attempts to secure the materials or services, or materials or

services of equivalent quality, at a substantially similar price from alternate sources; and

- b. The Department determines that an extension of time to correct the minor defect will not increase the probability of an accident involving the school bus or passengers or the risk of injury to the school bus driver or passengers.
6. Each extension of time shall be for 60 days or less. The Department shall determine the length of each extension of time after giving consideration to the information provided under subsection (A)(5)(a). When the minor defect is corrected, the school bus owner shall return to the Department a copy of the inspection order issued by the Department.
7. If a minor defect on a school bus is not corrected within 15 working days or at the end of an extension period, if applicable, the Department shall remove the safety inspection decal and the school bus shall be placed out of service until further inspection by the Department shows that the minor defect is corrected.
- B.** The Department shall use the following criteria to determine whether a major or minor defect is present on a school bus introduced into Arizona on or after February 16, 1996. For a school bus introduced into Arizona before that date, the Department shall determine whether the school bus is in an unsafe condition by using the following criteria or those at A.A.C. R17-4-612. A defect that causes a school bus introduced into Arizona before February 16, 1996 to be in an unsafe condition shall be deemed a major defect as defined in this Article.

INSPECTION ITEM	MAJOR DEFECT	MINOR DEFECT
Air conditioning system, if installed	Missing hose covers or trim panels Missing air conditioning louvres Loose or missing air conditioning mounting fasteners Refrigerant leaks from evaporators or hoses in the interior of the bus Broken compressor brackets Broken mounting bolts Electrical wiring hanging out of evaporator covers Missing evaporator covers Missing air diffusers Evaporators not secured to ceiling or bulkhead	Broken or loose evaporator covers Unsecured refrigerant hoses Loose, missing or severely cracked belts
Alarm, back-up, if installed		Low volume Not working
Auxiliary fan, if installed	Obstructs school bus driver's view of any mirror Used in place of defrosting or defogging system Not covered by protective cage	Incorrect size  Not controlled by independent switch
Battery (Types C and D buses only)	Not mounted according to the manufacturer's instructions	Incorrect or no identification
Belt cutter	Missing	
Body fluid cleanup kit	Absence of body fluid cleanup kit  Any item missing from body fluid cleanup kit	

Brakes, compressed air	Inoperative or missing visual or audible low air signal Compressed-air gauge missing Grease or oil leakage into brake system Exposed or damaged ply on any air hose Air capacity less than 90 pounds per square inch at idle speed Wet-reservoir valve missing or inoperative Leaking, cracked, or broken hose or connection Audible air leak Pushrod exceeds limitation Low-air warning system does not activate at 60 psi and remains activated at less than 60 psi	
Brakes, hydraulic-assisted	Inoperative or missing visual or audible signal	
Brakes, emergency-brake system	Inoperative Does not activate when service brake system reaches 20 to 40 pounds psi	
Bumpers	Break or rip Loose bumper Foothold or handle present on rear bumper	Not painted black
Cooling system		Leak in system Fluid level in radiator not full
Crossing control arm, if installed	Has sharp edges or projections that could injure a student Will not retract	Not working Fails to open completely
Defroster	Inoperative Ventilation opening blocked	
Drive shaft	Absence of protective metal guard installed by the manufacturer around the drive shaft to any driving axle	
Dust boots	Missing, torn, split, or loose around floor-mounted gear shift, parking brake handle, or steering column.	
Emergency warning devices	Having fewer than two operable	Missing one
Emergency door	Inoperative latch Broken or missing portion of seal around door Window not of safety glass Inoperative warning device Lock is not the ignition shut-off type	No header pad
Emergency exit	Inoperative warning device or latch on all emergency exits except roof exit Not properly identified Header pad missing or damaged Broken seal around window	Inoperative roof exit
Engine compartment	Inoperative hood latch	Deterioration of hose, belt, or wiring Deterioration of battery hold-down clamp, corrosive acid buildup on terminal

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Exhaust system	Exhaust leak  Exhaust tailpipe extends more than 2 inches beyond the outer edge of the rear bumper or fails to terminate flush with the outside edge of the school bus body in the rear of the school bus	Exhaust pipe bracket not attached to the chassis and the tailpipe  End of tailpipe pinched or bent
Exterior paint		Exposed metal or base primer  Incorrect color
Fire extinguisher	Absence of fire extinguisher  Not at full charge	Not mounted in required position
First-aid kit	Absence of first-aid kit  Three or more items missing from first-aid kit	One or two items missing from first-aid kit
Frame	Crack in frame  Cracked, loose, or missing body mount or body-mount bolt  Welded repair not performed by body or chassis manufacturer or manufacturer's certified agent	
Fuel system	Fuel tank not mounted to the chassis frame or not vented to outside of engine compartment  Fuel system extends above chassis frame (does not apply to filler tube or Type A bus)  Fuel tank bracket cracked or broken  Leaking tank or fuel line  Fuel line attached to bottom of fuel tank  Missing or improper fuel cap	
Handrail	Handrail does not pass the inspection procedure described in R13-13-107(13)	
Heating system	Heater missing or inoperative  Heater line in interior of school bus not covered by protective shield  No shutoff valve	Unsecured heater hose  Inadequate heat-producing capacity
Horn (Air or electrical)	Missing or inoperative	
Instrument panel	Missing or inoperative ignition power-deactivation switch if the ignition does not use a key.  Any inoperative gauge or switch, except auxiliary fan switch  Improper illumination	Inoperative auxiliary fan switch
Interior, aisles	Incorrect clearance	
Interior, seats	Broken, cracked, exposed, or loose seat frame  Screw or mounting bolt missing	
Interior, floor covering	Hole  Improper material Improperly bonded Loose metal trim	
Lamps, clearance	Inoperative  Cracked, broken, or missing lens	Incorrect color  Dust behind lens
Lamps, head	Low beam inoperative  Not mounted as required by 49 CFR 393.24  Both high beams inoperative	One high beam inoperative  Inoperative dimmer switch on a bus not operated when head lamps are required  Cracked, broken, or missing lens

Lamps, back-up	Inoperative	Incorrect color Cracked, broken, or missing lens Dust behind lens
Lamps, interior Over aisle		Inoperative Cracked, broken, or missing lens
Lamps, interior Over step-well	Inoperative	Cracked, broken, or missing lens
Lamps, turn signal	Inoperative	Cracked, broken, or missing lens Dust behind lens Incorrect size Incorrect location
Lamps, strobe, if installed	Pilot or strobe lamp missing or inoperative Cracked, broken, or missing lens Incorrect color Incorrect location	
Lamps, identification		Inoperative Incorrect color Cracked, broken, or missing lens Dust behind lens
Lamps, hazard	Inoperative	
Lamps, stop	Both inoperative	One inoperative Cracked, broken, or missing lens Dust behind lens
Lamps, tail	Both inoperative	One inoperative Cracked, broken, or missing lens Dust behind lens
Lamps, side marker		Inoperative Incorrect color Cracked, broken, or missing lens Dust behind lens
Lamps, alternately flashing signal	One or more inoperative lamps	Incorrect color Lamp hood missing Cracked, broken, or missing lens Dust behind lens
Lettering and numbering		Missing any lettering or numbering Incorrect size, color, or location Unauthorized sign, letter, or object
Mirrors, cross-view	Missing Broken or loose mounting Broken or clouded glass	
Mirrors	Interior or exterior mirror missing Loose or broken mounting bracket Crack, break, or flaking of reflective material affixed to back of mirror glass Crack or break of mirror glass Loose or missing mounting bracket bolt or screw Incorrect size Do not meet safety standards contained in 49 CFR 571.111	



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Miscellaneous	Object not secured inside the school bus Any item noted by the Department that could cause injury or present a danger to a passenger or school bus driver	Any item noted by the Department that needs to be repaired because it could interfere with the safe operation of the school bus but that is not a major defect
Noise suppression switch	Out of service Malfunctioning	
Parking brake	Inoperative, missing part, or not in proper adjustment	
Restraining barrier	Missing Incorrect size Loose	
Rub rails	Missing more than one Loose or dangling	Missing one Incorrect location Incorrect color Incorrect width
School bus body	Damage resulting in cut or rip to the exterior of school bus body Hole that would allow exhaust gases or dust to enter the passenger compartment Bolt attaching body to chassis loose, broken, or missing Exceeds length or width limitations	Absence of undercoating Loose or missing rivet, screw, or bolt
Seat belt	Absence of driver seat belt or inoperative driver seat belt buckle or retraction system Frayed seat belt material	
Seats	One or more missing Incorrect size or location Driver seat does not meet requirements for adjustment Loose seat cushions Exposed frame	Torn seat cushions
Service door	Incomplete closing of door assembly Does not contain safeguards to prevent accidental opening Window not made of safety glass Broken or cracked window panel Inoperative door control Does not open towards exterior of the school bus Scissors or butterfly door prohibited Absence of flexible material on outer edge of service door Absence of header pad	

Special needs school bus	<p>Incorrect location or size of special-service entrance</p> <p>Incorrect size of special-service entrance door</p> <p>Window not made of safety glass</p> <p>Inoperative pressure switch</p> <p>No safety device in wheelchair lift</p> <p>No restraining barrier on wheelchair-lift platform</p> <p>Fails to provide wheelchair-securement device or anchorage</p> <p>Special-service entrance door does not open towards exterior of school bus (except Type A school bus)</p> <p>Wheelchair lift inoperable</p>	<p>Drip molding not installed above the special-service entrance</p> <p>Special-service entrance door not weather-sealed</p> <p>Incorrect color of door material or panel</p> <p>Lacks wheelchair emblem</p> <p>Missing fastening device for special-service entrance door</p> <p>Dome light missing or inoperative</p>
Splash guards		<p>Bottom edge of guard is more than 8 inches above the ground</p> <p>Does not cover entire width of single or dual tire</p> <p>Missing splash guard</p>
Steering	<p>Distance of movement not within parameters of R13-13-106(22)(c)</p> <p>Steering wheel does not move freely when turning the wheel</p> <p>Missing or cracked steering-wheel ring or bracing from center of steering wheel to steering-wheel ring</p> <p>Steering column not in a fixed position or locking mechanism missing or inoperative on adjustable steering column</p> <p>Steering column mounting bracket cracked or missing</p> <p>Loose or missing mounting bolt in steering gear housing</p> <p>Loose connecting arm on steering gear power source</p>	<p>Leakage of lubricant</p> <p>Power-steering belt cracked, frayed, or slipping</p> <p>Fluid does not fill power steering reservoir to the full level on the dipstick</p>
Steps	<p>Loose or missing grab handle in step-well</p> <p>Missing stirrup step or handle</p>	<p>Incorrect distance between steps</p> <p>Incorrect floor covering</p>
Stop signal arm	<p>Any stop arm inoperative</p> <p>Air leak</p> <p>If equipped with a light-emitting diode system, one or more lights missing</p> <p>Missing any stop arm</p>	<p>Incorrect lettering or color on stop signal arm</p> <p>Incorrect size of stop signal arm</p>
Sun shield or visor (if required)	Broken, cracked, or missing	Not transparent
Suspension	<p>Broken, damaged, or missing suspension part</p> <p>U-bolt loose, broken, cracked, or missing</p>	Leaking shock absorber

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Tires	<p>Tires on same axle not of the same size</p> <p>Combination of bias and radial tires</p> <p>Tires vary more than one size between axles</p> <p>Tires not correct size for gross vehicle weight rating of school bus</p> <p>Single rear tire on school bus with gross vehicle weight rating of more than 10,000 pounds</p> <p>Regrooved, recapped, or retreaded tire mounted on a front wheel</p> <p>Tread groove depth less than 4/32 of an inch, measured in a tread groove on a tire on a front wheel</p> <p>Tire is mounted or inflated so it comes in contact with any part of the school bus or other tire</p> <p>Tread groove depth less than 2/32 of an inch, measured in a tread groove on a tire on a rear wheel</p> <p>Bump, knot, or bulge present on any tire</p> <p>Sidewall is cut, worn, or damaged to the extent that ply cord is exposed</p> <p>Separation of tread from tire casing</p> <p>Exposed ply or belting on any tire</p> <p>Flat tire or audible leak from a tire on any wheel</p> <p>If present, spare tire on Type C or D school bus not mounted outside passenger compartment</p>	
Ventilation	Non-closing exhaust ventilator missing	
Wheel housing	Incorrect size or construction of wheel housing or opening	
Wheels	<p>Not correct size for gross vehicle weight rating of school bus</p> <p>Loose or missing lug nut</p> <p>Broken stud bolt</p> <p>Crack or welded repair in wheel assembly</p>	Not painted black
Windows	<p>Not of safety glass</p> <p>Opening too small</p> <p>Cracked or broken</p> <p>Placement of non-transparent material</p> <p>Inoperative latch</p>	
Windshield	<p>Placement of non-transparent material</p> <p>Crack, chip, or pitting that interferes with the school bus driver's vision</p>	Crack, chip or pitting that does not interfere with the school bus driver's vision
Windshield washer system	Missing	Low or no cleaning solution
Windshield wipers	<p>Inoperative or missing wiper on school bus driver's side</p> <p>Inoperative or missing wiper on side opposite the school bus driver</p>	<p>Inoperative speed control</p> <p>Split or hardened wiper blade</p>
Wiring	<p>Incorrect color or number coding</p> <p>Wiring circuit not protected by fuse or circuit breaker</p> <p>One or more non-metal grommets missing</p> <p>Electrical wires outside the school bus body improperly secured</p>	

- C. A school bus shall be inspected annually, according to a schedule established by the Department and the standards contained in subsections (A) and (B) and this section.
1. If the Department finds a major defect, the Department shall remove the current safety inspection decal and replace with a new safety inspection decal only after the major defect is repaired.
  2. If the Department finds a minor defect, the Department shall remove the current safety inspection decal and replace with a new safety inspection decal and allow the school bus owner to make repairs in accordance with the provisions at R13-13-108(A)(4) through (A)(7).
- D. A school bus driver shall perform the following operations checks and tasks on the school bus:
1. Before a school bus is operated for the first time each day, conduct a pre-trip operations check of the school bus to determine that the following are operational and are not damaged:
    - a. All lamps, including alternately flashing, back-up, clearance, hazard, head, identification, interior, side marker, stop, tail, turn signal, and strobe lamps, if any, and emergency warning devices;
    - b. Tires, wheels, and wheel fasteners;
    - c. Service door;
    - d. Steps and step wells;
    - e. Emergency exits and signals;
    - f. Emergency doors and signals;
    - g. Wheelchair lift and wheelchair lift dome lamp;
    - h. Wheelchair-securement devices;
    - i. Wheelchair-securement anchorages;
    - j. Special-service entrance door;
    - k. Special-service entrance door signal;
    - l. Windows;
    - m. Windshield;
    - n. Windshield wipers;
    - o. Instrument panel and gauges;
    - p. Service brakes;
    - q. Service brake warning devices;
    - r. Parking brake;
    - s. Bumpers;
    - t. Seats and seat frames;
    - u. Floor coverings;
    - v. School bus body;
    - w. Engine fluid levels;
    - x. Engine compartment steering components;
    - y. Stop arm;
    - z. Horn;
    - aa. Mirrors;
    - bb. Engine fluid gauges;
    - cc. Noise suppression switch;
    - dd. Child alert notification system, if installed;
    - ee. Crossing control arm, if installed; and
    - ff. Air conditioning system, if installed.
  2. Each time a pre-trip operations check of a school bus is conducted, check all emergency equipment to determine that the emergency equipment complies with the standards at R13-13-107(11) and R13-13-110.
  3. Each time a school bus is operated subsequent to the first time the school bus is operated each day, conduct a walk-around operations check to determine whether there is an obvious engine fluid leak and the following are operational and are not damaged:
    - a. All lamps listed in subsection (D)(1)(a);
    - b. Tires, wheels, and wheel fasteners;
    - c. Bumpers;
    - d. School bus body;
    - e. Windows;
    - f. Stop arm; and
    - g. Windshield.
  4. Once daily, sweep and clean the interior of the school bus.
  5. After completing each operations check, the school bus driver shall complete the portions of a written monthly operations check report that provide the following information:
    - a. Date and time of the operations check;
    - b. Name of the school bus driver conducting the operations check;
    - c. Name of the employer;
    - d. Number assigned to the school bus by the school bus owner and painted on the outside of the school bus body; and
    - e. Indication of whether an item is operational, inoperative, or damaged.
  6. A school bus driver who performs an operations check and finds any item listed in subsections (D)(1) through (D)(3) inoperative or damaged shall immediately complete and submit a written repair order to the school bus owner through the employer.
    - a. The school bus owner shall use the standards contained in subsection (B) to determine whether an item reported on a repair order as inoperative or damaged is a major or minor defect.
    - b. If the school bus owner finds that a major defect exists, the school bus owner shall place the school bus out of service until the major defect is repaired.
    - c. If the school bus owner finds that a minor defect exists, the school bus may be used to transport passengers, but the school bus owner shall repair the defect in accordance with the provisions at R13-13-108(A)(4) through (A)(7). Time in which to make the minor repair shall be calculated from the date of the written repair order.
  7. After a school bus makes its final trip on the last day the school bus is driven in a particular month the school bus driver operating the school bus shall submit the written monthly operations check report to the school bus owner through the employer.
- E. In addition to the operations checks described in subsection (D), a school bus owner shall systematically inspect, repair, and maintain, or cause to be systematically inspected, repaired, and maintained, all parts of a school bus chassis and body described in Sections R13-13-106 and R13-13-107 and any other parts and accessories that may affect safe operation of the school bus. The school bus owner shall ensure that the maintenance of a school bus and repair of major defects is done by:
1. An ASE-certified technician,
  2. An individual working under the supervision of an ASE-certified master school bus technician,
  3. An individual with at least one year of participation in a school bus manufacturer-sponsored or commercial vehicle maintenance training program, or
  4. An individual with at least one year of experience as a school bus mechanic.
- F. Records
1. A school bus owner shall maintain the following records in a separate file for each school bus for as long as the school bus is in operation in Arizona:
    - a. Number assigned to the school bus by the school bus owner,
    - b. Name of the school bus body manufacturer,

- c. Name of the school bus chassis manufacturer,
  - d. Identification number of the school bus located in the driver's compartment,
  - e. Year the school bus body was assembled upon the school bus chassis, and
  - f. Size of the tires placed on the school bus.
2. A school bus owner shall maintain all records of initial inspection, subsequent inspections, and repairs and maintenance procedures performed on the school bus for three years from the date of inspection, repair, or maintenance. The school bus owner shall ensure that all records of repairs and maintenance procedures include verification from the owner of the business responsible for the repairs and maintenance procedures that the individual who actually performs the repairs and maintenance procedures is qualified under subsection (E).
  3. If a school bus is sold, the school bus owner shall transfer the records required by subsections (F)(1) and (F)(2) to the purchaser.
  4. A school bus owner shall maintain monthly operations check reports for three months from the date of the report.
- G. Alterations**
1. Before a school bus owner alters a school bus, the school bus owner shall submit a request in writing to the Department describing the proposed alteration and the reason for the proposal.
  2. Within 60 days of receiving a request for alteration, the Department shall inform the school bus owner in writing whether the request has been approved or denied. The Department shall base its decision to approve or deny on an assessment of whether the proposed alteration affects the operations of a school bus, complies with the statutes and rules applicable to school buses, or affects the health, safety, or welfare of any individual.
- Historical Note**
- Adopted effective February 16, 1996 (Supp. 96-1). Amended by final rulemaking at 7 A.A.R. 2906, effective June 13, 2001 (Supp. 01-2). Amended by final rulemaking at 14 A.A.R. 2110, effective May 8, 2008 (Supp. 08-2). New Section R13-13-108 recodified from R17-9-108 with Section cross-references revised, at 20 A.A.R. 2083, effective July 25, 2014 (Supp. 14-3).
- R13-13-109. Time-frames for Making Certification Determinations**
- A. For certification as a school bus driver, the time-frames required by A.R.S. § 41-1072 et seq. are:
    1. Overall time-frame: 60 days
    2. Administrative completeness review time-frame: 45 days
    3. Substantive review time-frame: 15 days
  - B. An administratively complete application for certification as a school bus driver consists of all the information and documents listed in R13-13-102(A).
  - C. An administrative completeness review time-frame, as described in A.R.S. § 41-1072(1) and listed in subsection (A)(2), begins on the date the Department receives an application.
    1. If the application is not administratively complete when received, the Department shall send a notice of deficiency to the applicant. The deficiency notice shall state the documents and information needed to complete the application.
    2. Within 120 days from the postmark date of the deficiency notice, the applicant shall submit to the Department the missing documents and information. The time-frame for the Department to finish the administrative completeness review is suspended from the postmark date of the deficiency notice until the date the Department receives the missing documents and information.
  3. If the applicant fails to provide the missing documents and information within the time provided, the Department shall close the applicant's file. An applicant whose file is closed and who wants to be certified shall apply again under R13-13-102.
  4. If the application is administratively complete, the Department shall send a written notice of administrative completeness to the applicant.
- D. A substantive review time-frame, as described in A.R.S. § 41-1072(3) and listed in subsection (A)(3), begins on the postmark date of the notice of administrative completeness.**
1. During the substantive review time-frame, the Department may make one comprehensive written request for additional information.
  2. The applicant shall submit to the Department the additional information identified in the request for additional information within 20 days from the postmark date of the request for additional information. The time-frame for the Department to finish the substantive review of the application is suspended from the postmark date of the request for additional information until the Department receives the additional information.
  3. Unless an applicant requests that the Department deny certification within the 20-day period in subsection (D)(2), the Department shall close the file of an applicant who fails to submit the additional information within the 20 days provided. An applicant whose file is closed and who wants to be certified shall apply again under R13-13-102.
  4. When the substantive review is complete, the Department shall inform the applicant in writing of its decision whether to certify the applicant.
    - a. The Department shall deny certification if it determines that the applicant does not meet all substantive criteria for certification required by statute and rule. An applicant who is denied certification may appeal the Department's decision under A.R.S. § 41-1092 et seq. and any rules made under A.R.S. § 41-1092.01(C)(4).
    - b. The Department shall grant certification if it determines that the applicant meets all substantive criteria for certification required by statute and rule.
- Historical Note**
- New Section R17-9-109 adopted by final rulemaking at 5 A.A.R. 384, effective January 5, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 557, effective March 5, 2005 (Supp. 05-1). New Section R13-13-109 recodified from R17-9-109 with Section cross-references revised, at 20 A.A.R. 2083, effective July 25, 2014 (Supp. 14-3).
- R13-13-110. First-aid Equipment**
- No later than 180 days after the effective date of these rules, a school bus in Arizona shall meet the requirements of this Section.
1. First-aid and body-fluid cleanup kits shall be mounted in a school bus in accordance with R13-13-107(11)(a).
  2. First-aid kit: A school bus shall be equipped with a removable first-aid kit that has a weatherproofing seal around the lid to prevent moisture or dust from entering the first-aid kit, is clearly labeled as a first-aid kit, and contains the following:
    - a. Two - 1 inch x 2 1/2 inch yards adhesive tape rolls,
    - b. 24 - Sterile gauze pads 3 inches x 3 inches,

- c. Eight - 2 inch adhesive bandages,
  - d. 10 - 3 inch adhesive bandages,
  - e. Two - 2 inch x 6 inch sterile gauze roller bandages,
  - f. Four - Triangular bandages approximately 40 inches x 36 inches x 54 inches with two safety pins,
  - g. Three - Sterile gauze pads at least 24 inches x 24 inches,
  - h. Three - Sterile eye pads,
  - i. One - Rounded-end scissors,
  - j. One - Pair of non-latex gloves, and
  - k. One - Mouth-to-mouth airway.
3. Body fluid or bloodborne-pathogen cleanup kit: A school bus shall be equipped with a removable body-fluid or bloodborne-pathogen cleanup kit that is sealed, clearly labeled as a body-fluid or bloodborne-pathogen cleanup kit, and contains the following:
- a. One - Pouch of solidifier with chlorine,
  - b. One - Pick-up scoop with scraper,
  - c. One - Pair of non-latex gloves,
  - d. Two - Disinfectant hand wipes (antimicrobial),
  - e. Two - Plastic disposal bags with ties (biohazard),
  - f. Two - Germicidal towelettes effective against human immunodeficiency virus and tuberculosis,
  - g. Two - Paper crepe towels, and
  - h. One - Easy to follow instructions.

#### Historical Note

New Section made by final rulemaking at 7 A.A.R. 2906, effective June 13, 2001 (Supp. 01-2). Amended by final rulemaking at 14 A.A.R. 2110, effective May 8, 2008 (Supp. 08-2). New Section R13-13-110 recodified from R17-9-110 with Section cross-references revised, at 20 A.A.R. 2083, effective July 25, 2014 (Supp. 14-3).

#### Exhibit A. Repealed

##### Historical Note

Adopted effective February 16, 1996 (Supp. 96-1). Former Exhibit A repealed; former Exhibit B renumbered to Exhibit A and amended by final rulemaking at 7 A.A.R. 2906, effective June 13, 2001 (Supp. 01-2). Exhibit A repealed by final rulemaking at 11 A.A.R. 557, effective March 5, 2005 (Supp. 05-1).

#### Exhibit B. Renumbered

##### Historical Note

Adopted effective February 16, 1996 (Supp. 96-1). Former Exhibit B renumbered to Exhibit A by final rulemaking at 7 A.A.R. 2906, effective June 13, 2001 (Supp. 01-2).

### ARTICLE 2. MINIMUM STANDARDS FOR SCHOOL BUSES OPERATED ON ALTERNATIVE FUEL

#### R13-13-201. Minimum Standards for Compressed Natural Gas Fuel Systems

- A. In addition to the definitions in R13-13-101, in this Article, unless otherwise specified:
- “AGA” means the American Gas Association.
- “ANSI” means the American National Standards Institute.
- “Angle of departure” means the area above an imaginary line that extends from the bottom outside edge of the rear bumper on a vehicle to the point at which a tire on the vehicle's rear drive axle touches the ground.
- “Appurtenance” means an item connected to an opening of a natural-gas pressure vessel to make the natural-gas pressure vessel gas-tight. This includes pressure relief devices, shutoff,

backflow, excess-flow, and internal valves, liquid-level and pressure gauges, and plugs.

“Approved” means acceptable to the Department.

“ASE” means National Institute of Automotive Service Excellence.

“Bracket” means rubber-lined, hoop and cradle mounting hardware supplied or approved by a pressure-vessel manufacturer to hold a natural-gas pressure vessel in a rack.

“CNG” means compressed natural gas, a combustible mixture of hydro-carbon gases and vapors, principally methane, that is reduced in volume by pressure for use as a vehicular fuel.

“Fuel-distribution assembly” means a device that regulates the flow of fuel from a natural-gas pressure vessel to a vehicle engine.

“Fuel line” means a pipe, tubing, or hose, and all related fittings through which natural gas passes on a vehicle.

“Installer” means a person who converts a school bus from the use of gasoline to the use of CNG by attaching a natural-gas fuel system to the school bus after the school bus is manufactured.

“Listed” means included in a publication of an approved organization that is concerned with product evaluation, conducts periodic inspection of equipment or material, and includes equipment or material in the approved organization's publication only if the equipment or material complies with appropriate standards or performs in a specified manner.

“NFPA” means the National Fire Protection Association, which is located at 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101, and which is accessible at (617) 770-3000 and [www.nfpa.org](http://www.nfpa.org).

“NGV-1” means specific standards set by the American National Standards Institute and American Gas Association for the refueling connection device of a natural-gas vehicle.

“NGV-2” means specific standards set by the American National Standards Institute and American Gas Association for a vehicle-on-board natural-gas pressure vessel.

“Natural gas” means a combustible mixture of hydrocarbon gases and vapors, principally methane.

“Natural-gas fuel system” means a group of items including a pressure vessel and all attached valves, piping, and appurtenances that form a network for distributing natural gas to a vehicle engine.

“Operating pressure” means the internal force that a manufacturer intends for a natural-gas pressure vessel to achieve during normal operation of the vehicle to which the natural-gas pressure vessel is attached.

“Out-of-service” means not compliant with these rules, NFPA 52, or manufacturer's instructions for installation, maintenance, or repair.

“Owner” means a private business, school, or school district that owns a school bus.

“PSI” means pound per square inch.

“Pressure-relief device” means a mechanism that is installed in a natural-gas pressure vessel or integrated with a valve, that is operated by temperature, pressure, or both, and that releases the CNG in the natural-gas pressure vessel in specific emergency conditions. A pressure-relief device for a U.S. Depart-

ment of Transportation or Canada Transport natural-gas pressure vessel also includes a mechanism capable of protecting a partially charged natural-gas pressure vessel.

“Pressure vessel” means a cylinder that is part of a natural-gas fuel system and that is constructed, inspected, and maintained in accordance with U.S. Department of Transportation or Canada Transport regulations or ANSI/AGA NGV2, Basic Requirements for Compressed Natural Gas Vehicle (CNGV) Fuel Containers, or CSA B51, Boiler, Pressure Vessel and Pressure Piping Code.

“Pressure-vessel valve” means a mechanical device connected directly to a natural-gas pressure vessel opening that regulates the flow of CNG from the natural-gas pressure vessel to the vehicle engine.

“Rack” means a metal structure that surrounds a natural-gas pressure vessel mounted on a vehicle and is secured to the vehicle frame by a method capable of withstanding a static up, down, left, right, forward, or backward force of eight times the weight of the fully pressurized natural-gas pressure vessel.

“UL” means the Underwriters' Laboratory, Inc.

#### **B. Applicability and enforcement date of this Section**

1. This Section applies to school buses that are manufactured to use only gasoline or diesel fuel and are converted to use CNG, in whole or in part.
2. The Department shall enforce this Section beginning 180 days after it is filed with the Office of the Secretary of State. After the beginning enforcement date, a school bus that is manufactured to use only gasoline or diesel fuel and is converted to use CNG, in whole or in part, shall meet the requirements of this Section when the school bus is introduced into Arizona or when the school bus is converted to natural-gas power. A school bus introduced into Arizona and powered in whole or in part by CNG before the beginning enforcement date of this Section shall meet the requirements of this Section or those at A.A.C. R17-4-611.
3. After the beginning enforcement date of this Section, the Department shall not approve a school bus manufactured to use only gasoline or diesel fuel and converted to use CNG, in whole or in part, unless the natural-gas fuel system meets the requirements of this Section.

#### **C. Insurance**

1. An owner shall not contract with an installer unless the installer has insurance coverage provided by a comprehensive general liability broad form insurance policy that is approved by the Department. The insurance policy shall include coverage for liability resulting from:
  - a. Completed installation operations,
  - b. Harm that arises on the installer's premises, and
  - c. Breach of contract by the installer.
2. In addition to the liability coverage described in subsection (C)(1), an owner shall ensure that either:
  - a. The installer has insurance coverage for liability resulting from harm that arises from subcontracted work performed by an independent contractor, or
  - b. An independent contractor who performs work for the installer under an agreement has an insurance policy that provides coverage for liability resulting from harm caused by the independent contractor's work.
3. An owner shall not contract with an installer unless the installer has an insurance policy that provides at least \$1

million liability coverage per occurrence both for bodily injury and for property damage.

4. An owner shall not contract with an installer unless the issuer of the installer's insurance policies described in subsections (C)(1) through (C)(3) names the Department as an additional insured on each policy and keeps the Department informed of any change in the status of each policy.
  5. An owner shall obtain the Department's approval of the installer's insurance policy by submitting proof of the insurance described in subsections (C)(1) through (C)(3) to the Department before entering a contractual agreement with the installer for the installation of a natural-gas fuel system on a school bus.
  6. If an owner acts as an installer, the owner shall maintain the insurance required by this Section.
  7. The Department shall approve an installer's insurance policy, proof of which is submitted by an owner in accordance with subsection (C)(5), if the policy conforms to the requirements in subsections (C)(1) through (C)(3). The Department shall send written notice of its decision to approve or disapprove the installer's insurance policy to the owner within 15 days from receipt of the proof of insurance.
- D. General requirements for installing a natural-gas fuel system**
1. Converting a school bus to use of CNG, whether in whole or in part, is not an alteration as defined in R13-13-101.
  2. Unless specifically provided otherwise in this Section, when installing a natural-gas fuel system, an installer shall use parts and equipment and perform work in a manner that meets or exceeds the standards of NFPA 52, Standard for Compressed Natural Gas (CNG) Vehicular Fuel Systems, 1995 (and no later editions or amendments), Quincy, MA, which is incorporated by this reference and on file with the Department and the Office of the Secretary of State.
  3. An installer shall use only UL-listed or AGA-approved carburetor equipment when installing a natural-gas fuel system on a school bus.
  4. An installer shall meet or exceed the recommended guidelines provided by the manufacturers of all parts of a natural-gas fuel system when installing the natural-gas fuel system on a school bus.
  5. An installer shall ensure that installation of a natural-gas fuel system on a school bus is performed by an individual who has proof of training provided by the manufacturer of the natural-gas fuel system or ASE alternative fuels certification.
  6. If a school bus is converted from the use of gasoline or diesel fuel to the dedicated use of CNG, the installer shall remove the gasoline or diesel-fuel tank and accompanying gasoline or diesel-fuel system parts from the school bus.
- E. Natural-gas pressure vessel:** An installer shall use only a natural-gas pressure vessel that is certified by its manufacturer as meeting or exceeding the NGV2 standards and as being U.S. Department of Transportation or ANSI listed. An installer shall use the natural-gas pressure vessel manufacturer's recommended bracket.
- F. Installing a natural-gas pressure vessel**
1. An installer shall securely attach a rack to the frame of a school bus in the following manner:
    - a. By drilling no holes in the school bus frame that exceed the manufacturer's requirements; and
    - b. By using no welding on and applying no heat to the school bus frame.

2. When installing a natural-gas fuel system on a school bus, an installer shall locate the natural-gas pressure vessel and its appurtenances on the vehicle frame as follows:
    - a. Below the driver's or passengers' compartment;
    - b. So no part protrudes:
      - i. In front of the front axle,
      - ii. Beyond the outside face of the rear bumper, or
      - iii. Beyond the sides of the school bus;
    - c. Inside a rack; and
    - d. So the minimum clearance between the road and the lowest part of the natural-gas pressure vessel and its rack on a school bus loaded to its gross vehicle weight rating, is:
      - i. No fewer than 7 inches (17.5 mm) for a school bus with a wheel base fewer than or equal to 127 inches (323 mm); or
      - ii. No fewer than 9 inches (22.5 mm) for a school bus with a wheel base greater than 127 inches (323 mm).
  3. If the natural-gas pressure vessel and its appurtenances are located behind the rear axle of the school bus, in addition to the requirements in subsection (F)(3), an installer shall locate the natural-gas pressure vessel as follows:
    - a. Below the floor line, and
    - b. Above the school bus' angle of departure.
- G.** Protecting a natural-gas pressure vessel. To protect a natural-gas pressure vessel and its appurtenances from damage, an installer shall:
1. Surround the natural-gas pressure vessel with a stone guard on all sides that are not protected by the natural barriers of the vehicle. The stone guard shall not be attached to the natural-gas pressure vessel. If the stone guard protects a valve, it shall be made of at least 16-gauge steel. If the stone guard does not protect a valve, it shall be made of at least 3/16-in. mesh with openings no greater than 1 in.;
  2. Place a resilient, non-absorbent gasket between the natural-gas pressure vessel and its brackets in a manner that prevents the brackets from directly contacting the natural-gas pressure vessel;
  3. Ensure that the weight of the natural-gas pressure vessel is not supported, in whole or in part, by an appurtenance; and
  4. Place a shield between, but not attached to, the natural-gas pressure vessel and the vehicle exhaust system if the natural-gas pressure vessel or the fuel lines are located fewer than 8 inches from the exhaust system. The shield shall be constructed of at least 18-gauge metal.
- H.** Safety and check valves: An installer shall equip a natural-gas fuel system with:
1. Either an automatic fuel supply shut-off valve that is placed between the pressure vessel fuel-pressure regulator and the fuel distribution assembly and activated by engine vacuum or oil pressure, or an electronic fuel injector; and
  2. Either a manual or automatically controlled shut-off valve that enables the natural-gas pressure vessel to be isolated from the remainder of the natural-gas fuel system. If a manual shut-off valve is used, it shall:
    - a. Have no more than 90° rotation from the opened to the closed position;
    - b. Have a red valve handle;
    - c. Be placed in an accessible location; and
  - d. Have "ESV" printed on the school bus at the access location to the manual shut-off valve, in 2-in. to 4-in., unshaded, red letters.
- I.** Installation of fuel lines. An installer shall:
1. Use fuel lines constructed of seamless stainless steel that has been tested and certified by the manufacturer to an operating pressure of 3600 PSI with a 4:1 safety factor;
  2. Mount and brace fuel lines to the vehicle frame in a manner that minimizes vibration;
  3. Secure fuel lines to the vehicle frame at least every 24 inches with rubber-lined fasteners;
  4. Protect fuel lines that pass through any structural member with rubber grommets, bulkhead fittings, or both;
  5. Cause fuel lines that run to the engine to follow the main frame channel; and
  6. Install an access door that is at least 70 square inches if access to the fill receptacle and fuel pressure gauge is through the school bus body. The words "CNG Fill" shall be printed on the school bus body, immediately above the access door, in 2-in. to 4-in., unshaded letters.
- J.** Installation of Venting System. An installer shall ensure that in addition to meeting the requirements in NFPA 52, all vent exits are aimed toward the ground.

#### Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 4115, effective October 3, 2000 (Supp. 00-4). New Section R13-13-201 recodified from R17-9-201 with Section cross-references revised, at 20 A.A.R. 2083, effective July 25, 2014 (Supp. 14-3).

#### R13-13-202. Inspection and Maintenance of Compressed Natural Gas Fuel Systems

- A.** This Section applies to all school buses that are powered, in whole or in part, by CNG and are introduced into Arizona after the beginning enforcement date of these rules.
- B.** An owner shall not use a school bus equipped with a natural-gas fuel system to transport passengers until the natural-gas fuel system is inspected and approved by the Department. An owner shall notify the Department when the owner obtains a school bus that needs to be inspected for compliance with these rules.
- C.** After the initial inspection conducted by the Department, an owner shall ensure that a school bus equipped with a natural-gas fuel system is inspected annually and under the following special circumstances:
1. When the school bus is involved in an accident;
  2. When the natural-gas pressure vessel may have been damaged;
  3. When natural gas is smelled;
  4. When there is an unexpected loss of gas pressure, rattling, or other indication of looseness; or
  5. When the natural-gas pressure vessel is changed.
- D.** An owner shall ensure that an annual or special-circumstances inspection is conducted by the Department or an individual who has proof of training provided by the manufacturer of the natural-gas fuel system or ASE alternative-fuel certification.
- E.** An owner shall ensure that every inspection of a school bus equipped with a natural-gas fuel system assesses whether the natural-gas fuel system meets the safety standards in 13 A.A.C. 13, and NFPA 52. This assessment shall include:
1. Leak-testing the natural-gas fuel system in compliance with NFPA 52 guidelines;
  2. Verifying that the pressure vessel is designed for storage of CNG;
  3. Verifying that the service life of the natural-gas pressure vessel has not expired;



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4. Verifying that the natural-gas pressure vessel is certified by its manufacturer as meeting or exceeding the NGV2 standards and as being U.S. Department of Transportation or ANSI listed;
  5. Verifying that all parts of the natural-gas fuel system are properly listed or approved; and
  6. Verifying that all parts of the natural-gas fuel system are installed in accordance with the manufacturer's instructions.
- F.** An owner shall ensure that an individual who conducts an inspection of a school bus equipped with a natural-gas fuel system completes a Compressed Natural Gas Safety Inspection Form, which is available from the Department, and certifies that the school bus meets all safety standards in 13 A.A.C. 13, and NFPA 52.
- G.** If it is necessary to condemn a natural-gas pressure vessel, the owner shall:
1. Return the condemned natural-gas pressure vessel to its manufacturer; and
  2. Obtain a certificate from the manufacturer that states ownership of the natural-gas pressure vessel is transferred from the owner to the manufacturer.
- H.** An owner shall maintain each completed Compressed Natural Gas Safety Inspection Form in a separate file for each school bus for the service life of the school bus. If a school bus is transferred from one owner to another, the first owner shall transfer the completed inspection forms to the second owner.
- I.** An owner shall make the inspection forms maintained under subsection (H) available for review by the Department.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 4115, effective October 3, 2000 (Supp. 00-4). New Section R13-13-202 recodified from R17-9-202 with Section cross-references revised, at 20 A.A.R. 2083, effective July 25, 2014 (Supp. 14-3).

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**Supplement to the**

**Arizona Administrative Code**

The official compilation of Arizona Rules

**Arizona Secretary of State's Office**

Public Services Division

1700 W. Washington Street, Fl 7.

Phoenix, AZ 85007

***Replacement Check List***

For rules filed within the

Third

July 1, 2014 - September 30, 2014

**Code Release Number: Supp. 14-3**

Within the stated calendar quarter, this Title contains all rules made, amended, repealed, renumbered, and recodified; or rules that have expired or were terminated due to an agency being eliminated under sunset law. These rules were either certified by the Governor's Regulatory Review Council or the Attorney General's Office; or exempt from the rulemaking process, and filed with the Office of the Secretary of State. Refer to the historical notes for more information. Please note that some rules you are about to remove may still be in effect after the publication date of this Supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

**Follow the instructions to replace the updated Chapters.**

**TITLE 17. Transportation**

**Chapter 05. Department of Transportation - Commercial Programs**

Sections, Parts, Exhibits, Tables or Appendices modified

R17-5-202 through R17-5-205, R17-5-208 through R17-5-209, R17-5-211

REMOVE Supp. 12-3

Pages: 1 - 30

REPLACE with Supp. 14-3

Pages: 1 - 33

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**TITLE 17. TRANSPORTATION**  
**CHAPTER 5. DEPARTMENT OF TRANSPORTATION**  
**COMMERCIAL PROGRAMS**

*Editor's Note: 17 A.A.C. 5 was created from Sections recodified from 17 A.A.C. 4 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).*

**ARTICLE 1. GENERAL PROVISIONS**

**ARTICLE 2. MOTOR CARRIERS**

Section

- R17-5-201. Definitions
- R17-5-202. Motor Carrier Safety: Incorporation of Federal Regulations; Applicability
- R17-5-203. Motor Carrier Safety: 49 CFR 390 - Federal Motor Carrier Safety Regulations; General
- R17-5-204. Motor Carrier Safety: 49 CFR 391 - Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors
- R17-5-205. Motor Carrier Safety: 49 CFR 383 - Commercial Driver's License Standards; Requirements and Penalties
- R17-5-206. Motor Carrier Safety: 49 CFR 392 - Driving of Commercial Motor Vehicles
- R17-5-207. Civil Penalties
- R17-5-208. Commercial Driver License Intrastate Medical Waiver; Intrastate Alternative Physical Qualification Standards for the Loss or Impairment of Limbs, an Insulin-Dependent Diabetic Condition, or Monocular Vision
- R17-5-209. Hazardous Materials Transportation: Incorporation of Federal Regulations; Applicability
- R17-5-210. Motor Carrier Safety: Public Service Corporation, Political Subdivision of this State that is Engaged in Rendering Public Utility Service, or Railroad Contacting State Officials in an Emergency
- R17-5-211. Motor Carrier Safety: Inspection, Enforcement, Sanction
- R17-5-212. Motor Carrier Safety: Hearing Procedure

**ARTICLE 3. PROFESSIONAL DRIVER TRAINING SCHOOLS**

Section

- R17-5-301. Reserved
- R17-5-302. Commercial driving schools and instruction licensing

**ARTICLE 4. DEALERS**

Section

- R17-5-401. Reserved
- R17-5-402. Bond Amounts; Motor Vehicle Dealers, Brokers, and Recyclers Business Licenses
- R17-5-403. Bond Amount; Motor Vehicle Title Service Business License
- R17-5-404. Dealer Title Requirement for Vehicle Sale
- R17-5-405. Motor Vehicle Dealer Acquisition Contract
- R17-5-406. Motor Vehicle Dealer Consignment Contract
- R17-5-407. Motor Vehicle Repossession
- R17-5-408. Resale of a New Motor Vehicle

**ARTICLE 5. MOTOR CARRIER FINANCIAL RESPONSIBILITY**

Section

- R17-5-501. Definitions
- R17-5-502. Repealed
- R17-5-503. Repealed

- R17-5-504. Requirement to Submit Proof of Financial Responsibility; Applicability; Procedure; Exception
- R17-5-505. Repealed
- R17-5-506. Repealed
- R17-5-507. Repealed

**ARTICLE 6. IGNITION INTERLOCK DEVICE MANUFACTURERS**

Section

- R17-5-601. Definitions
- R17-5-602. Ignition Interlock Device Manufacturer Certification; Expiration
- R17-5-603. Device Requirements, Technical Specifications, and Standards for Setup and Calibration
- R17-5-604. Ignition Interlock Device Certification; Application Requirements
- R17-5-605. Application Processing; Time-frames; Exception
- R17-5-606. Application Completeness; Denial of Ignition Interlock Device Certification; Hearing
- R17-5-607. Cancellation of Certification; Hearing
- Appendix A. Renumbered
- Appendix B. Renumbered
- Appendix C. Renumbered
- R17-5-608. Modification of a Certified Ignition Interlock Device Model
- R17-5-609. Manufacturer Referral to Division-certified Installers; Manufacturer Oversight of its Authorized Installers
- R17-5-610. Installation Verification; Accuracy Check; Noncompliance and Removal Reporting
- Exhibit A. Renumbered
- Exhibit B. Renumbered
- Appendix A. Repealed
- Appendix B. Repealed
- Appendix C. Repealed
- R17-5-611. Emergency Assistance by Manufacturers and Authorized Installers; Continuity of Service to Participants
- R17-5-612. Records Retention; Submission of Copies and Quarterly Reports; Periodic Inspections
- R17-5-613. Ignition Interlock Investigator

**ARTICLE 7. IGNITION INTERLOCK DEVICE INSTALLERS**

*Article 7, consisting of Sections R17-5-701 through R17-5-708, made by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4). Article 7 introduction added for clarification per the Department's request (Supp. 09-2).*

*Article 7, consisting of Sections R17-5-701 through R17-5-706, repealed by final rulemaking at 12 A.A.R. 2297, effective August 5, 2006 (Supp. 06-2).*

Section

- R17-5-701. Definitions
- R17-5-702. Ignition Interlock Device Installer Certification; Application Requirements
- R17-5-703. Ignition Interlock Device Installer Bond Requirements
- Exhibit A. Repealed
- Exhibit B. Repealed

- R17-5-704. Division-certified Installer Responsibilities
- R17-5-705. Installer-certified Service Representatives
- R17-5-706. Accuracy and Compliance Check; Requirements
- R17-5-707. Certification and Inspection of Service Centers; Application
- R17-5-708. Cease and Desist; Denial or Cancellation of Certification; Appeal; Hearing

## ARTICLE 8. MANDATORY INSURANCE AND FINANCIAL RESPONSIBILITY

*Article 8, consisting of Sections R17-5-801 through R17-5-811, made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).*

### Section

- R17-5-801. Definitions
- R17-5-802. Insurance Company Electronic Reporting Requirement; Applicability
- R17-5-803. Insurance Company Reportable Activity
- R17-5-804. Record Matching Criteria for a Vehicle-specific Policy
- R17-5-805. Record Matching Criteria for a Non-vehicle-specific Commercial Policy
- R17-5-806. Division-authorized EDI Reporting Methods; Reporting Schedule
- R17-5-807. X12 Data Format for Policy Receipt and Error Return
- R17-5-808. Insurance Company Reporting Errors; Resolution; Noncompliance
- R17-5-809. Insurance Company Failure to Submit Required Data; Request for Hearing
- R17-5-810. Self-insurance as Alternate Proof of Financial Responsibility; Provisions; Applicability
- R17-5-811. Certificate of Deposit as Alternate Proof of Financial Responsibility; Applicability

## ARTICLE 1. GENERAL PROVISIONS

### ARTICLE 2. MOTOR CARRIERS

#### R17-5-201. Definitions

In addition to the definitions provided under A.R.S. §§ 28-3001 and 28-5201, the following definitions apply to this Article unless otherwise specified:

“Audit” means any inspection of a transporter’s motor vehicle, equipment, books, or records to determine compliance with this Article and A.R.S. Title 28, Chapter 14.

“Co-applicant” means an employer or potential employer.

“Danger to public safety” means any condition of a transporter likely to result in serious peril to the public if not discontinued immediately.

“Director” means the Director of the Arizona Department of Transportation or the Director’s designated agent.

“Executive Hearing Office” means the Arizona Department of Transportation’s Executive Hearing Office.

“Medical waiver evaluation summary” means the form, provided by the Department, to be completed by either a board qualified or board certified orthopedic surgeon or physiatrist and mailed to the Department, at the address provided on the form, on behalf of an Arizona intrastate medical waiver applicant.

“Physiatrist” means a doctor of medicine specialized in physical medicine and rehabilitation.

“Transporter” means any person, driver, motor carrier, shipper, manufacturer, or motor vehicle, including any motor vehicle transporting a hazardous material, hazard-

ous substance, or hazardous waste, subject to this Article and A.R.S. Title 28, Chapter 14.

“Violation” means any conduct, act, or failure to act required or prohibited under this Article and A.R.S. Title 28, Chapter 14.

“Vision examination report” means a form provided by the Department to be completed by an ophthalmologist or a licensed optometrist on behalf of a driver or driver applicant and mailed to the Department, at the address provided on the form, for use in determining whether or not a medical condition affects the driver’s, or driver applicant’s, ability to safely perform the functional skills involved with driving a motor vehicle.

### Historical Note

New Section made by final rulemaking at 8 A.A.R. 3249, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 14 A.A.R. 3797, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3).

#### R17-5-202. Motor Carrier Safety: Incorporation of Federal Regulations; Applicability

- A. The Department incorporates by reference 49 CFR 40, 379, 382, 383, 385, 390, 391, 392, 393, 395, 396, 397, and 399, revised as of October 1, 2012, and no later amendments or editions, as amended under this Article. The incorporated material is on file with the Department and is available from the U.S. Government Printing Office, P.O. Box 979050, St. Louis, Missouri 63197-9000. The incorporated material can be ordered online by visiting the U.S. Government Online Bookstore at <http://bookstore.gpo.gov>.
- B. The sections of 49 CFR incorporated under subsection (A) apply as amended under this Article to all intrastate and interstate motor carriers operating in Arizona and persons operating a commercial motor vehicle, except as provided under subsection (C).
- C. The intrastate operator of a tow truck with a gross vehicle weight rating of 26,000 pounds or less is exempt from the requirements of 49 CFR 390 through 399, except that the driver is subject to the physical qualifications and examination requirements of 49 CFR 391, subpart E.

### Historical Note

New Section recodified from R17-4-435 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 3249, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 9 A.A.R. 1867, effective June 3, 2003 (Supp. 03-2). Amended by final rulemaking at 10 A.A.R. 2679, effective June 8, 2004 (Supp. 04-2). Amended by final rulemaking at 12 A.A.R. 1559, effective May 2, 2006 (Supp. 06-2). Amended by final rulemaking at 14 A.A.R. 3797, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3). Amended by final rulemaking at 20 A.A.R. 2382, effective August 5, 2014 (Supp. 14-3).

#### R17-5-203. Motor Carrier Safety: 49 CFR 390 - Federal Motor Carrier Safety Regulations; General

- A. 49 CFR 390.3, General applicability. Paragraph (a) is amended to read:  
Regulations incorporated in this section are applicable to all motor carriers operating in Arizona and any vehicle owned or operated by the state, a political subdivision, or a state public authority that is used to transport a hazardous material in an

amount requiring the vehicle to be placarded as prescribed under R17-5-209.

- B.** 49 CFR 390.5, Definitions. The definitions listed under 49 CFR 390.5 are amended as follows:

“Commercial Motor Vehicle” or “CMV” has the same meaning as prescribed under A.R.S. § 28-5201.

“Special agent” means an officer or agent of the Department, the Department of Public Safety, or a political subdivision, who is trained and certified by the Department of Public Safety to enforce Arizona’s Motor Carrier Safety requirements.

“State” means a state of the United States or the District of Columbia.

“Tow truck,” as used in the definition of emergency under 49 CFR 390.5, has the same meaning as prescribed under A.A.C. R13-3-701.

- C.** 49 CFR 390.19, Motor carrier, hazardous material shipper, and intermodal equipment provider identification reports. Paragraph (a)(1) is amended to read:

A U.S.-, Canada-, Mexico-, or non-North America-domiciled motor carrier conducting operations in interstate commerce or in intrastate commerce in a CMV, except for intrastate commerce in a farm vehicle as defined under A.R.S. § 28-2514, must file a Motor Carrier Identification Report, Form MCS-150.

- D.** 49 CFR 390.23, Relief from regulations.

1. Paragraph (a)(2), Local emergencies, is amended by adding:

When a local emergency exists that justifies an exemption from parts 390 through 399 of this chapter, a motor carrier may request the exemption by contacting Commercial Vehicle Enforcement at the Arizona Department of Public Safety, Highway Patrol Division, P.O. Box 6638, Phoenix, Arizona 85005. The Arizona Department of Public Safety may grant the exemption with or without restrictions as necessary to provide vital service to the public.

2. Paragraph (a)(2)(i)(A) is amended to read:

An emergency has been declared by a federal, state or local government official having authority to declare an emergency; or an emergency situation exists under A.R.S. § 28-5234(B); or

- E.** 49 CFR 390.25, Extension of relief from regulations - emergencies, is amended by adding:

A motor carrier seeking to extend a period of relief from these regulations may request the extension by contacting Commercial Vehicle Enforcement at the Arizona Department of Public Safety, Highway Patrol Division, P.O. Box 6638, Phoenix, Arizona 85005. The Arizona Department of Public Safety may grant the extension with any restrictions it considers necessary to provide vital service to the public.

#### Historical Note

New Section recodified from R17-4-435.01 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 3249, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 9 A.A.R. 1867, effective June 3, 2003 (Supp. 03-2). Amended by final rulemaking at 11 A.A.R. 862, effective February 1, 2005 (Supp. 05-1). Amended by final rulemaking at 12 A.A.R. 1559, effective May 2, 2006 (Supp. 06-2). Amended by final rulemaking at 13 A.A.R. 2636, effective July 10, 2007 (Supp. 07-3). Amended by final rulemaking at 14 A.A.R. 3797, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3). Amended by final rulemaking at 20 A.A.R. 2382, effective August 5, 2014 (Supp. 14-3).

tive August 5, 2014 (Supp. 14-3).

#### **R17-5-204. Motor Carrier Safety: 49 CFR 391 - Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors**

- A.** 49 CFR 391.11, General qualifications of drivers. Paragraph (b)(1) is amended to read:

Is at least 21 years of age for interstate operation or is at least 18 years of age for operations restricted to intrastate transportation not involving the transportation of a reportable quantity of hazardous substance, hazardous waste required to be manifested, or hazardous material in an amount requiring a vehicle to be placarded as prescribed under R17-5-209;

- B.** 49 CFR 391.51, General requirements for driver qualification files. Paragraph (b)(8) is amended to read:

A Skill Performance Evaluation Certificate obtained from a Field Administrator, Division Administrator, or state Director issued in accordance with § 391.49; or the Medical Exemption document, issued by a Federal medical program in accordance with part 381 of this chapter; or a copy of the Arizona intrastate medical waiver, if a waiver is granted by the Director as prescribed under R17-5-208.

#### Historical Note

New Section recodified from R17-4-435.02 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 14 A.A.R. 3797, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3). Amended by final rulemaking at 20 A.A.R. 2382, effective August 5, 2014 (Supp. 14-3).

#### **R17-5-205. Motor Carrier Safety: 49 CFR 383 - Commercial Driver’s License Standards; Requirements and Penalties**

- A.** 49 CFR 383.5, Definitions. The definitions listed under 49 CFR 383.5 are amended as follows:

“Commercial motor vehicle” or “CMV” has the same meaning as prescribed under A.R.S. § 28-3001.

“Conviction” has the same meaning as prescribed under A.R.S. § 28-3001.

“Disqualification” has the same meaning as prescribed under A.R.S. § 28-3001.

“Motor vehicle” has the same meaning as prescribed under A.R.S. § 28-101.

“Out-of-service order” has the same meaning as prescribed under A.R.S. § 28-5241.

“School bus” has the same meaning as prescribed under A.R.S. § 28-101.

“Tank vehicle” has the same meaning as prescribed under A.R.S. § 28-3103.

- B.** 49 CFR 383.71, Driver application and certification procedures. Paragraphs (b)(1)(ii), Excepted interstate, and (b)(1)(iv), Excepted intrastate, are deleted.

- C.** 49 CFR 383.73, State procedures.

1. Paragraph (a)(2)(vi) is amended to read:

Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in § 383.71(a)(2)(v) and proof of state of domicile specified in § 383.71(a)(2)(vi). Exception: A state is required to check the proof of citizenship or legal presence specified in this paragraph only for initial issuance, renewal or upgrade of a CLP or non-domiciled CLP and for initial issuance, renewal, upgrade or transfer of a CDL or non-domiciled CDL for the first time after July 8, 2011, provided a notation is made on the driver’s record confirming that the proof of citizenship or legal presence

- check required by this paragraph has been made and noting the date it was done;
2. Paragraph (b)(6) is amended to read:  
Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in § 383.71(b)(9) and proof of state of domicile specified in § 383.71(b)(10). Exception: A state is required to check the proof of citizenship or legal presence specified in this paragraph only for initial issuance, renewal or upgrade of a CLP or non-domiciled CLP and for initial issuance, renewal, upgrade or transfer of a CDL or non-domiciled CDL for the first time after July 8, 2011, provided a notation is made on the driver's record confirming that the proof of citizenship or legal presence check required by this paragraph has been made and noting the date it was done;
  3. Paragraph (c)(4) is amended to read:  
If such applicant wishes to retain a hazardous materials endorsement, require compliance with standards for such endorsement specified in §§ 383.71(b)(8) and 383.141 and ensure that the driver has successfully completed a new test for such endorsement specified in § 383.121.
  4. Paragraphs (c)(4)(i) and (c)(4)(ii) are deleted.
  5. Paragraph (c)(7) is amended to read:  
Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in § 383.71(b)(9) and proof of state of domicile specified in § 383.71(b)(10). Exception: A state is required to check the proof of citizenship or legal presence specified in this paragraph only for initial issuance, renewal or upgrade of a CLP or non-domiciled CLP and for initial issuance, renewal, upgrade or transfer of a CDL or non-domiciled CDL for the first time after July 8, 2011, provided a notation is made on the driver's record confirming that the proof of citizenship or legal presence check required by this paragraph has been made and noting the date it was done;
  6. Paragraph (d)(7) is amended to read:  
Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in § 383.71(b)(9) and proof of state of domicile specified in § 383.71(b)(10). Exception: A state is required to check the proof of citizenship or legal presence specified in this paragraph only for initial issuance, renewal or upgrade of a CLP or non-domiciled CLP and for initial issuance, renewal, upgrade or transfer of a CDL or non-domiciled CDL for the first time after July 8, 2011, provided a notation is made on the driver's record confirming that the proof of citizenship or legal presence check required by this paragraph has been made and noting the date it was done; and
  7. Paragraph (e)(5) is amended to read:  
Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in § 383.71(b)(9) and proof of state of domicile specified in § 383.71(b)(10). Exception: A state is required to check the proof of citizenship or legal presence specified in this paragraph only for initial issuance, renewal or upgrade of a CLP or non-domiciled CLP and for initial issuance, renewal, upgrade, or transfer of a CDL or non-domiciled CDL, for the first time after July 8, 2011, provided a notation is made on the driver's record confirming that the proof of citizenship or legal presence check required by this paragraph has been made and noting the date it was done;
  8. Paragraph (f)(2)(ii) is amended to read:  
  
The state must add the word "non-domiciled" to the face of the CLP or CDL, in accordance with § 383.153(c); and
  9. Paragraph (m), Document verification, is amended to read:  
The state must require at least two persons within the driver licensing agency to participate substantively in the processing and verification of the documents involved in the licensing process for initial issuance, renewal or upgrade of a CLP or non-domiciled CLP and for initial issuance, renewal, upgrade or transfer of a CDL or non-domiciled CDL. The documents being processed and verified must include, at a minimum, those provided by the applicant to prove legal presence and domicile, the information filled out on the application form, and knowledge and skills test scores. This section does not require two people to process or verify each document involved in the licensing process. Exception: For offices with only one staff member, at least some of the documents must be processed or verified by a supervisor before issuance or, when a supervisor is not available, copies must be made of some of the documents involved in the licensing process and a supervisor must verify them within one business day of issuance of the CLP, non-domiciled CLP, CDL or non-domiciled CDL.
- D. 49 CFR 383.75, Third party testing.**
1. Paragraph (a)(7) is amended to read:  
A skills test examiner who is also a skills instructor either as a part of a school, training program or otherwise is prohibited from administering a skills test to an applicant who received skills training by that skills test examiner; and
  2. Paragraph (a)(8)(v) is amended to read:  
Require the third party tester to initiate and maintain a bond in an amount pursuant to A.R.S. Title 28, Chapter 13 to be sufficient to pay for re-testing drivers in the event that the third party or one or more of its examiners is involved in fraudulent activities related to conducting skills testing of applicants for a CDL. Exception: A third party tester that is a government entity is not required to maintain a bond.
- E. 49 CFR 383.153, Information on the CLP and CDL documents and applications.**
1. Paragraph (b)(1) is amended to read:  
A CLP may, but is not required to, contain a digital color image or photograph or black and white laser engraved photograph.
  2. Paragraph (e) is amended to read:  
Before a CLP or CDL may be issued:
    - a. A driver applicant must provide the driver applicant's Social Security Number on the application of a CLP or CDL.
    - b. The state must provide the Social Security Number to the CDLIS.
    - c. The state must not display the Social Security Number on the CLP or CDL.
  3. Paragraph (h) is amended to read:  
On or after July 8, 2014 current CLP and CDL holders who do not have the standardized endorsement and restriction codes and applicants for a CLP or CDL are to be issued CLPs with the standardized codes upon initial issuance, renewal or upgrade and CDLs with the standardized codes upon initial issuance, renewal, upgrade or transfer.

**Historical Note**

New Section recodified from R17-4-435.03 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by



final rulemaking at 8 A.A.R. 3249, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 14 A.A.R. 3797, effective November 8, 2008 (Supp. 08-3). Section repealed by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3). New Section made by final rulemaking at 20 A.A.R. 2382, effective August 5, 2016 (Supp. 14-3).

**R17-5-206. Motor Carrier Safety: 49 CFR 392 - Driving of Commercial Motor Vehicles**

49 CFR 392.5, Alcohol prohibition. Paragraph (e) is amended by adding:

Drivers who violate the terms of an out-of-service order as prescribed under this section are also subject to the provisions and sanctions of A.R.S. § 28-5241.

**Historical Note**

New Section recodified from R17-4-435.04 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 9 A.A.R. 1867, effective June 3, 2003 (Supp. 03-2). Amended by final rulemaking at 14 A.A.R. 3797, effective November 8, 2008 (Supp. 08-3).

Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3).

**R17-5-207. Civil Penalties**

To determine the amount of civil penalty for repeat findings of responsibility for the same class of violations involving vehicles required to be placarded, the higher level of civil penalty as prescribed under A.R.S. § 28-5238 applies.

**Historical Note**

New Section recodified from R17-4-435.05 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 14 A.A.R. 3797, effective November 8, 2008 (Supp. 08-3).

**R17-5-208. Commercial Driver License Intrastate Medical Waiver; Intrastate Alternative Physical Qualification Standards for the Loss or Impairment of Limbs, an Insulin-Dependent Diabetic Condition, or Monocular Vision**

- A. A person who is not physically qualified to drive a commercial motor vehicle in interstate commerce due to loss of limb, limb impairment, an insulin-dependent diabetic condition, or monocular vision, as provided under 49 CFR 391.41(b)(1), (b)(2), (b)(3), or (b)(10), but otherwise meets all other requirements under 49 CFR 391.41, may operate a commercial motor vehicle in intrastate commerce if granted an intrastate medical waiver by the Director. Application for an intrastate medical waiver shall be submitted according to subsection (B).
- B. A driver applicant, or a driver applicant jointly with the motor carrier co-applicant that will employ the driver applicant, may complete and submit an intrastate medical waiver application to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, Arizona 85001-2100, which shall:
  1. Identify the applicant:
    - a. Name and complete address of the driver applicant;
    - b. Name and complete address of the motor carrier co-applicant;
    - c. U.S. Department of Transportation motor carrier identification number, if known; and
    - d. A description of the driver applicant's limb or visual impairment or insulin-dependent diabetic condition as applicable to the type of waiver being requested;
  2. Describe the type of operation the driver applicant will be employed to perform, including the following information (if known):
    - a. Average period of time the driver will be driving or on duty, per day;

- b. Type of commodities or cargo to be transported;
  - c. Type of driver operation (i.e., sleeper team, relay, owner operator, etc.); and
  - d. Number of years experience operating each type of commercial motor vehicle requested in the intrastate medical waiver application and total years of experience operating all types of commercial motor vehicles;
3. Describe the commercial motor vehicles the driver applicant intends to drive:
  - a. Truck, truck tractor, or bus make, model, and year (if known);
  - b. Drive train:
    - i. Transmission type (automatic or manual - if manual, designate number of forward speeds);
    - ii. Auxiliary transmission (if any) and number of forward speeds; and
    - iii. Rear axle (designate single speed, two-speed, or three-speed);
  - c. Type of brake system;
  - d. Steering, manual or power assisted;
  - e. Description of types of trailers (i.e., van, flatbed, cargo tank, drop frame, lowboy, or pole);
  - f. Number of semitrailers or full trailers to be towed at one time;
  - g. For commercial motor vehicles designed to transport passengers, indicate the seating capacity of the commercial motor vehicle; and
  - h. Description of any modifications made to the commercial motor vehicle for the driver applicant, attach photographs where applicable;
4. Include a certification statement:
  - a. The driver applicant shall certify that the driver applicant is otherwise qualified to drive a commercial motor vehicle under the regulations of 49 CFR 391 as adopted by the Department; and
  - b. In case of a co-applicant, the co-applicant motor carrier shall certify that the driver applicant is otherwise qualified to drive a commercial motor vehicle under the regulations of 49 CFR 391 as adopted by the Department; and
5. Contain signature of each applicant and date signed:
  - a. The driver applicant's signature; and
  - b. The motor carrier official's signature and title if the application has a co-applicant. Depending on the motor carrier's organizational structure (corporation, partnership, or proprietorship), the signer of the application shall be an officer, partner, or the proprietor.
- C. The completed intrastate medical waiver application for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(1) or (2) shall be accompanied by:
  1. A copy of the medical examination report and medical examination certificate completed pursuant to 49 CFR 391.43;
  2. The Department's medical waiver evaluation summary completed by either a board-qualified or board-certified psychiatrist or orthopedic surgeon. The co-applicant motor carrier or the driver applicant shall provide the psychiatrist or orthopedic surgeon with a description of the job-related tasks the driver applicant will be required to perform:
    - a. The medical waiver evaluation summary for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(1) shall include:

- i. An assessment of the functional capabilities of the driver as they relate to the ability of the driver to perform normal tasks associated with operating a commercial motor vehicle; and
      - ii. A statement by a board-qualified or board-certified physiatrist or orthopedic surgeon that the applicant is capable of demonstrating precision prehension (e.g., manipulating knobs and switches) and power grasp prehension (e.g., holding and maneuvering the steering wheel) with each upper limb separately;
    - b. The medical waiver evaluation summary for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(2) shall include:
      - i. An explanation as to how and why the impairment interferes with the ability of the applicant to perform normal tasks associated with operating a commercial motor vehicle;
      - ii. An assessment and medical opinion of whether the condition will likely remain medically stable over the lifetime of the driver applicant; and
      - iii. A statement by a board-qualified or board-certified physiatrist or orthopedic surgeon that the applicant is capable of demonstrating precision prehension (e.g., manipulating knobs and switches) and power grasp prehension (e.g., holding and maneuvering the steering wheel) with each upper limb separately;
  - 3. A description of the driver applicant's prosthetic or orthotic device worn, if any; and
  - 4. A copy of the driver applicant's state motor vehicle driving record for the past three years from each state in which a motor vehicle driver license or permit has been obtained.
- D.** The completed intrastate medical waiver application for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(3) shall be accompanied by:
- 1. A copy of the medical examination report and medical examination certificate completed pursuant to 49 CFR 391.43;
  - 2. An evaluation by a board-certified or board-eligible endocrinologist. A complete endocrinologist evaluation shall consist of:
    - a. A comprehensive evaluation of the applicant's five-year medical history and current status. The applicant shall provide the examining endocrinologist with a complete medical history as it pertains to the applicant's diabetes or its complications or both, including, the date insulin use began, all hospitalization reports, consultation notes for diagnostic examinations, special studies, follow-up reports, reports of any hypoglycemic insulin reactions within the 12 months prior to the date of application, and other reports as requested by the endocrinologist. The evaluation shall also include a review of:
      - i. Daily glucose monitoring logs, glycosylated hemoglobin (A1c) indicating a result in the range of 7% to 10%, including lab reference page performed during the last six months unless recently diagnosed;
      - ii. Insulin dosages and types, diet utilized for control, and all medications taken; and
      - iii. Examinations to detect any peripheral neuropathy or circulatory insufficiency of the extremities;
    - b. A statement that the applicant is free from insulin reactions. Insulin reactions include any severe hypoglycemic reaction, which can be a reaction that results in seizure, loss of consciousness, requiring the assistance of another person, or a period of impaired cognitive function that occurs without warning. To be eligible the applicant must not have hypoglycemia unawareness and must have had no more than one documented severe hypoglycemic reaction in the previous 12 months and must have had:
      - i. No recurrent (two or more) severe hypoglycemic reactions resulting in a loss of consciousness or seizure within the past five years;
      - ii. No recurrent severe hypoglycemic reactions requiring the assistance of another person within the past five years;
      - iii. No recurrent severe hypoglycemic reactions resulting in impaired cognitive functions that occurred without warning symptoms within the past five years; and
      - iv. A period of one year of demonstrated stability following the first period of severe hypoglycemia;
  - c. A statement prepared and signed by the examining endocrinologist whose status as board-certified or board-eligible is indicated. The signed statement shall include separate declarations indicating the following medical determinations:
    - i. The endocrinologist is familiar with the applicant's medical history for the past five years through a records review, treating the patient, or consultation with the treating physician;
    - ii. The applicant is able to safely operate a commercial motor vehicle while using insulin; and
    - iii. The applicant has been educated in diabetes, including the last education date, and its management and is informed of and understands how to individually manage and monitor the applicant's diabetes mellitus and has demonstrated the ability and willingness to properly monitor and manage the applicant's diabetes and procedures to follow if complications arise;
3. A separate signed vision evaluation report from an ophthalmologist or optometrist indicating that the applicant has been examined and does not have diabetic retinopathy and meets the vision standard of 49 CFR 391.41(b)(10), or has been issued a valid intrastate medical waiver for monocular vision. If the applicant has any evidence of diabetic retinopathy, the applicant must be examined by an ophthalmologist and submit a separate signed statement from the ophthalmologist that the applicant does not have unstable proliferative diabetic retinopathy (i.e. unstable advancing disease of blood vessels in the retina); and
4. A copy of the driver applicant's state motor vehicle driving record for the past three years from each state in which a motor vehicle driver license or permit has been obtained.
- E.** The completed intrastate medical waiver application for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(10) shall be accompanied by:
- 1. A copy of the medical examination report and medical examination certificate completed pursuant to 49 CFR 391.43;

2. A current vision examination report issued within the last 90 days from the date the report is received by the Department, completed by an ophthalmologist or optometrist. The report shall indicate that the applicant has distant visual acuity of at least 20/40 (Snellen), with or without a corrective lens, in one eye, and the applicant's dominant eye has a visual field of at least 70° peripheral measurement in one direction and 35° in the opposite direction of the horizontal meridian and the ability to distinguish the colors of a traffic signal or device showing standard red, green, and amber, as applicable to the type of medical waiver being requested;
  3. A copy of the driver applicant's state motor vehicle driving record for the past three years from each state in which a motor vehicle driver license or permit has been obtained; and
  4. A statement from the employer that the driver applicant has driven the type of vehicle for which the waiver is being requested for at least two of the previous five years.
- F.** Agreement. A motor carrier that employs a driver subject to an intrastate medical waiver granted by the Director under subsection (A), whether the waiver was granted unilaterally to the driver, or to the driver and co-applicant motor carrier, shall agree to:
1. Report to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, Arizona 85001-2100, in writing, any suspension, revocation, disqualification, or withdrawal of the subject driver's driver license or permit, and any accident, arrest, or conviction involving the driver within 30 days after the occurrence;
  2. Provide to the Department's Medical Review Program, on request, any documents and information pertaining to the driving activities, accidents, arrests, convictions, and driver license or permit suspensions, revocations, disqualifications, or withdrawals involving the subject driver;
  3. Evaluate the subject driver with a road test using the trailer types the motor carrier intends the driver to transport, or alternatively accept a certificate of a trailer road test from another motor carrier if the trailer types are similar, or accept the trailer road test completed during the skill performance evaluation if trailer types are similar to that of the prospective motor carrier;
  4. Evaluate the subject driver for those non-driving safety related job tasks associated with each type of trailer that will be used and any other non-driving safety related or job related tasks unique to the operations of the employing motor carrier; and
  5. Use the subject driver to operate the type of commercial motor vehicle indicated on the intrastate medical waiver only when the driver is in compliance with the conditions and limitations of the waiver.
- G.** A driver subject to an intrastate medical waiver, issued by the Director under subsection (A), shall supply each employing motor carrier with a copy of the intrastate medical waiver.
- H.** The Department may require the driver applicant to demonstrate the driver applicant's ability to safely operate the commercial motor vehicle the driver intends to drive.
- I.** If required by the Department during the application process, a driver applicant shall have a skill performance evaluation performed by a federally-certified state commercial driver license examiner at a Department commercial driver license facility when directed.
- J.** If the Director grants an intrastate medical waiver under subsection (A) to the driver applicant, the Department shall mail to the driver applicant and co-applicant motor carrier (if applicable) written approval of the intrastate medical waiver describing the terms, conditions, and limitations of the waiver.
- K.** The intrastate medical waiver granted by the Director under subsection (A) shall identify:
1. The power unit (bus, truck, truck tractor) for which the waiver is granted; and
  2. The trailer type used in the skill performance evaluation, if applicable, without limiting the waiver to that specific trailer type.
- L.** A subject driver may use the intrastate medical waiver with other trailer types if the driver successfully completes:
1. A trailer road test administered by the motor carrier under subsection (F)(3) for each type of trailer, and
  2. A non-driving safety related or job related task evaluation administered by the motor carrier under subsection (F)(4).
- M.** The intrastate medical waiver granted by the Director under subsection (A) is:
1. Valid for a period of not more than two years from the date of issuance;
  2. Renewable 30 days prior to the expiration date; and
  3. Transferable from an original motor carrier co-applicant employer to a new motor carrier employer or to the subject driver, as a unilateral applicant if becoming self-employed, upon written notification to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, Arizona 85001-2100, stating the new employer's name and the type of equipment to be driven.
- N.** An intrastate medical waiver granted by the Director under subsection (A) to a driver applicant for monocular vision under subsection (E), shall prohibit the subject driver from transporting:
1. Passengers for hire; and
  2. Reportable quantities of hazardous substances, manifested hazardous wastes, and hazardous material required to be placarded.
- O.** A driver subject to an intrastate medical waiver, issued by the Director under subsection (A), shall have the intrastate medical waiver (or a legible copy) in the subject driver's possession while on duty.
- P.** The motor carrier employing a subject driver shall maintain a copy of the intrastate medical waiver in its driver qualification file and retain the copy in the motor carrier's file for a period of three years after the driver's employment is terminated.
- Q.** A driver subject to an intrastate medical waiver, issued by the Director under subsection (A) to an applicant for insulin-dependent diabetes under subsection (D), must comply with the following conditions:
1. Maintain appropriate medical supplies for glucose management while preparing for the operation of a commercial motor vehicle and during its operation. The supplies shall include the following:
    - a. A digital glucose monitor with computerized memory,
    - b. Supplies needed to obtain adequate blood samples and to measure blood glucose,
    - c. Insulin to be used as necessary, and
    - d. An amount of rapidly absorbable glucose to be used as necessary;
  2. Maintain a daily record of actual driving time to correlate with the daily glucose measurements;
  3. Monitor and maintain blood glucose levels in the range of 100 to 400 milligrams per deciliter (mg/dl) prior to and while driving.
    - a. Check glucose before starting to drive and take corrective action if necessary. If glucose is less than

- 100 mg/dl, take glucose or food and recheck in 30 minutes. Repeat the process until glucose is greater than 100 mg/dl. Do not drive if glucose is less than 100 mg/dl;
- b. While driving, stop the vehicle in a safe location and check glucose every two to four hours and take appropriate action to maintain it in the range of 100 to 400 mg/dl;
- c. Have food available at all times when driving. If glucose is less than 100 mg/dl, stop driving and eat. Recheck in 30 minutes and repeat procedure until glucose is greater than 100 mg/dl; and
- d. If glucose is greater than 400 mg/dl, stop driving until glucose returns to the 100 to 400 mg/dl range. If more than two hours have passed since last insulin injection and eating, take additional insulin. Recheck blood glucose in 30 minutes. Do not resume driving until glucose is less than 400 mg/dl;
4. Participate in a diabetes education program annually;
5. Undergo the following evaluations and examinations and submit to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, Arizona 85001-2100, within 10 days of the date of the evaluation or exam:
  - a. A quarterly evaluation completed by a board-certified or board-eligible endocrinologist. A quarterly endocrinologist evaluation shall include a review of the driver's daily glucose logs and glucose levels (from the subject driver's required monitoring device), a comparison of monitoring dates to the driving log to ensure that the subject driver is checking glucose levels prior to operating a commercial motor vehicle, a certifying statement indicating that the subject driver is maintaining a glucose level in the range of 100 to 400 mg/dl while driving a commercial motor vehicle, a certifying statement indicating that the subject driver is maintaining a stable insulin regimen and that the subject driver's quarterly A1c result continues to reflect stable control, reports of any severe hypoglycemic episodes, any hypoglycemic-related hospitalization, and any treatment regimen changes since the last hypoglycemic episode;
  - b. An annual evaluation completed by a board-certified or board-eligible endocrinologist. In addition to the requirements of a quarterly endocrinologist evaluation under subsection (Q)(5)(a), an annual endocrinologist evaluation shall also include a general physical examination, an indication that the driver has continued to participate in a diabetes education program with the last education date provided, a certifying statement indicating that the driver understands how to individually manage and monitor the driver's diabetes mellitus, an indication of the development of, or progression, or both, in diabetes complications (i.e. renal disease, cardiovascular disease, and neurological disease), a list of all medications taken and whether any of the medications may compromise the driver's ability to operate a commercial motor vehicle, the endocrinologist's belief that the driver has demonstrated the ability and willingness to properly manage the driver's diabetes, and a certifying statement indicating that the driver is able to safely operate a commercial motor vehicle while using insulin;
  - c. An annual vision evaluation report, as prescribed under subsection (D)(3). If there is any evidence of diabetic retinopathy, provide annual documentation by an ophthalmologist that the driver does not have unstable proliferative diabetic retinopathy; and
  - d. An annual medical examination report and medical examination certificate completed pursuant to 49 CFR 391.43. Provide copies of the endocrinologist evaluation and the vision evaluation report to the medical examiner for review; and
6. Report the following information to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, Arizona 85001-2100, within two days of occurrence:
  - a. All episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; and
  - b. Any involvement in an accident or any other adverse event in a commercial motor vehicle or personal vehicle, related to an episode of hypoglycemia or hyperglycemia.
- R. A driver subject to an intrastate medical waiver, issued by the Director under subsection (A) to an applicant for monocular vision under subsection (E), must be physically examined every year and shall submit the following to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, Arizona 85001-2100:
  1. A vision examination report issued within the last 90 days from the date the report is received by the Department, as prescribed under subsection (E)(2); and
  2. A current medical examination report and medical examination certificate completed pursuant to 49 CFR 391.43 within the past year.
- S. A driver subject to an intrastate medical waiver, or a driver subject to an intrastate medical waiver jointly with a motor carrier co-applicant, may renew an intrastate medical waiver by submitting to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, Arizona 85001-2100, a new intrastate medical waiver application. The intrastate medical waiver application shall contain the following:
  1. Name and complete address of the motor carrier currently employing the applicant;
  2. Name and complete address of the subject driver;
  3. Total miles driven under the current intrastate medical waiver;
  4. Number of accidents incurred while driving under the current intrastate medical waiver, including the date of each accident, number of fatalities, number of injuries, and the estimated dollar amount of any property damage;
  5. A current medical examination report and medical examination certificate completed pursuant to 49 CFR 391.43;
  6. A current medical examination or evaluation as applicable to the medical condition:
    - a. A current medical waiver evaluation summary, as prescribed under subsection (C)(2), for a driver with a loss of limb or limb impairment;
    - b. A current endocrinologist evaluation, as prescribed under subsection (D)(2), and a current vision evaluation report, as prescribed under subsection (D)(3), for a driver who is an insulin-dependent diabetic; or
    - c. A current vision examination report, as prescribed under subsection (E)(2), for a driver with monocular vision;
  7. A copy of the subject driver's current state motor vehicle driving record for the period of time the current intrastate medical waiver has been in effect;

8. Notification of any change in the type of tractor the driver will operate;
  9. Subject driver's signature and date signed; and
  10. Motor carrier co-applicant's signature and date signed (if applicable).
- T. The Director may deny an application for the intrastate medical waiver or may grant the waiver in whole or in part and issue the waiver subject to such terms, conditions, and limitations as the Director deems consistent with the public interest.
- U. The Director may revoke an intrastate medical waiver after providing the driver subject to an intrastate medical waiver written notice of the proposed revocation and a reasonable opportunity to request a hearing pursuant to the procedure prescribed under 17 A.A.C. 1, Article 5. The Director may revoke an intrastate medical waiver if the:
1. Driver subject to an intrastate medical waiver, or co-applicant (if applicable), or both provided false information in the application,
  2. Driver subject to an intrastate medical waiver, or co-applicant (if applicable), or both failed to comply with the terms and conditions of the intrastate medical waiver, or
  3. Issuance of the intrastate medical waiver resulted in a lower level of safety than before the waiver was granted.
- V. If the enforcement of any provision of this Section would result in the loss or disqualification of federal funding for any state agency or program, that provision is invalid.

#### Historical Note

New Section recodified from R17-4-435.06 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 3249, effective July 10, 2002 (Supp. 02-3). Section repealed; new Section made by final rulemaking at 14 A.A.R. 3797, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3). Amended by final rulemaking at 20 A.A.R. 2382, effective August 5, 2014 (Supp. 14-3).

#### **R17-5-209. Hazardous Materials Transportation: Incorporation of Federal Regulations; Applicability**

- A. Incorporation of federal regulations.
1. As relevant to the transportation of hazardous materials by highway, the Department incorporates by reference, as amended under this Section, the following Parts of the Federal Hazardous Materials Regulations; revised as of October 1, 2012, and no later amendments or editions, as 49 CFR - Transportation, Subtitle B - Other Regulations Relating to Transportation, Chapter I - Pipeline and Hazardous Materials Safety Administration, Department of Transportation:
    - a. Subchapter A - Hazardous Materials and Oil Transportation; Part 107 - Hazardous materials program procedures; and
    - b. Subchapter C - Hazardous Materials Regulations; Parts:
      - i. 171 - General information, regulations, and definitions;
      - ii. 172 - Hazardous materials table, special provisions, hazardous materials communications, emergency response information, training requirements, and security plans;
      - iii. 173 - Shippers - general requirements for shipments and packagings;
      - iv. 177 - Carriage by public highway;
      - v. 178 - Specifications for packagings; and
      - vi. 180 - Continuing qualification and maintenance of packagings.
  2. The material incorporated by reference under this subsection is on file with the Department and is available from the U.S. Government Printing Office, P.O. Box 979050, St. Louis, Missouri 63197-9000. The incorporated material can be ordered online by visiting the U.S. Government Online Bookstore at <http://bookstore.gpo.gov>.
- B. Application and exceptions.
1. Application.
    - a. Regulations incorporated under subsection (A) apply as amended by subsection (C) to motor carriers, shippers, and manufacturers as defined under A.R.S. § 28-5201.
    - b. Regulations incorporated under subsection (A) also apply to any vehicle owned or operated by the state, a political subdivision, or a state public authority, used to transport a hazardous material, including hazardous substances and hazardous waste.
  2. Exceptions. An authorized emergency vehicle, as defined under A.R.S. § 28-101, is excepted from the provisions of this Section.
- C. Amendments. The following sections of the Federal Hazardous Materials Regulations, incorporated under subsection (A), are amended as follows:
1. Part 171, General information, regulations, and definitions. Section 171.8, Definitions and abbreviations. Section 171.8 is amended by revising the definitions for "Carrier," "Hazmat employer," and "Person," and adding a definition for "Highway" as follows:
 

"Carrier" means a person engaged in the transportation of passengers or property by highway as a common, contract, or private carrier and also includes the state, a political subdivision, and a state public authority engaged in the transportation of hazardous material."

"Hazmat employer" means a person who uses one or more employees in connection with: transporting hazardous material; causing hazardous material to be transported or shipped; or representing, marking, certifying, selling, offering, reconditioning, testing, repairing, or modifying containers, drums, or packagings as qualified for use in the transportation of hazardous material. This term includes motor carriers, shippers, and manufacturers defined under A.R.S. § 28-5201 and includes the state, political subdivisions, and state public authorities."

"Highway" means a public highway defined under A.R.S. § 28-5201."

"Person" has the same meaning as defined under A.R.S. § 28-5201."
  2. Part 172, Hazardous materials table, special provisions, hazardous materials communications, emergency response information, training requirements, and security plans. Section 172.3, Applicability. Paragraph (a)(2) is amended to read: "Each motor carrier that transports hazardous materials, and each state agency, political subdivision, and state public authority that transports hazardous material by highway."
  3. Part 177, Carriage by public highway.
    - a. Section 177.800, Purpose and scope of this part and responsibility for compliance and training. In paragraph (a), the phrase "by private, common, or contract carriers by motor vehicle" is amended to read, "by a motor carrier operating in Arizona, a state agency, a political subdivision, or a state public authority that transports hazardous material by highway."
    - b. Section 177.802, Inspection. Section 177.802 is amended to read: "Records, equipment, packagings,

and containers under the control of a motor carrier or other persons subject to this part, affecting safety in transportation of hazardous material by motor vehicle, must be made available for examination and inspection by an authorized representative of the Department as prescribed under A.R.S. §§ 28-5204 and 28-5231.”

#### Historical Note

New Section recodified from R17-4-436 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 3249, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 9 A.A.R. 1867, effective June 3, 2003 (Supp. 03-2). Amended by final rulemaking at 13 A.A.R. 1262, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3). Amended by final rulemaking at 20 A.A.R. 2382, effective August 5, 2014 (Supp. 14-3).

#### **R17-5-210. Motor Carrier Safety: Public Service Corporation, Political Subdivision of this State that is Engaged in Rendering Public Utility Service, or Railroad Contacting State Officials in an Emergency**

- A.** A public service corporation, a political subdivision of this state that is engaged in rendering public utility service, or a railroad shall notify Commercial Vehicle Enforcement, through the Arizona Department of Public Safety Duty Office, that an emergency situation under A.R.S. § 28-5234(B) exists. Notification shall be made on a form provided by the Arizona Department of Public Safety and sent by fax transmission to (602) 223-2929 immediately, but in no case longer than three hours from the time the public service corporation, political subdivision of this state that is engaged in rendering public utility service, or railroad determines that the emergency situation exists. The information to be provided includes:
1. Date of the emergency situation,
  2. Time that the emergency situation started,
  3. Description of the emergency situation,
  4. Location of the emergency situation,
  5. Projected duration of the emergency situation,
  6. Authorized party's signature for determining that an emergency situation exists,
  7. Name and contact number of responsible party in the field, and
  8. The utility's self-generated Emergency ID or tracking number.
- B.** A public service corporation, a political subdivision of this state that is engaged in rendering public utility service, or a railroad shall maintain supporting documentation for no less than three years from the date of an emergency situation and shall make the supporting documentation available to a special agent upon request. Supporting documentation includes:
1. A list of drivers involved in the emergency situation;
  2. The duration of the emergency situation;
  3. The off-duty time provided for the affected drivers after the emergency situation concluded; and
  4. Any United States Department of Transportation recordable accidents, as defined under 49 CFR 390.5, which occurred during the emergency situation.
- C.** After an emergency situation terminates and a driver returns to the principal place of business, the driver shall not drive a commercial motor vehicle unless the driver remains off duty under 49 CFR 395.

#### Historical Note

New Section recodified from R17-4-438 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final

rulemaking at 7 A.A.R. 4259, effective September 13, 2001 (Supp. 01-3). Section repealed by final rulemaking at 8 A.A.R. 3249, effective July 10, 2002 (Supp. 02-3). New Section made by final rulemaking at 11 A.A.R. 862, effective February 1, 2005 (Supp. 05-1). Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3).

#### **R17-5-211. Motor Carrier Safety: Inspection, Enforcement, Sanction**

- A.** Scope. This Section applies to any transporter subject to:
1. R17-5-201 through R17-5-209; and
  2. A.R.S. Title 28, Chapter 14.
- B.** Audits.
1. The Department may conduct an audit for cause or without cause.
  2. The Department may enter the premises of any transporter for the purpose of conducting an audit.
  3. The Department may inspect a motor vehicle:
    - a. Within Arizona at:
      - i. A transporter's place of business, or
      - ii. Any other in-state location, or
    - b. Outside Arizona at a transporter's place of business.
  4. A transporter shall make records available for audit:
    - a. During the transporter's normal business hours, and
    - b. In a specific location as follows:
      - i. The transporter's Arizona place of business, or
      - ii. Either an Arizona location designated by the Director or the transporter's out-of-state place of business.
  5. The Department shall charge a transporter in advance for all expenses to be incurred in performance of an out-of-state audit.
- C.** Violation notification. Within five days after audit completion, the Department shall notify an audited transporter in writing of all violations. The notification shall specify a deadline date for remedy of all violations.
- D.** Obligation to remedy violations. After receipt of a violation notification, a transporter shall remedy all violations by the specified date to comply with:
1. R17-5-201 through R17-5-209; and
  2. A.R.S. Title 28, Chapter 14.
- E.** Noncompliance: Failure to remedy violations. If the Department determines a transporter does not remedy a violation by the date specified in a violation notice, the Department shall initiate further enforcement action as prescribed under A.R.S. §§ 28-5237 and 28-5238.
- F.** Danger to public safety. If the Director determines a written violation report establishes probable cause of danger to public safety, the Director shall issue an order by 5:00 p.m. the next business day suspending the Arizona registration of the motor vehicle owned or leased by the transporter, or a driver's Arizona driver license or nonresident driving privilege.

#### Historical Note

New Section recodified from R17-4-439 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 7 A.A.R. 4259, effective September 13, 2001 (Supp. 01-3). Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3). Amended by final rulemaking at 20 A.A.R. 2382, effective August 5, 2014 (Supp. 14-3).

#### **R17-5-212. Motor Carrier Safety: Hearing Procedure**

- A.** Scope.
1. This Section applies only to a motor carrier enforcement action under:
    - a. R17-5-201 through R17-5-209; and

- b. A.R.S. Title 28, Chapter 14.
- 2. In an enforcement hearing involving a manufacturer, motor carrier, shipper, or driver under this Section, the Department shall follow the procedures prescribed under 17 A.A.C. 1, Article 5, except as modified under subsections (B) through (I).
- B. Initiation of proceedings, pleadings.**
  - 1. The Director shall initiate a hearing under this Section by:
    - a. Signing and serving a complaint in the form prescribed under subsection (G) that cites a manufacturer, motor carrier, shipper, or driver for an alleged infraction; and
    - b. Serving the cited manufacturer, motor carrier, shipper, or driver with a hearing notice within 15 days after the date the complaint is signed.
  - 2. After the Director signs a complaint, the Executive Hearing Office shall act on the Director's behalf through completion of an administrative proceeding under this Section.
- C. Order to show cause.**
  - 1. When a complaint is served, the Executive Hearing Office shall immediately issue a summons for a respondent to appear at an administrative hearing to explain why the Executive Hearing Office should not grant the requested relief.
  - 2. The Executive Hearing Office shall hold a hearing under this Section within 60 days after the date the complaint is served.
  - 3. The parties may resolve a complaint before the hearing date.
    - a. The respondent shall file any settlement condition with the Executive Hearing Office.
    - b. Complaint settlement terminates the right of both petitioner and respondent to receive additional administrative review.
- D. Service.**
  - 1. The Executive Hearing Office shall:
    - a. Send an order to show cause by certified mail as prescribed under A.R.S. § 28-5232(B), and
    - b. Maintain a proof-of-service file.
  - 2. The date of service is the date of mailing.
- E. Answer.**
  - 1. Within 15 days after service of a complaint, a respondent shall respond to the complaint by:
    - a. Filing a written answer with the Executive Hearing Office; and
    - b. Serving the Assistant Attorney General, Transportation Division, representing the Department with a copy of the answer.
  - 2. A respondent's written answer shall contain:
    - a. An admission or denial of each complaint allegation, and
    - b. A list of all defenses that the respondent intends to raise during the hearing.
  - 3. In a hearing, the Executive Hearing Office shall consider any allegation not denied in the answer as an admission to the allegation.
- F. Default.**
  - 1. The Executive Hearing Office shall find in default a respondent that fails to file an answer within 15 days after the service date of a complaint.
  - 2. If the Executive Hearing Office finds a respondent in default, the Executive Hearing Office shall:
    - a. Consider the respondent's default as an admission of all complaint allegations unless the default is cured under subsection (F)(3), and
    - b. Enter an order granting the relief requested in the Department's complaint.
- 3. A respondent may cure a default by following Rule 60(c) of the Arizona Rules of Civil Procedure.
- G. Emergency motor carrier hearings; scope.**
  - 1. The Director shall initiate an emergency motor carrier hearing process according to R17-5-211(E) by:
    - a. Issuing a complaint and order to show cause according to the hearing scope under A.R.S. § 28-5232(C); and
    - b. Ordering immediate suspension of the registration of the motor vehicle owned or leased by the manufacturer, shipper, or motor carrier, or the driver license or driver's nonresident operating privilege, as prescribed under A.R.S. § 28-5232(A).
  - 2. The Executive Hearing Office shall set an emergency hearing date to occur within 30 days after the date on the complaint.
  - 3. The complaint and order to show cause shall contain the following:
    - a. The Department as the designated petitioner on the state's behalf;
    - b. The respondent's name and the basis of fact for the complaint, including a listing of any alleged violation of Department statute or rule;
    - c. The relief sought by the Department; and
    - d. An original copy of the written violation notice issued by a law enforcement agency that was served upon the respondent.
  - 4. At an emergency motor carrier hearing, an Executive Hearing Office administrative law judge shall determine whether the respondent:
    - a. Was operating on a public highway and the operation created a danger to the public safety,
    - b. Was responsible for the danger, and
    - c. Is responsible for preventing or remedying further danger to public safety.
  - 5. Upon a finding that the factors in subsection (G)(4) are present, the administrative law judge shall order that the motor carrier's registration and operator's driver license or driver's nonresident operating privilege suspension continue.
  - 6. If a respondent fails to appear at an emergency motor carrier hearing, any suspension previously ordered remains in effect until the respondent appears and meets all requirements under A.R.S. § 28-5232(F).
- H. Upon a finding that the factors in subsection (G)(4) are present, the Director shall impose a civil penalty as prescribed under A.R.S. §§ 28-5232, 28-5237 and 28-5238.**
- I. A respondent may request judicial review of a motor carrier safety hearing as prescribed under A.R.S. § 28-5239.**

#### Historical Note

New Section recodified from R17-4-440 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 4230, effective November 15, 2002 (Supp. 02-3). Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3).

### ARTICLE 3. PROFESSIONAL DRIVER TRAINING SCHOOLS

#### R17-5-301. Reserved

#### R17-5-302. Commercial driving schools and instruction licensing

- A. Definitions.** The following words and phrases have been defined as follows:

1. "Commission": The Arizona Highway Commission.
  2. "Instructor": Any person, whether acting for himself as operator of a professional driver training school or for any such school for compensation, who teaches, conducts classes of, gives demonstrations to, or supervises practice of persons learning to operate or drive motor vehicles or preparing to take an examination for an operator or chauffeur's license or learner's permit; and any person who supervises the work of any other such instructor.
  3. "Professional driver training school or school": A business enterprise conducted by an individual, association, partnership, or corporation, for the education and training of persons, either practically or theoretically, or both, to operate or drive motor vehicles, to prepare an applicant for an examination given by the state for an operator's or chauffeur's license or learner's permit and charging a consideration or tuition for such services.
  4. "Superintendent": The superintendent of the Motor Vehicle Division.
  5. "Suspension": The licensee's privilege to operate a professional driving school or to instruct (as provided in these rules) is temporarily withdrawn.
  6. "Revocation": The licensee's privilege to operate a professional driving school or to instruct (as provided in these rules) is terminated indefinitely.
  7. "Operator": The owner of a professional driver training school or one who holds himself out as offering, or one who otherwise offers, for a consideration or tuition, any service or services enumerated in A.R.S. § 32-2351, subsection (3).
  8. "Doing business": Soliciting for the purpose of offering, or performing any or all of the Acts set forth in A.R.S. § 32-2351(2) and (3).
- B. General provisions:**
1. Administration and enforcement. The Commission, through the Superintendent of Motor Vehicle Division, shall administer and enforce the provisions of this Chapter.
  2. Schools and instruction subject to licensing and rules. Section 1, Title 32, Chapter 23 and these rules shall apply to driving schools of all kinds as defined in these rules and to all persons giving instruction in driving schools or giving instruction in the operation of motor vehicle as defined in "instructor."
  3. Use of driver training vehicle. No operator of a driving school shall lease, rent, or by any other arrangement permit the use of a vehicle used in driver training by another person when said vehicle is being operated by a student.
  4. Employment of Motor Vehicle Division or Traffic Safety employees. No school will be permitted to engage the service of an employee of the Motor Vehicle Division or Traffic Safety as an instructor, agent or employee.
- C. Licenses:**
1. Requirements for an original license to operate a professional driver training school and a license to give driving instructions.
    - a. In general two types of licenses will be issued. A license to operate a driving school and a license for an individual to give driving instruction as an employee of a school.
    - b. A license to operate a driving school shall include the right to give driving instruction only when the licensee is licensed as an instructor or employs a person who is licensed as an instructor in accordance with all the requirements of law.
  2. Application for original professional driving school license.
    - a. Before any license is issued an application shall be made in writing to the Division on a form prepared and furnished by the Division, which shall include the following:
      - i. The name of the school together with ownership and controlling officers thereof.
      - ii. The application for a driving school license shall include the official name of the school and the location of its established place of business.
      - iii. The specified course of instruction which will be offered.
      - iv. The place or places where such instruction will be given.
      - v. The qualifications of the instructors and supervisors in each specific field together with their names, addresses and other information which may be required by the superintendent.
      - vi. Samples of any and all contracts to be used by the school.
      - vii. Sample copies of all forms of receipts to be used by the school.
      - viii. Copies of all forms used by the school which will be furnished or delivered to students.
      - ix. Driver training schools proposing to give instructions pertaining to the operation of motorcycles, buses, and trucks other than 1/2- or 3/4-ton pickups must submit their complete curriculum for approval along with their application.
    - b. Every application for a license to operate driver training school must be accompanied by a fee of \$200.00. An applicant doing business in more than
      - c. A copy of the instructor's license must be displayed in the office of each school he may represent.
      - d. The license issued by the Division to operate a driving school shall be prominently displayed in the place of business of the driving school.
      - e. The instructor's identification card shall be in the possession of the licensee at all times that he instructs or actually accompanies a student. The instructor must surrender this card to the Division upon becoming inactive or when his license is cancelled, suspended or revoked.
      - f. A license certificate shall be issued to each driving school for each instructor employed by such school. This certificate shall be prominently displayed in the place of business along with the license to operate such school.
      - g. In case of loss or mutilation, duplicate license or instructor's identification card may be issued by the Division upon submission of a properly signed and completed application accompanied by the required fee and an affidavit setting forth the circumstances. The affidavit must show the date the license or identification card was lost, mutilated, or destroyed, and the circumstances involving the loss, mutilation, or destruction.
      - h. A license to operate a driving school and any instructor's license shall be nontransferable.
      - i. Each license will be effective on the date of issuance and will expire on the last day of the calendar year.
      - j. No license fee will be prorated in the event the license is issued less than 12 calendar months prior to expiration.



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- one location must secure a license for each branch office. An application for a branch license must be accompanied by a fee of \$50.00.
- c. All renewal application forms must be submitted to the Division not less than 30 days prior to the time the present school license expires. The Division will not be responsible for the timely issuance of any renewal license when application is not received at least 30 days prior to the expiration date.
  - d. Each driving school shall submit to the Division, upon application for a license or a renewal license, a complete list of all personnel in its organization and shall indicate those in the staff who will be instructing. When changes are made in instructor personnel, notification shall be made to the Division within 10 days thereafter.
  - e. An individual, association, partnership, or corporation may qualify for a license to operate a professional driver training school through himself, one of its partners, officer of the corporation or managing employee. The qualifying party shall be a regular and bona fide employee whose principal employment is with the employer for whom he has qualified and must have active and direct supervision and control of all operations necessary to secure full compliance with all the provisions of Arizona Revised Statutes Title 32, Chapter 23 and these rules.
3. Application for driving school instructor's license.
    - a. Application for an instructor's license shall be made upon a form supplied by the Division, which form may require the following disclosures and information.
      - i. True full names
      - ii. Residence addresses
      - iii. Fingerprint card
      - iv. Employment histories
      - v. Personal references
      - vi. Such other information which the Division deems pertinent to determine the applicant's good moral character. No instructor's license shall be issued except upon compliance with all the provisions of these rules and the provisions of A.R.S. §§ 32-2351 through 32-2391.
    - b. The application for an instructor's license shall include the official name of the school at which the applicant will be an instructor. The licensed instructor shall notify the Division of his initial employment or of any change of employer within 10 days thereafter.
    - c. Every application for a license as a driving school instructor must be accompanied by a fee of \$10.00.
    - d. All renewal application forms must be submitted to the Division not less than 30 days prior to the time the previous license expires. The Division will not be responsible for the timely issuance of any renewal license when application is not received at least 30 days prior to expiration date.
  - D. Requirements of applicants for driver training school license and driver training instructors. Every applicant for a license to operate a driving school and every applicant for a license to give instructions in driving motor vehicles shall meet the requirements as set forth below:
    - a. Each applicant shall pass an examination given by the Division which may consist of an actual demonstration or a written test or both covering:
      - i. Traffic laws
      - ii. Safe driving practices
      - iii. Operation of motor vehicles
      - iv. Knowledge of teaching methods, techniques, and practices
      - v. Driving school statutes and regulations, business ethics, office procedures, elementary recordkeeping.
    - b. Each applicant must be of good moral character, at least 21 years of age and have the minimum of a high school education or the equivalent.
    - c. Each applicant must hold a valid Arizona driver license.
    - d. Each applicant must have a satisfactory driving record.
    - e. All instructors shall be physically and mentally able to safely operate a motor vehicle and to train others in the operation of motor vehicles. To substantiate this, the superintendent may require a properly signed and completed certificate of medical examination conducted by a person qualified and licensed to practice medicine in Arizona.
  - E. Insurance and safety requirements:
    1. All professional school operators shall maintain bodily injury and property damage liability insurance on motor vehicles while being used in driving instruction, insuring the liability of the driving school, the driving instructor, and any person taking instruction in at least the following amounts: \$10,000.00 for bodily injury to or death of any one person in any one accident and, subject to said limit for one person, \$20,000.00 for bodily injury to or death of two or more persons in any one accident, and the amount of \$5,000.00 for damage to property of others in any one accident.
    2. Evidence of such insurance coverage in the form of a certificate from the insurance carrier shall be filed by the school with the Division and the certificate shall stipulate that the insurance contract carried by the school provides for cancellation only upon 30 days prior written notice to the Division and shall further include the make, model, year and motor or serial number of every vehicle which will be used for instruction.
    3. When a vehicle is added to or exchanged in a driving school fleet covered under a fleet insurance plan, the licensee shall provide the Superintendent a copy of a policy rider issued by the insurance carrier showing the addition or exchange, with complete descriptions of the vehicles involved.
  - F. Place of business:
    1. The established place of business of each driver training school must be regularly occupied and primarily used by that driver training school for the business of giving driving instructions for hire and the business of preparing members of the public for the examination given by the Division for a motor vehicle operator's license.
    2. Each place of business shall be safe and meet all requirements of state law and local ordinances, and the superintendent may require applicants and licenses to provide proof of compliance with local zoning ordinances.
    3. Each school shall post its office hours in a conspicuous place and shall be open to the public during these hours. In the absence of the operator, the person left in charge of the office during the posted office hours shall be fully qualified and authorized to give pertinent information to the public concerning lessons and accounts, and to give information to any representative of the Division concerning the operation of the school.

4. When a driving school office is located in an office building, store, or any other physical structure which is not a part of a dwelling, there shall be a clear separation between the driving school business and any other activity housed in the building.
  5. The school's license must be conspicuously displayed.
  6. All records pertaining to the operation of the school shall be maintained in the established place of business and available for inspection during normal business hours.
  7. Every place of business used by each driving school shall provide adequate facilities for any student being given instructions in other than behind-the-wheel driver training.
- G. Branch offices:**
1. A driver training school desiring to open a branch office shall make application on a form prescribed by the Division and accompanied by the required fee of \$50.00. If application is approved, the Division will issue a copy of the license of the principal place of business, appropriately endorsed, for use in the branch office.
  2. This copy must be conspicuously displayed in such branch office at all times.
  3. A branch office may not be removed to a new location without prior approval of the Division.
  4. Should a branch office be discontinued, the branch office copy of the license must be surrendered immediately to the Division.
  5. The branch office must meet all of the requirements of the licensed principal place of business and must be equipped to, and shall perform, substantially the same services apply to the principal place of business.
  6. Branch offices are restricted to the county wherein the principal place of business is located.
- H. Advertising:**
1. A school shall not use any name other than its licensed name for advertising or publicity purposes. Nor shall the school use the word "State" in any part of the school name. A licensed school which advertises, solicits patrons, or conducts the business regulated by A.R.S. § 32-2351 et seq., by the use of or under a name other than the name by which the school was licensed, must apply for and obtain an original license for such school before it may lawfully operate.
  2. No driving school advertisement shall indicate in any way that a school can issue or guarantee the issuance of a driver's license, or imply that the school can in any way influence the Division in the issuance of a driver's license or imply that preferential or advantageous treatment from the Division can be obtained.
  3. Schools that are in fact licensed by the Division may in their advertising state they are "LICENSED" but shall not indicate that a school is approved, sanctioned, or in any other way endorsed by the Division.
- I. Professional conduct:**
1. No driving school instructor, employee, or agent will be permitted to accompany any student into any examining office rented, leased, or owned by the Division of Motor Vehicles for the purpose of taking a driver license examination.
  2. No driving school instructor, employee, or agent will be permitted to personally solicit any individual on the premises rented, leased, or owned by the Division of Motor Vehicles for the purpose of enrolling them in any professional driving school.
  3. Violation of any of the provisions of this Article may be grounds for the cancellation, suspension or revocation of an instructor's license or a school's license, subject to the provisions of A.R.S. §§ 32-2373 and 32-2391 and these rules.
- J. Records and contracts:** Every licensee shall maintain the following records:
1. A permanently bound book or a card file setting forth the name, address, contract number, and terms of payment with respect to every person receiving lessons, lectures, tutoring, instructions of any kind or any other service relating to instructions in the operations of a motor vehicle. The book or card file shall also contain records showing the date, type, and duration of all lessons, lectures, tutoring and instructions including the name of the instructor giving such lessons and the tag number, make and model of vehicle used to conduct the training.
  2. A record of all receipts and disbursements.
  3. If a licensee enters into written contracts with any person or group of persons receiving lessons, lectures, tutoring or instructions relating to the operation of a motor vehicle, the original contract must be given to the student or his agent who executes the contract, and a carbon copy of the contract retained as part of the records of the license.
  4. All records must be retained for three years.
- K. Equipment:**
1. All vehicles used for driver training must be equipped with the following:
    - a. Any motor vehicle with an automatic transmission must be equipped with at least a dual braking device which will enable an accompanying instructor to bring the car under control in case of an emergency.
    - b. Any motor vehicle equipped with a standard transmission must have at least a dual clutch and braking device which will enable an accompanying instructor to bring the car under control in case of an emergency.
  2. All vehicles must be maintained in safe operating conditions at all times.
- L. Suspension, revocation, cancellation and denial of driver training school and driver training instructor licenses:**
1. The superintendent may suspend or revoke the license of any driver training school or driver training instructor:
    - a. If the licensee fails to do anything which is required by the provisions of A.R.S. Title 32, Chapter 23, or these rules relating to driver training schools and driver training instructors.
    - b. If the licensee does anything which is prohibited by the provisions of A.R.S. Title 32, Chapter 23, or these rules relating to driver training schools or driver training instructors.
    - c. If the application contains any misstatements or misrepresentations.
  2. No license fee will be refunded in the event a license is suspended or revoked.
  3. The superintendent may deny any application for a driver training school or driver training instructor's license, if the applicant does not qualify for the license under the provisions of A.R.S. Title 32, Chapter 23, or these rules relating to driver training schools and driver training instructors. Previous revocation, misstatements or misrepresentations may be grounds for denying a license.
- M. The superintendent, upon determining that grounds for cancellation of a license exist, shall give notice thereof to the licensee in writing, and by the notice shall require the licensee to appear before him at a specified time and place, then and there to show cause why his license should not be cancelled. At the time and place fixed by the superintendent, which shall**

be not less than 10 days after notice, the licensee shall appear and be heard and may have other persons he desires present and testify at the hearing.

#### Historical Note

New Section recodified from R17-4-512 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

### ARTICLE 4. DEALERS

#### R17-5-401. Reserved

#### R17-5-402. Bond Amounts; Motor Vehicle Dealers, Brokers, and Recyclers Business Licenses

- A. As prescribed under A.R.S. § 28-4362, the Division shall require a bond in the amount specified for the following motor vehicle business license applicants:
1. \$100,000 from a motor vehicle dealer engaged in selling new or used motor vehicles,
  2. \$25,000 from a wholesale motor vehicle dealer,
  3. \$25,000 from a wholesale motor vehicle auction dealer,
  4. \$25,000 from a motor vehicle broker, and
  5. \$20,000 from an automotive recycler.
- B. An applicant shall submit a bond in a form prescribed by the Division Director. The Division shall not accept a handwritten bond.

#### Historical Note

New Section recodified from R17-4-240 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 9 A.A.R. 1864, effective August 2, 2003 (Supp. 03-2).

#### R17-5-403. Bond Amount; Motor Vehicle Title Service Business License

- A. As prescribed under A.R.S. § 28-5005, the Division shall require a \$25,000 bond for a motor vehicle title service company applying for a business license.
- B. An applicant shall submit a bond in a form prescribed by the Division Director. The Division shall not accept a handwritten bond.

#### Historical Note

New Section made by final rulemaking at 9 A.A.R. 1864, effective August 2, 2003 (Supp. 03-2).

#### R17-5-404. Dealer Title Requirement for Vehicle Sale

For purposes of A.R.S. § 28-4409(A), the dealer's name shall be recorded on a title certificate as transferee or purchaser.

#### Historical Note

New Section recodified from R17-4-241 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section heading corrected as recodified at 7 A.A.R. 3483 (Supp. 09-2).

#### R17-5-405. Motor Vehicle Dealer Acquisition Contract

- A. Definitions.
1. "Contract" or "Dealer acquisition contract" has the meaning prescribed under A.R.S. § 28-4410(G)(2).
  2. "Dealer" or "Motor vehicle dealer" has the meaning prescribed in A.R.S. § 28-4301(23).
  3. "Division" means the "Motor Vehicle Division" of the Arizona Department of Transportation and any authorized agent.
  4. "Vehicle" or "motor vehicle" has the meaning prescribed under A.R.S. § 28-4301(22).
  5. "Owner" means a person prescribed under A.R.S. § 28-101(36)(a), that has the legal right to sell or dispose of the motor vehicle.

6. "State" means the "state of Arizona" and all its agencies and political subdivisions and their officers and agents.
- B. General Requirements. For purposes of A.R.S. § 28-4410, a dealer shall prepare a dealer acquisition contract on a form with contents as prescribed under subsection (C).
- C. Content. A dealer acquisition contract shall contain the following information:
1. The heading "Dealer Acquisition Contract;"
  2. The dealer's name and dealer license number;
  3. The dealer's business address and telephone number;
  4. The owner's name, address, and telephone number;
  5. The vehicle identification number; license plate number; licensing state; and model, make, and year;
  6. If there is a lien holder:
    - a. The lien holder's name, address, telephone number;
    - b. Lien balance;
    - c. Prepayment penalties, if any; and
    - d. Other information relevant to the terms and conditions of the lien repayment;
  7. A statement by the owner that the vehicle is free and clear of all liens and encumbrances, except those disclosed under subsection (C)(6)(a) and the unpaid lien balance is no greater than disclosed under subsection (C)(6)(b);
  8. The contracted purchase price and a recital that this amount has been either paid directly to the owner or credited to the owner against the purchase price of another vehicle;
  9. A statement indicating that the owner is selling and transferring the described vehicle to the dealer;
  10. An authorization by the owner permitting the dealer to obtain all information necessary to verify the accuracy of the lien balance and assure that the balance is paid and the lien is released;
  11. A statement by the owner that the registration document provided to the dealer is the original and most recent registration issued for the vehicle;
  12. An agreement indicating whether the owner or dealer is responsible to satisfy the lien balance;
  13. An authorization by the owner permitting the dealer to obtain the original title certificate from the lien holder; endorse the owner's name on the title; and if necessary, transfer the title to the dealer;
  14. A statement that if the owner receives the certificate of title, the owner shall immediately deliver the title to the dealer and provide any signature and acknowledgment necessary to complete the title transfer to the dealer;
  15. The date the contract is executed;
  16. The dealer's signature; and
  17. The owner's signature.
- D. A dealer or an owner who adds to a dealer acquisition contract a provision not described in this Section shall ensure that the provision does not conflict with or alter the meaning of a provision of this Section.
- E. Disposition. When a dealer prepares a dealer acquisition contract as prescribed under this Section, the dealer shall give a copy to the owner and keep the original at the dealer's established place of business for three years after the date that the contract expires or terminates, or the date the vehicle is sold.
- F. Disclaimer. In complying with this Section, a dealer shall not interpret or claim compliance to be an approval by the state of the fairness, validity, or legality of a dealer acquisition contract. This Section furnishes only information required in a dealer acquisition contract. It does not detail any additional contractual requirements that may be defined under other Arizona statutes.

**Historical Note**

New Section recodified from R17-4-245 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 4234, effective November 15, 2002 (Supp. 02-3).

**R17-5-406. Motor Vehicle Dealer Consignment Contract****A. Definitions.**

1. "Contract" or "Dealer consignment contract" has the meaning prescribed under A.R.S. § 28-4410(G)(1).
2. "Dealer" or "Motor vehicle dealer" has the meaning prescribed under A.R.S. § 28-4301(23).
3. "Division" means the "Motor Vehicle Division" of the Arizona Department of Transportation and any authorized agent.
4. "Vehicle" or "motor vehicle" has the meaning prescribed under A.R.S. § 28-4301(22).
5. "Owner" means a person prescribed under A.R.S. § 28-101(36)(a), that has the legal right to sell or dispose of the motor vehicle.
6. "State" means the "state of Arizona" and all its agencies and political subdivisions and their officers and agents.

**B. General Requirements.** For purposes of A.R.S. § 28-4410, a dealer shall prepare a dealer consignment contract on a form with contents as prescribed under subsection (C).**C. Content.** A dealer consignment contract shall contain the following information:

1. The heading "Dealer Consignment Contract;"
2. The dealer's name and dealer license number;
3. The dealer's business address and telephone number;
4. The owner's name, address, and telephone number;
5. The vehicle identification number; license plate number; licensing state; and model, make, and year;
6. If there is a lien holder:
  - a. The lien holder's name, address, telephone number;
  - b. Lien balance;
  - c. Prepayment penalties, if any; and
  - d. Other information relevant to the terms and conditions of the lien repayment;
7. A statement by the owner that the vehicle is free and clear of all liens and encumbrances, except those disclosed under subsection (C)(6)(a) and the lien balance is no greater than that disclosed under subsection (C)(6)(b);
8. An authorization by the owner permitting the dealer to market and sell the vehicle on behalf of the owner at a mutually-agreed upon, specified, minimum price;
9. An agreement by the dealer to inform any prospective purchaser that the vehicle is on consignment;
10. An agreement by the dealer that, upon receiving the sale proceeds, the dealer shall immediately satisfy all disclosed liens and ensure that the liens are released;
11. An agreement by the owner that, upon the completion of the sale and after receiving the sale proceeds, the owner shall promptly deliver and endorse the title certificate for reassignment to the purchaser;
12. The expiration date of the consignment contract;
13. An agreement by the dealer to deliver the vehicle to the owner at a specified location on the date that the contract expires or terminates;
14. An agreement by the owner to pay any specified fees due the dealer upon the return of the vehicle, after the expiration or termination of the consignment contract;
15. The date the contract is executed;
16. The dealer's signature; and
17. The owner's signature.

**D.** A dealer or an owner who adds to a dealer consignment contract a provision not described in this Section shall ensure that

the provision does not conflict with or alter the meaning of a provision of this Section.

- E.** Disposition. When a dealer prepares a dealer consignment contract as prescribed under this Section, the dealer shall give a copy to the owner and keep the original at the dealer's established place of business for three years after the date that the contract expires or terminates, or the vehicle is sold.
- F.** Disclaimer. In complying with this Section, a dealer shall not interpret or claim compliance to be an approval by the state of the fairness, validity, or legality of a dealer consignment contract. This Section furnishes only information required in a dealer consignment contract. It does not detail any additional contractual requirements that may be defined under other Arizona statutes.

**Historical Note**

New Section recodified from R17-4-246 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 4234, effective November 15, 2002 (Supp. 02-3).

**R17-5-407. Motor Vehicle Repossession****A.** The Division shall not transfer a title when the ownership of a motor vehicle titled in this state or another state reverts through operation of state law to a lienholder of record through repossession unless the following conditions are met:

1. The vehicle is physically located in this state;
2. A notice of lien is filed with the Division;
3. A completed affidavit from the lienholder is submitted to the Division stating that the vehicle is physically located in this state and was repossessed on default pursuant to the terms of the lien and applicable law and that this state, its agencies, employees, and agents shall not be held liable for relying on the contents of the affidavit; and
4. In addition to the information required in subsection (A)(3), the affidavit contains the following information:
  - a. The Vehicle Identification Number (VIN),
  - b. The vehicle model year,
  - c. The vehicle make,
  - d. The registered owner's name,
  - e. The date of repossession,
  - f. The state in which the vehicle is titled,
  - g. The lienholder company name,
  - h. The lienholder agent or representative name,
  - i. Lienholder signature, and
  - j. Notary or Motor Vehicle Division agent signature.

**B.** The Division shall accept out-of-state affidavits of repossession that comply with the requirements in subsections (A)(3) and (4) and subsection (C) if all of the following apply:

1. The affidavit is submitted by an Arizona licensed dealer, and
2. The Arizona licensed dealer is transferring the title into the dealership's name.

**C.** A lienholder may sell a repossessed vehicle without transferring the title into the lienholder's name by completing a Bill of Sale for submission to the Division. The Bill of Sale may be combined with the affidavit of repossession and shall contain the following information:

1. The buyer's name;
2. The sale date;
3. Buyer's street address, including the city, state, and zip code;
4. Name of new lienholder, if applicable;
5. New lien date, if applicable;
6. Odometer certification statement, including odometer reading, and an area for the buyer's name and signature to acknowledge the odometer certification;

7. A statement that the buyer is aware of the odometer certification made by the seller;
  8. The seller's name;
  9. The seller's notarized signature;
  10. The seller's address, including city, state, and zip code; and
- D.** A completed repossession affidavit as prescribed in this Section is proof of ownership, right of possession, and right of transfer.
- E.** Disclaimer. The Division has no responsibility relating to foreclosure on real property under A.R.S. Title 33, Chapter 7.

**Historical Note**

New Section recodified from R17-4-260 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 10 A.A.R. 3399, effective October 2, 2004 (Supp. 04-3).

**R17-5-408. Resale of a New Motor Vehicle**

- A.** A new motor vehicle dealer, as defined in A.R.S. § 28-4301, that sells a new motor vehicle that was delivered to a previous purchaser, shall provide written notice to the new purchaser under subsection (B).
- B.** A dealer shall ensure that the notice under A.R.S. § 28-4422 contains the following information:
1. The name of the dealership;
  2. A vehicle description, including year, make, and vehicle identification number (VIN);
  3. A statement that the vehicle was delivered to a previous purchaser;
  4. The printed name of the new purchaser; and
  5. The signature of the new purchaser (initials are not acceptable) indicating that the new purchaser has received the notice.
- C.** The new motor vehicle dealer shall:
1. Provide a copy of the notice under subsection (B) to the new purchaser, and
  2. Keep a copy of the signed notice under subsection (B) at the new motor vehicle dealer's established place of business for at least three years.
- D.** The new motor vehicle dealer is not required to submit to the Division the notice under subsection (B) unless otherwise required by state or federal law.
- E.** A new motor vehicle dealer shall not add additional language to the notice that would conflict with, or alter, the intent of the provisions specified in subsection (B).

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 225, effective March 11, 2006 (Supp. 06-1).

**ARTICLE 5. MOTOR CARRIER FINANCIAL RESPONSIBILITY****R17-5-501. Definitions**

In addition to the definitions provided under A.R.S. §§ 28-4001, 28-4031, 28-5201, and 28-5431, the following terms apply to this Article, unless the context otherwise requires:

"Binder" means a contract for temporary insurance as described in A.R.S. § 20-1120.

"Initial motor vehicle registration" means the first time a motor carrier registers a specific motor vehicle or a vehicle combination in Arizona.

"Insurance company" means an entity that is in the business of issuing motor carrier liability insurance policies.

**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 235,

effective March 11, 2003 (Supp. 03-1). Amended by final rulemaking at 18 A.A.R. 2365, effective November 10, 2012 (Supp. 12-3).

**R17-5-502. Repealed****Historical Note**

New Section recodified from R17-4-226 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

**R17-5-503. Repealed****Historical Note**

New Section recodified from R17-4-226.01 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

**R17-5-504. Requirement to Submit Proof of Financial Responsibility; Applicability; Procedure; Exception**

- A.** If a person or motor carrier subject to financial responsibility requirements under A.R.S. § 28-4032 does not insure its motor vehicle or vehicle combination through an insurance company that electronically reports to the Department under A.R.S. § 28-4148 and Article 8 of this Chapter, the person or motor carrier shall submit proof of financial responsibility as prescribed in this Section, and in the amount required under A.R.S. § 28-4033(A):
1. On initial motor vehicle registration, or
  2. On written request by the Department.
- B.** An insurance company, its managing general agent, broker, or agent may submit proof of financial responsibility to the Department on behalf of a person or motor carrier.
- C.** As proof of financial responsibility, a person or motor carrier shall submit to the Department a photocopy of:
1. A valid liability insurance policy;
  2. A binder dated within 90 days of filing with the Department;
  3. A completed and signed Form E Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance, issued by an insurer that holds a valid certificate of authority or that is permitted to transact surplus lines insurance in this state, naming the Arizona Department of Transportation as the agency;
  4. A completed and signed Certificate of Liability Insurance form, issued by an insurer that holds a valid certificate of authority or that is permitted to transact surplus lines insurance in this state, naming the Arizona Department of Transportation as the certificate holder; or
  5. A certificate of self-insurance issued by the Department after a person or motor carrier meets the requirements of R17-5-810 and A.R.S. §§ 28-4007 and 28-4135.
- D.** Before a binder submitted as proof of financial responsibility expires, a motor carrier shall submit:
1. A binder from an insurance company other than the insurance company named in the first binder; or
  2. Proof of financial responsibility listed in subsections (C)(1) or (C)(3) through (5).
- E.** A person or motor carrier that maintains a valid USDOT number and files proof of financial responsibility with the Federal Motor Carrier Safety Administration under 49 CFR 387 is not required to submit additional proof of financial responsibility under this Section, except on written request by the Department.

**Historical Note**

New Section recodified from R17-4-445 at 7 A.A.R.

3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 9 A.A.R. 235, effective March 11, 2003 (Supp. 03-1). Amended by final rulemaking at 18 A.A.R. 2365, effective November 10, 2012 (Supp. 12-3).

**R17-5-505. Repealed**

**Historical Note**

New Section recodified from R17-4-446 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 235, effective March 11, 2003 (Supp. 03-1).

**R17-5-506. Repealed**

**Historical Note**

New Section recodified from R17-4-447 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section repealed; new Section made by final rulemaking at 9 A.A.R. 235, effective March 11, 2003 (Supp. 03-1). Repealed by final rulemaking at 18 A.A.R. 2365, effective November 10, 2012 (Supp. 12-3).

**R17-5-507. Repealed**

**Historical Note**

New Section recodified from R17-4-448 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 235, effective March 11, 2003 (Supp. 03-1).

**ARTICLE 6. IGNITION INTERLOCK DEVICE MANUFACTURERS**

**R17-5-601. Definitions**

In addition to the definitions under A.R.S. § 28-1301, in this Article and A.A.C. R17-4-408, unless the context otherwise requires:

“Alcohol” means ethyl alcohol, also called ethanol.

“Alcohol concentration” means the weight amount of alcohol contained in a unit volume of breath or air, measured in grams of ethanol/210 liters of breath or air and expressed as grams/210 liters.

“Alveolar breath sample” means the last portion of a prolonged, uninterrupted exhalation from which breath alcohol concentrations can be determined.

“Anticircumvention feature” means any feature or circuitry incorporated into the ignition interlock device that is designed to prevent human activity that would cause the device not to operate as intended.

“Authorized installer” means a person or entity appointed by a manufacturer, and certified by the Division, to install and service a certified ignition interlock device model provided by the manufacturer.

“Breath alcohol test” means analysis of a sample of the person’s expired alveolar breath to determine alcohol concentration.

“Calibration” means the testing, adjustment, or systematic standardization of an ignition interlock device to determine and verify its accuracy.

“Cancellation” means the withdrawal of a certification granted by the Division under this Article, which prohibits a previously certified ignition interlock device manufacturer, its authorized installer, or the authorized installer’s service center from offering, installing, or servicing an ignition interlock device under Arizona law.

“Certification” means a status granted by the Division under this Article, which permits a certified ignition interlock device manufacturer, an authorized installer, or an authorized installer’s service center to offer, install, or service an ignition interlock device under Arizona law.

“Customer number” means the system-generated, or other distinguishing number, assigned by the Division to each person conducting business with the Division. The customer number of a private individual is generally the person’s driver license or non-operating identification license number.

“Data storage system” means a computerized recording of all events monitored by an installed ignition interlock device, which may be reproduced in the form of specific reports.

“Director” means the Assistant Director for the Motor Vehicle Division of the Arizona Department of Transportation or the Assistant Director’s designee.

“Division” means the Arizona Department of Transportation’s Motor Vehicle Division.

“Emergency bypass” means an event that permits a vehicle equipped with an ignition interlock device to be started without requiring successful completion of a required breath alcohol test.

“Emergency situation” means a circumstance where the participant declares to a Division-certified installer that the vehicle needs to be moved as a condition of law or the participant has a valid and urgent need to operate the vehicle.

“False sample” means any sample other than the unaltered, undiluted, or unfiltered alveolar breath sample coming from the participant.

“Filtered breath sample” means any mechanism by which there is an attempt to remove alcohol from the human breath sample.

“Fixed-site service center” means a permanent location operated by an installer for conducting business and providing services related to a certified ignition interlock device.

“Free restart” means a function of a certified ignition interlock device that will allow a participant to restart the vehicle, under the conditions provided in R17-5-603, without having to complete another breath alcohol test.

“Ignition interlock investigator” means a Division representative authorized under R17-5-613 to inspect and monitor ignition interlock device manufacturers, installers, and service centers for continuous compliance with Articles 6 and 7 of this Chapter and A.R.S. Title 28, Chapter 4, Article 5.

“Illegal start” means the starting of a vehicle equipped with an ignition interlock device without successfully completing the required breath alcohol test.

“Independent laboratory” means a testing facility, not owned or operated by a manufacturer, that can test an ignition interlock device according to Sections 1 and 2 of the National Highway Traffic Safety Administration (NHTSA) Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDs), 57 FR 11772 to 11787, April 7, 1992.

“Installer” means a manufacturer, a manufacturer’s authorized representative, or a person or entity responsible for the day-to-day operations of a service center, who is certified by the Division to install a certified ignition interlock device and to provide certified ignition interlock device related services to the public.

“Installer-certified service representative” means any individual who has successfully completed all requirements under R17-5-705, and has received certification from an installer to install, inspect, download, calibrate, repair, monitor, maintain, service, or remove a specific certified ignition interlock device.

“Interlock” means the mechanism which prevents a motor vehicle from starting when the breath alcohol concentration of a participant meets or exceeds a preset value.

“Lock-out condition” means the operational status of a certified ignition interlock device, which after recording any violation of A.R.S. Title 28, Chapter 4, Article 5, immobilizes a participant’s vehicle by disallowing further operation of the device. The lock-out feature is built into an ignition interlock device through manufacturer software or firmware, and once activated, the device must be re-set by the manufacturer’s authorized installer.

“Manufacturer” means a person or entity that produces a certified ignition interlock device and is certified by the Division to offer the device for installation under Arizona law.

“Manufacturer’s representative” means an individual or entity designated by a manufacturer to represent or act on behalf of the manufacturer of a certified ignition interlock device.

“Material modification” means a change to a certified ignition interlock device that affects the functionality of the device.

“Mobile service center” means the portable operation of an installer, whether contained within a vehicle or temporarily erected on location, which includes all personnel and equipment necessary for an installer to conduct ignition interlock device related business and services, separately and simultaneously, with its parent fixed-site service center.

“Negative result” means a test result indicating that the alcohol concentration is less than the startup set point value.

“NHTSA” means the United States Department of Transportation’s National Highway Traffic Safety Administration.

“NHTSA specifications” means the specifications for breath alcohol ignition interlock devices published at 57 FR 11772 to 11787, April 7, 1992.

“Participant” means a person who is ordered by an Arizona court or the Division to equip each motor vehicle operated by the person with a functioning certified ignition interlock device and who becomes an authorized installer’s customer for installation and servicing of the certified ignition interlock device.

“Positive result” means a test result indicating that the alcohol concentration meets or exceeds the startup set point value.

“Purge” means any mechanism which cleanses or removes a previous breath or reference sample from the device and specifically removes alcohol.

“Reference sample device” means a device containing a sample of known alcohol concentration.

“Retest set point” has the same meaning as startup set point.

“Rolling retest” means an additional breath alcohol test required of the participant at random intervals. This test is in addition to the initial test required to start the vehicle.

“Service center” means a certified ignition interlock device service center operated by an installer who meets and maintains all certification and inspection requirements of the Division

under R17-5-707, whether operated on a fixed-site or mobile.

“Startup set point” means the alcohol concentration value, established by the Division under R17-5-603, which is determined by the Division to be the point at which, or above, an ignition interlock device shall disable the ignition of a motor vehicle.

“Violation” means any of several events including, but not limited to, high alcohol concentrations, illegal starts, and failures to perform rolling retests.

“Violation reset” means the unplanned servicing of a certified ignition interlock device and the downloading of information from its data storage system by a service center when required as a result of an over-accumulation of violations.

#### Historical Note

New Section recodified from R17-4-709 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

#### **R17-5-602. Ignition Interlock Device Manufacturer Certification; Expiration**

- A. An ignition interlock device manufacturer shall obtain certification by the Division under this Article before offering an ignition interlock device model for installation under Arizona law.
- B. After receiving Division certification for an ignition interlock device model under R17-5-604, the ignition interlock device manufacturer is effectively certified by the Division to offer its certified ignition interlock device model for installation under Arizona law.
- C. An ignition interlock device manufacturer shall submit a new application to the Division under R17-5-604 for the certification of each new ignition interlock device model the manufacturer intends to offer for installation.
- D. Manufacturer certification issued by the Division under this Article shall automatically expire if:
  - 1. The manufacturer no longer provides at least one currently certified ignition interlock device model for installation under Arizona law; and
  - 2. The manufacturer has no pending application on file with the Division for the certification of a device under R17-5-604.
- E. Once a manufacturer’s certification expires, the manufacturer may reapply for certification by submitting a new application to the Division for the certification of a device under R17-5-604.

#### Historical Note

New Section recodified from R17-4-709.01 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Former R17-5-602 renumbered to R17-5-604; new R17-5-602 made by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

#### **R17-5-603. Device Requirements, Technical Specifications, and Standards for Setup and Calibration**

- A. Accuracy standards. The startup set point value for an ignition interlock device shall be an alcohol concentration of 0.030 g/210 liters of breath. The accuracy of a device shall be 0.030 g/210 liters plus or minus 0.010 g/210 liters. The accuracy shall be determined by analysis of an external standard generated by a reference sample device.
- B. Alveolar breath sample. A device shall have a demonstrable feature designed to assure that a breath sample measured is essentially alveolar.

- C. Specificity. A test of alcohol-free samples shall not yield a positive result. Endogenously produced substances capable of being present in the breath shall not yield or significantly contribute to a positive result.
- D. Temperature. A device shall meet the requirements of subsection (A) when used at ambient temperatures of -20° Celsius to 83° Celsius.
- E. Anticircumvention standards. A device shall be designed so that anticircumvention features will be difficult to bypass.
1. Anticircumvention provisions shall include, but are not limited to, prevention or preservation of any evidence of cheating by attempting to use a false or filtered breath sample or electronically bypassing the breath sampling requirements of a device.
  2. A device shall use special seals or other methods that reveal attempts to bypass lawful device operation.
- F. Operational features.
1. A device shall allow a free restart of a motor vehicle's ignition, within three minutes after the ignition is switched off, without requiring another breath alcohol test.
  2. A device shall automatically purge alcohol before allowing analysis.
  3. A device shall have a data storage system with the capacity to sufficiently record and maintain a record of the participant's daily driving activities that occur between each regularly scheduled accuracy and compliance check referenced under R17-5-610 and R17-5-706. All daily driving activity records in the device's data storage system shall be maintained by the installer and the service center and made available to the Division upon request as provided under R17-5-612.
  4. A device shall use the most current version of the manufacturer's software and firmware to ensure compliance with this Article and any other applicable rule or statute. The manufacturer's software and firmware:
    - a. Shall require device settings and operational features to include, but are not limited to, sample delivery requirements, startup and retest set points, free restart, rolling retest requirements, violation settings and lock-out conditions; and
    - b. Shall not allow modification of the device settings or operational features by a service center or service representative unless the Division approves the modification under subsection (G).
  5. A device shall record all emergency bypasses in its data storage system.
  6. A device shall require a participant to perform a rolling retest within five to 15 minutes after the initial test required to start an engine. The device shall continuously require additional rolling retests at random intervals of up to 45 minutes after each previously requested retest.
    - a. A device shall emit a warning light, tone, or both, to alert a participant that a rolling retest is required.
    - b. A device shall require a participant to perform a new test to restart an engine if it is inadvertently switched off during or after a rolling retest warning.
    - c. A device shall use the startup set point value as its retest set point value.
    - d. A device shall record, in its data storage system, the result of each rolling retest performed by a participant.
    - e. A device shall immediately require another rolling retest each time a participant refuses to perform a requested rolling retest.
  7. Until a participant successfully performs a rolling retest, or the engine is switched off, a device shall record in its data storage system, each subsequent refusal of the participant to perform the requested rolling retest.
  8. Upon recording a violation of A.R.S. Title 28, Chapter 4, Article 5, the device shall emit a unique cue, either auditory, visual, or both, to warn a participant that the device will enter into a lock-out condition in 72 hours unless reset by the installer.
  9. When a violation results in a lock-out condition, the device shall:
    - a. Immobilize the participant's vehicle;
    - b. Uniquely record the event in the data storage system; and
    - c. Require a violation reset by the installer.
- G. Modification. No modification shall be made to the design or operational concept of a device after the Division has certified the device for installation under Arizona law.
1. A software or firmware update required to maintain a device is permissible if the update does not modify the design or operational concept of the device.
  2. Replacement, substitution, or repair of a part required to maintain a device is permissible if the part does not modify the design or operational concept of the device.
  3. If a manufacturer determines that an existing Division-certified ignition interlock device model requires a modification that may affect the operational concept of a device, the manufacturer shall immediately notify the Division.

#### Historical Note

New Section recodified from R17-4-709.02 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Former R17-5-603 renumbered to R17-5-606; new R17-5-603 made by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

#### R17-5-604. Ignition Interlock Device Certification; Application Requirements

- A. A manufacturer shall offer for installation only an ignition interlock device that is certified by the Division under this Section.
- B. For certification of an ignition interlock device model, a manufacturer shall submit to the Division a properly completed application form that provides:
1. The manufacturer's name;
  2. The manufacturer's business address and telephone number;
  3. The manufacturer's status as a sole proprietorship, partnership, limited liability company, or corporation;
  4. The name of the sole proprietor or of each partner, officer, director, manager, member, agent, or 20% or more stockholder;
  5. The name and model number of the ignition interlock device and the name under which the ignition interlock device will be marketed; and
  6. The following statements, signed by an authorized representative of the manufacturer and acknowledged by a notary public or Division agent:
    - a. A statement that all information provided on the application form, including all information provided on any attachment to the application form, is complete, true, and correct;
    - b. A statement that the manufacturer agrees to indemnify and hold harmless the state of Arizona and any department, division, agency, officer, employee, or agent of the state of Arizona from all liability for:



- i. Damage to property or injury to people arising, directly or indirectly, out of any act or omission by the manufacturer or its authorized installer relating to the installation and operation of the ignition interlock device; and
    - ii. All court costs, expenses of litigation, and reasonable attorneys' fees;
  - c. A statement that the manufacturer agrees to comply with all requirements under this Article; and
  - d. A statement that the manufacturer agrees to immediately notify the Division of any change to the information provided on the application form.
- C. A manufacturer shall submit the following additional items with the application form:
1. A document that provides a detailed description of the ignition interlock device and a photograph, drawing, or other graphic depiction of the device;
  2. A document that contains the complete technical specifications for the accuracy, reliability, security, data collection, recording, and tamper detection capabilities of the ignition interlock device;
  3. An independent laboratory's report that:
    - a. Presents supporting data to demonstrate that the ignition interlock device meets or exceeds the test results required by Sections 1 and 2 of the NHTSA specifications published at 57 FR 11772 to 11787, April 7, 1992. The NHTSA specifications are incorporated by reference and are on file with the Division and the NHTSA Office of Research & Technology (NTS-131), 400 7th St. S.W., Washington, D.C. 20590. This incorporation by reference contains no future editions or amendments;
    - b. Provides the independent laboratory's name, address, and telephone number; and
    - c. Provides the name and model number of the ignition interlock device tested;
  4. A laboratory certification form, signed by an authorized representative of the independent laboratory that prepared the report required under subsection (C)(3) and acknowledged by a notary public or Division agent, that states:
    - a. The laboratory is not owned or operated by a manufacturer and no other conflict of interest exists;
    - b. The laboratory tested the ignition interlock device in accordance with Sections 1 and 2 of the NHTSA specifications;
    - c. The laboratory confirms that the ignition interlock device meets or exceeds the test results required under Sections 1 and 2 of the NHTSA specifications;
    - d. The laboratory used properly maintained equipment and trained personnel to test the ignition interlock device; and
    - e. The laboratory presented accurate test results to the Division;
  5. A list of all authorized installers of the ignition interlock device, including the name, location, telephone number, contact person, and hours of operation of each authorized installer;
  6. A copy of the complete written instructions the manufacturer will provide to its authorized installers under R17-5-609 for installation and operation of the ignition interlock device for which the manufacturer seeks certification. The written instructions shall include a requirement for the installer to affix, to each certified ignition interlock device installed, a warning label that conforms to the criteria prescribed under R17-5-609, as illustrated on the application form provided by the Division;
  7. A copy of the complete written instructions the Manufacturer shall provide to its authorized installers under R17-5-609 for distribution under R17-5-704 to participants and other operators of a vehicle equipped with the ignition interlock device for which the manufacturer seeks certification; and
  8. A certificate of insurance, issued by an insurance company authorized to transact business in Arizona, specifying:
    - a. A product liability policy with a current effective date;
    - b. The name and model number of the ignition interlock device model covered by the policy;
    - c. Policy coverage of at least \$1,000,000;
    - d. The manufacturer as the insured and the state of Arizona as an additional insured;
    - e. Product liability coverage for defects in manufacture, materials, design, calibration, installation, and operation of the ignition interlock device; and
    - f. The insurance company will notify the Division at least 30 days before canceling the product liability policy.

#### Historical Note

New Section recodified from R17-4-709.03 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Former R17-5-604 renumbered to R17-5-607; new R17-5-604 renumbered from R17-5-602 and amended by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

#### R17-5-605. Application Processing; Time-frames; Exception

- A. The Division shall process an application for certification under this Article, and Article 7, only if an applicant meets all applicable application requirements.
- B. The Division shall, within 10 days of receiving an application for certification, provide notice to the applicant that the application is either complete or incomplete.
  1. The date of receipt is the date the Division stamps on the application when received.
  2. If an application is incomplete, the notice shall specifically identify what required information is missing.
- C. An applicant with an incomplete application shall provide all missing information to the Division within 15 days of the date indicated on the notice provided by the Division under subsection (B).
  1. After receiving all of the required information, the Division shall notify the applicant that the application is complete.
  2. The Division may deny certification if the applicant fails to provide the required information within 10 days of the date indicated on the notice.
- D. Except as provided under subsection (F), the Director shall render a decision on an application for certification under this Article or Article 7, within 45 days of the date indicated on the notice acknowledging receipt of a complete application, provided to the applicant under subsections (B) or (C).
- E. For the purpose of A.R.S. § 41-1073, the Division establishes the following time-frames for processing an application for certification under this Article or Article 7:
  1. Administrative completeness review time-frame: 15 days.
  2. Substantive review time-frame: 30 days.
  3. Overall time-frame: 45 days.

- F. Established time-frames may be adjusted by the Division as needed to obtain all external agency approvals required for certifying a new ignition interlock device model submitted by a manufacturer under R17-5-604.

#### Historical Note

New Section recodified from R17-4-709.04 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Former R17-5-605 renumbered to R17-5-608; new R17-5-605 made by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

#### R17-5-606. Application Completeness; Denial of Ignition Interlock Device Certification; Hearing

- A. An application for certification of an ignition interlock device model is complete when the Division receives:
1. From the manufacturer, a properly prepared application form;
  2. From the manufacturer, all additional items required under R17-5-604(C); and
  3. From the Arizona Department of Public Safety, under A.R.S. § 28-1462, written confirmation or disapproval of the independent laboratory's report that the ignition interlock device meets NHTSA specifications.
- B. The Director shall deny an application for certification of an ignition interlock device model if all requirements of subsection (A) are not met, or upon finding any of the following:
1. The design, materials, or workmanship contains a defect that causes the ignition interlock device model to fail to function as intended;
  2. The manufacturer's liability insurance coverage is terminated or canceled;
  3. The manufacturer no longer offers the ignition interlock device model for installation under Arizona law;
  4. The manufacturer or independent laboratory provided false or inaccurate information to the Division relating to the performance of the ignition interlock device model;
  5. The components, design, or installation and operating instructions have undergone a modification that causes the ignition interlock device model to be out of compliance with NHTSA specifications; or
  6. The Division receives a report of device disapproval from an independent laboratory or other external reviewer.
- C. The Division shall mail to the manufacturer, written notification of the certification or denial of an ignition interlock device model. A notice denying certification of an ignition interlock device model shall specify the basis for the denial and indicate that the applicant may, within 15 days of the date on the notice, request a hearing on the Director's decision to deny certification by filing a written request with the Division's Executive Hearing Office as prescribed under 17 A.A.C. 1, Article 5.
- D. If a manufacturer timely requests a hearing on the Director's decision to deny certification, the Division's Executive Hearing Office shall conduct the hearing as provided under A.R.S. Title 41, Chapter 6, Article 6, and 17 A.A.C. 1, Article 5.

#### Historical Note

New Section recodified from R17-4-709.05 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Former R17-5-606 renumbered to R17-5-609; new R17-5-606 renumbered from R17-5-603 and amended by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

#### R17-5-607. Cancellation of Certification; Hearing

- A. The Director shall cancel an ignition interlock device model certification and remove the device from its list of certified ignition interlock devices upon finding any of the following:

1. The design, materials, or workmanship contains a defect that causes the ignition interlock device model to fail to function as intended;
  2. The manufacturer's liability insurance coverage is terminated or canceled;
  3. The manufacturer no longer offers the ignition interlock device model for installation under Arizona law;
  4. The manufacturer or independent laboratory provided false or inaccurate information to the Division relating to the performance of the ignition interlock device model;
  5. The components, design, or installation and operating instructions have undergone a modification that causes the ignition interlock device model to be out of compliance with NHTSA specifications;
  6. The manufacturer instructs the Division to cancel its certification of the ignition interlock device model; or
  7. The manufacturer, its authorized installer, or the device does not comply with this Article or any other applicable rule or statute.
- B. The Division, upon finding any of the conditions described under subsection (A), shall mail to the manufacturer a notice and order of cancellation of certification for the specific ignition interlock device model. The notice and order of cancellation shall:
1. Specify the basis for the action; and
  2. State that the manufacturer may, within 15 days of the date on the notice, file a written request for a hearing with the Division's Executive Hearing Office to show cause as to why the ignition interlock device certification should not be cancelled.
- C. If a hearing to show cause is timely requested, the Division's Executive Hearing Office shall conduct the hearing as prescribed under A.R.S. Title 41, Chapter 6, Article 6, and 17 A.A.C. 1, Article 5.
- D. Within 60 days after the effective date of an order of cancellation, the manufacturer shall, at the manufacturer's own expense, ensure the removal of all decertified ignition interlock devices and facilitate the replacement of each device with a certified ignition interlock device.
- E. The manufacturer of a previously decertified ignition interlock device model may reapply to the Division for certification of the ignition interlock device model under R17-5-604.

#### Historical Note

New Section recodified from R17-4-709.06 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Former R17-5-607 renumbered to R17-5-610; new R17-5-607 renumbered from R17-5-604 and amended by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

#### Appendix A. Renumbered

#### Historical Note

New Appendix recodified from 17 A.A.C. 4, Article 7 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Appendix A renumbered to R17-5-610, Appendix A, by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

#### Appendix B. Renumbered

#### Historical Note

New Appendix recodified from 17 A.A.C. 4, Article 7 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Appendix B renumbered to R17-5-610, Appendix B, by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

**Appendix C. Renumbered****Historical Note**

New Appendix recodified from 17 A.A.C. 4, Article 7 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Appendix C renumbered to R17-5-610, Appendix C, by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

**R17-5-608. Modification of a Certified Ignition Interlock Device Model**

- A.** A manufacturer shall notify the Division in writing at least 10 days before a material modification is made to a certified ignition interlock device model.
- B.** Before providing a previously certified but materially modified ignition interlock device model for installation in a motor vehicle under an order of an Arizona court or the Division, a manufacturer shall:
  1. Submit to the Division a completed application form and all additional items required under R17-5-604(C), and
  2. Obtain certification of the materially modified ignition interlock device from the Division.
- C.** The Division's certification of a materially modified ignition interlock device model does not affect the original certification of the unmodified model.

**Historical Note**

New Section recodified from R17-4-709.07 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Former R17-5-608 renumbered to R17-5-611; new R17-5-608 renumbered from R17-5-605 and amended by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

**R17-5-609. Manufacturer Referral to Division-certified Installers; Manufacturer Oversight of its Authorized Installers**

- A.** A manufacturer shall refer a participant only to a Division-certified installer.
- B.** A manufacturer shall provide the Division with a toll-free telephone number for a participant to call to obtain names, locations, telephone numbers, contact people, and hours of operation for its authorized installers.
- C.** A manufacturer shall ensure that its authorized installer follows the installation and operation procedures established by the manufacturer.
- D.** A manufacturer shall ensure that its authorized installer receives and maintains all necessary training and skills required to install, troubleshoot, examine, and verify proper operation of the certified ignition interlock device.
- E.** A manufacturer shall ensure that its authorized installer:
  1. Complies with the manufacturer's procedures for removing a certified ignition interlock device from a vehicle, and
  2. Electronically notifies the Division within 24 hours after removing a certified ignition interlock device.
- F.** A manufacturer shall ensure that its authorized installer distributes to every participant, and makes available for every person operating a motor vehicle equipped with a certified ignition interlock device, the manufacturer's written instructions for the following:
  1. Operating a motor vehicle equipped with the certified ignition interlock device,
  2. Cleaning and caring for the certified ignition interlock device, and
  3. Identifying and addressing any vehicle malfunctions or repairs that may affect the certified ignition interlock device.

- G.** A manufacturer shall ensure that its authorized installer provides to every participant, and makes available for any person operating a motor vehicle equipped with a certified ignition interlock device, the manufacturer's specified training in how to operate a motor vehicle equipped with the device.
- H.** A manufacturer or installer shall provide a warning label, for each certified ignition interlock device installed, which shall:
  1. Be of a size appropriate to each device model;
  2. Have an orange background; and
  3. Contain the following language in black lettering: "Warning! Any person tampering with, circumventing, or otherwise misusing this Ignition Interlock Device, is guilty of a Class 1 misdemeanor."
- I.** A manufacturer shall ensure that its authorized installer affixes conspicuously to each installed certified ignition interlock device the warning label described under subsection (H).

**Historical Note**

New Section recodified from R17-4-709.08 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Former R17-5-609 renumbered to R17-5-612; new R17-5-609 renumbered from R17-5-606 and amended by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

**R17-5-610. Installation Verification; Accuracy Check; Non-compliance and Removal Reporting**

- A.** A participant shall have installed in a motor vehicle, only an ignition interlock device certified by the Division under R17-5-604.
- B.** A manufacturer shall comply, and ensure that its authorized installer complies, with its written procedures for the installation of a certified ignition interlock device.
- C.** Certified ignition interlock device installation verification.
  1. A manufacturer shall electronically transmit, or ensure that its authorized installer electronically transmits, a Certified Ignition Interlock Device Summarized Reporting Record to the Division within 24 hours of installing a certified ignition interlock device.
  2. The electronic Certified Ignition Interlock Device Summarized Reporting Record for installation verification shall contain all of the following information:
    - a. Installer ID;
    - b. Participant's full name (first, middle, last and suffix);
    - c. Date of birth;
    - d. Driver license or customer number;
    - e. Report date;
    - f. Install date;
    - g. Removal date; and
    - h. Report Type.
- D.** Certified ignition interlock device accuracy and compliance check.
  1. A manufacturer shall ensure that its authorized installer schedules a participant for accuracy and compliance checks as follows:
    - a. 30 days, 60 days, and 90 days after installation of a certified ignition interlock device; and
    - b. At least once every 60 days after the 90-day accuracy and compliance check.
  2. A manufacturer shall electronically transmit, or ensure that its authorized installer electronically transmits, a Certified Ignition Interlock Device Summarized Reporting Record to the Division within 24 hours after performing an accuracy and compliance check on an installed certified ignition interlock device.

3. The electronic Certified Ignition Interlock Device Summarized Reporting Record for the accuracy and compliance check shall contain all of the following information:
  - a. Installer ID;
  - b. Participant's full name (first, middle, last and suffix);
  - c. Date of birth;
  - d. Driver license or customer number;
  - e. Report date;
  - f. Install date;
  - g. Removal date;
  - h. Report Type; and
  - i. Noncompliance code and breath alcohol concentration violation count as applicable.
- E. Certified ignition interlock device noncompliance report.
  1. A manufacturer shall electronically transmit, or ensure that its authorized installer electronically transmits, a Certified Ignition Interlock Device Summarized Reporting Record to the Division, within 24 hours after conducting an accuracy and compliance check, when an installed certified ignition interlock device displays evidence of tampering, circumvention, or misuse.
  2. The electronic Certified Ignition Interlock Device Summarized Reporting Record for noncompliance shall indicate the condition of noncompliance and contain all of the following information:
    - a. Installer ID;
    - b. Participant's full name (first, middle, last and suffix);
    - c. Date of birth;
    - d. Driver license or customer number;
    - e. Report date;
    - f. Install date;
    - g. Removal date;
    - h. Report Type; and
    - i. Noncompliance code and breath alcohol concentration violation count as applicable.
- F. Certified ignition interlock device removal report.
  1. A manufacturer shall electronically transmit, or ensure that its authorized installer electronically transmits, a Certified Ignition Interlock Device Summarized Reporting Record to the Division within 24 hours if a certified ignition interlock device is removed before the end of a participant's certified ignition interlock device requirement period.
  2. The electronic Certified Ignition Interlock Device Summarized Reporting Record for removal of a device shall indicate the condition of noncompliance and contain all of the following information:
    - a. Installer ID;
    - b. Participant's full name (first, middle, last and suffix);
    - c. Date of birth;
    - d. Driver license or customer number;
    - e. Report date;
    - f. Install date;
    - g. Removal date;
    - h. Report Type; and
    - i. Noncompliance code and breath alcohol concentration violation count as applicable.

**Historical Note**

New Section recodified from R17-4-709.09 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Former R17-5-610 renumbered to R17-5-703; new R17-5-610 renumbered from R17-5-607 and amended by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp.

07-4).

**Exhibit A. Renumbered****Historical Note**

New Exhibit recodified from 17 A.A.C. 4, Article 7 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Exhibit A renumbered to R17-5-703, Exhibit A, by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

**Exhibit B. Renumbered****Historical Note**

New Exhibit recodified from 17 A.A.C. 4, Article 7 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Exhibit B renumbered to R17-5-703, Exhibit B, by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

**Appendix A. Repealed****Historical Note**

Appendix A renumbered from R17-5-607, Appendix A, and repealed by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

**Appendix B. Repealed****Historical Note**

Appendix B renumbered from R17-5-607, Appendix B, and repealed by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

**Appendix C. Repealed****Historical Note**

Appendix C renumbered from R17-5-607, Appendix C, and repealed by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

**R17-5-611. Emergency Assistance by Manufacturers and Authorized Installers; Continuity of Service to Participants**

- A. A manufacturer shall ensure that its authorized installer provides to each participant a 24-hour emergency phone number for assistance in the event a certified ignition interlock device fails to operate properly or a vehicle experiences a problem relating to the installation, operation, or failure of a certified ignition interlock device.
  1. Within two hours after receiving a participant's call for emergency assistance, if the authorized installer determines that a vehicle is experiencing a problem relating to the installation, operation, or failure of a certified ignition interlock device, the authorized installer shall either:
    - a. Provide telephonically, the technical information required for the participant to resolve the issue; or
    - b. Provide or arrange for appropriate towing or roadside assistance services if unable to resolve the issue telephonically.
  2. Within 48 hours after receiving a participant's call for emergency assistance, the authorized installer shall either:
    - a. Make the certified ignition interlock device functional, or
    - b. Replace the certified ignition interlock device.
- B. A manufacturer shall ensure uninterrupted service to a participant for the duration of the participant's certified ignition interlock device requirement, which shall include facilitating the immediate replacement of an authorized installer if the installer goes out of business or its certification is cancelled by the Division under R17-5-708.

1. If a manufacturer terminates its authorized installer's appointment, or the Division cancels the installer's certification under R17-5-708, the manufacturer shall:
    - a. Obtain participant records from its formerly authorized installer; and
    - b. Provide the participant records to a new authorized installer for retention according to R17-5-612; or
    - c. Retain the participant records according to R17-5-612, if a new authorized installer is not appointed.
  2. If a manufacturer appoints a new authorized installer, the manufacturer shall:
    - a. Ensure that the new authorized installer operates either:
      - i. A mobile service center that is located within 75 miles of the Arizona residence of each participant with an installed certified ignition interlock device provided by the manufacturer; or
      - ii. A service center that is a permanent facility located within 125 miles of the Arizona residence of each participant with an installed certified ignition interlock device provided by the manufacturer; and
    - b. Notify each participant affected by the appointment of the new authorized installer at least 30 days before the appointment becomes effective.
  3. If a manufacturer does not appoint a new authorized installer, or its new authorized installer cannot provide service as prescribed under subsection (2), the manufacturer, at no cost to the participant, shall:
    - a. Provide written notification to all participants affected by the change of authorized installers at least 30 days before the authorized installer is to discontinue service. The written notification shall inform the participant of the manufacturer's responsibility to facilitate removal and replacement of the certified ignition interlock device and shall provide all of the instructions necessary for the participant to successfully exchange the device;
    - b. Remove the device from the vehicle of each affected participant; and
    - c. Facilitate the replacement of each device through a manufacturer with an authorized installer that can provide service as prescribed under subsection (2).
  4. A manufacturer shall notify the Division within 72 hours of replacing its authorized installer.
  5. A manufacturer shall submit to the Division an updated list of its authorized installers within 10 days after making a change to the list provided to the Division under R17-5-604.
- C.** Except in an emergency situation, a manufacturer or its authorized installer shall not remove another manufacturer's certified ignition interlock device without the express permission of that manufacturer.
1. If in an emergency situation a manufacturer or its authorized installer removes another manufacturer's certified ignition interlock device, that manufacturer or authorized installer shall return the device to the original installer within 72 hours of the emergency removal; and
  2. The original installer, upon receipt of the device, shall provide to the Division an electronic report of the device removal under R17-5-610, which shall include the transmission of all data stored in its data storage system.
- D.** A manufacturer shall facilitate the immediate replacement of its authorized installer's service center if the service center goes out of business or its Division certification is cancelled under R17-5-708. The manufacturer shall notify the Division within 72 hours of replacing a service center.
1. If an out-of-business or cancelled service center is replaced, the manufacturer shall make all reasonable efforts to obtain, from the service center being replaced, all participant records and data required to be retained under R17-5-612. The records shall be provided to, and maintained by, the new service center.
  2. If an out-of-business or cancelled service center is not replaced, the manufacturer shall retain the records and data as required under R17-5-612. The Division shall be notified of this event within 72 hours.
    - a. The manufacturer shall facilitate removal of all installed certified ignition interlock devices no longer serviced by the out-of-business or cancelled service center, and shall bear the cost of replacing each device with a serviceable certified ignition interlock device, even if the replacement device must be provided through an alternate manufacturer.
    - b. The manufacturer shall, within 30 days, make a reasonable effort to notify its customers of the change of service center or replacement of a device.
  3. If neither subsection (1) nor (2) can be accomplished, the manufacturer shall, within 60 days:
    - a. Notify its customers and the Division that service will be terminated; and
    - b. Remove each device at no cost to the customer.

#### Historical Note

Section R17-5-611 renumbered from R17-5-608 and amended by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

#### **R17-5-612. Records Retention; Submission of Copies and Quarterly Reports; Periodic Inspections**

- A.** Records retention. A manufacturer shall retain, or ensure that its authorized installer retains, a participant's records for five years after the removal of a certified ignition interlock device. The retained records shall consist of every document relating to installation and operation of the certified ignition interlock device.
- B.** Copies of records and quarterly reports.
1. A manufacturer shall ensure that its authorized installer or the manufacturer provides copies of participants' records to the Division within 10 days after Division personnel make a request for copies of records, including records relating to installation and operation of the certified ignition interlock device.
  2. A manufacturer shall ensure that its authorized installer mails, faxes, or e-mails to the Division, by the 10th day of January, April, July, and October, a quarterly report containing the following information for the previous three months:
    - a. The number of certified ignition interlock devices the authorized installer currently has in service;
    - b. The number of certified ignition interlock devices installed since the previous quarterly report; and
    - c. The number of certified ignition interlock devices removed by the authorized installer since the previous quarterly report.
- C.** Periodic inspections. The Division shall periodically conduct an inspection at the premises of a manufacturer or its authorized installer, under A.R.S. § 41-1009 and R17-5-613. The inspection shall determine whether the manufacturer, its authorized installer, the service center of the authorized installer, and the installer-certified service representatives are in compliance with this Article and Article 7.

**Historical Note**

Section R17-5-612 renumbered from R17-5-609 and amended by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

**R17-5-613. Ignition Interlock Investigator**

- A. The Division's ignition interlock investigator shall investigate any complaint or report of misconduct brought against a certified ignition interlock device manufacturer, installer, service center, or installer-certified service representative for noncompliance with a provision of Articles 6 or 7 of this Chapter or A.R.S. Title 28, Chapter 4, Article 5.
- B. Inspection of a manufacturer, installer, or service center under Articles 6 or 7 of this Chapter shall be conducted in accordance with A.R.S. § 41-1009. The inspection shall include an examination of participant records and verification of an adequate supply of the warning labels and written instructions required to be made available under A.R.S. § 28-1462, R17-5-609, and R17-5-704.
- C. The Division's ignition interlock investigator shall perform onsite inspections of a manufacturer, installer, or service center as needed to verify continuous compliance with the Division's ignition interlock program requirements established under Articles 6 and 7 of this Chapter and A.R.S. Title 28, Chapter 4, Article 5.

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

**ARTICLE 7. IGNITION INTERLOCK DEVICE INSTALLERS****R17-5-701. Definitions**

In addition to the definitions under A.R.S. § 28-1301, and unless the context otherwise requires, the definitions under A.A.C. R17-4-408 and R17-5-601 apply to this Article.

**Historical Note**

New Section recodified from R17-4-801 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 12 A.A.R. 2297, effective August 5, 2006 (Supp. 06-2). New Section made by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

**R17-5-702. Ignition Interlock Device Installer Certification; Application Requirements**

- A. A manufacturer's authorized installer shall be certified by the Division before installing a certified ignition interlock device under Arizona law.
- B. A manufacturer's authorized installer shall obtain from the manufacturer, as provided under R17-5-609, all necessary training and skills required to install, troubleshoot, examine, and verify proper operation of the manufacturer's certified ignition interlock device.
- C. A manufacturer's authorized installer shall submit to the Division a properly completed application for installer certification. The application for installer certification shall provide:
  1. The authorized installer's name;
  2. The authorized installer's business address and telephone number;
  3. The authorized installer's status as a sole proprietorship, partnership, limited liability company, or corporation;
  4. The name of the sole proprietor or of each partner, officer, director, manager, member, agent, or 20% or more stockholder;

5. The name and model number of each certified ignition interlock device the authorized installer intends to install; and
6. The following statements, signed by the authorized installer and acknowledged by a notary public or Division agent:
  - a. A statement that all information provided on the application form, including all information provided on any attachment to the application form, is complete, true, and correct;
  - b. A statement that the authorized installer agrees to indemnify and hold harmless from all liability the state of Arizona and any department, division, agency, officer, employee, or agent of the state of Arizona;
  - c. A statement that the authorized installer agrees to comply with all requirements under this Article; and
  - d. A statement that the authorized installer agrees to immediately notify the Division of any change to the information provided on the application form.
- D. The Division shall process an application for installer certification as provided under R17-5-605.
- E. Division certification issued to an authorized installer under this Article shall not expire as long as the installer remains authorized by a manufacturer to install its certified ignition interlock device model under Arizona law.
  1. If a Division-certified installer is no longer authorized by a manufacturer to install its certified ignition interlock device, the installer's certification is immediately expired.
  2. If the installer again becomes authorized by a manufacturer to install its certified ignition interlock device, the installer may reapply to the Division for certification under this Article by submitting a new application.
- F. A Division-certified ignition interlock device installer shall notify the Division within 24 hours of making a decision to relocate a fixed-site service center.
- G. A Division-certified ignition interlock device installer shall train and certify each of its service representatives on the proper installation of a certified ignition interlock device before allowing the service representative to install the certified ignition interlock device.
- H. A Division-certified ignition interlock device installer shall provide to the Division a current list of the names of each of its certified service representatives. The installer shall electronically notify the Division within 24 hours of making a change to its list.

**Historical Note**

New Section recodified from R17-4-805 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 12 A.A.R. 2297, effective August 5, 2006 (Supp. 06-2). New Section made by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

**R17-5-703. Ignition Interlock Device Installer Bond Requirements**

- A. Before installing, servicing, or removing a certified ignition interlock device, an installer shall:
  1. Be appointed by a manufacturer as an authorized installer of its certified ignition interlock device;
  2. Obtain an ignition interlock installer bond from a surety company authorized by the Arizona Department of Insurance to conduct general surety business in Arizona. The ignition interlock installer bond shall be:
    - a. In the amount of \$25,000;

- b. On the approved form provided by the Division; and
  - c. Maintained for as long as the installer intends to install, service, or remove Division-certified ignition interlock devices under Arizona law;
  - 3. Submit the original completed ignition interlock installer bond to the Arizona Department of Transportation, Motor Vehicle Division, Ignition Interlock Program, 1801 W. Jefferson St. MD530M, Phoenix, AZ 85007; and
  - 4. Receive Division certification under R17-5-702.
- B.** An installer authorized by a manufacturer and certified by the Division to install, service, or remove more than one certified ignition interlock device model needs only one bond.

**Historical Note**

New Section recodified from R17-4-806 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 12 A.A.R. 2297, effective August 5, 2006 (Supp. 06-2). Section R17-5-703 renumbered from R17-5-610 and amended by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

**Exhibit A. Repealed****Historical Note**

Exhibit A renumbered from R17-5-610, Exhibit A, and repealed by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

**Exhibit B. Repealed****Historical Note**

Exhibit B renumbered from R17-5-610, Exhibit B, and repealed by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

**R17-5-704. Division-certified Installer Responsibilities**

An authorized installer certified by the Division to install a certified ignition interlock device shall:

1. Follow the installation and operating procedures established, and provided, by the manufacturer;
2. Acquire and maintain all necessary training and skills specified by the manufacturer for installing, troubleshooting, examining, and verifying the proper operation of its certified ignition interlock device;
3. Comply with all of the manufacturer's procedures for removing the certified ignition interlock device from a vehicle;
4. Electronically notify the Division within 24 hours after removing a certified ignition interlock device under R17-5-611;
5. Provide to the manufacturer, or to the Division if delegated by the manufacturer, an accurate electronic reporting of all applicable information required of the manufacturer under R17-5-610;
6. Provide to every participant, and make available for every person operating a motor vehicle equipped with the certified ignition interlock device, a copy of the manufacturer's written instructions for the following:
  - a. Operating a motor vehicle equipped with the certified ignition interlock device;
  - b. Cleaning and caring for the certified ignition interlock device; and
  - c. Identifying and addressing vehicle malfunctions or repairs that may affect the certified ignition interlock device;
7. Ensure that each participant receives an operator's manual and is further instructed regarding all of the following:

- a. How to use the system;
  - b. How to obtain service for the system;
  - c. How to find answers to any additional questions;
  - d. How the alcohol retest feature works;
  - e. How drinking alcohol before a test may result in a reading of sensitive or fail;
  - f. How the handset of the device shall not be removed, except by an installer-certified service representative;
  - g. How missing an appointment for a regularly scheduled accuracy check will cause the certified ignition interlock device to enter into a lock-out condition that will emit a unique cue, either auditory, visual, or both, to warn the driver that after 72 hours the vehicle will not start. It shall be the responsibility of each participant to have the car towed to the service center if a lock-out condition occurs;
  - h. How noncompliance with a regularly scheduled accuracy check shall result in suspension of the participant's driver license until proof of compliance is submitted to the Division under A.R.S. § 28-1463; and the duration of the participant's certified ignition interlock device requirement shall be extended under A.R.S. § 28-1464 and A.A.C. R17-4-408;
  - i. What the penalties are for tampering with, circumventing, or misusing the system;
  - j. What will happen after failing a start-up breath alcohol test; and
  - k. What will happen after failing a rolling retest.
8. Ensure that each participant demonstrates:
- a. A properly delivered alveolar breath sample; and
  - b. An understanding of how the abort test feature works.
9. Affix conspicuously, the warning label provided by the Manufacturer under R17-5-609.
10. Check each device for evidence of tampering at least once every 60 days or more frequently if needed. This anticircumvention check shall be conducted at each participant's regularly scheduled accuracy and compliance check required under R17-5-610.
11. Notify the Division electronically under R17-5-610 if any evidence of tampering is discovered.

**Historical Note**

New Section recodified from R17-4-807 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 12 A.A.R. 2297, effective August 5, 2006 (Supp. 06-2). New Section made by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

**R17-5-705. Installer-certified Service Representatives****A. Initial certification.**

1. To achieve certification as a service representative, an individual shall obtain written documentation from a Division-certified ignition interlock device installer documenting that the individual is currently trained in each aspect involved with the specific certified ignition interlock device for which the individual seeks certification to install or service.
2. An installer shall not certify as a service representative, any individual with a felony conviction in the five years preceding the individual's request for certification. In this Section, conviction means that a court of competent jurisdiction adjudicated the individual guilty.
3. The Division, with advance notice to the installers, may require additional standards for installer certification of

its service representatives when needed to ensure compliance with the Division's ignition interlock program.

**B. Proficiency requirements.**

1. It is the responsibility of the installer to ensure that its certified service representatives maintain proficiency in each aspect involved with each specific certified ignition interlock device model the individual is certified to install or service.
2. The Division's ignition interlock investigator may at any time require an installer-certified service representative to demonstrate competency in the installation, inspection, downloading, calibrating, repairing, monitoring, maintaining, servicing or removal of a specific certified ignition interlock device. A failure of the installer-certified service representative to demonstrate proficiency to the Division's ignition interlock investigator may result in disciplinary action against the installer as provided under R17-5-707.

**Historical Note**

New Section recodified from R17-4-808 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 12 A.A.R. 2297, effective August 5, 2006 (Supp. 06-2). New Section made by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

**R17-5-706. Accuracy and Compliance Check; Requirements**

- A.** An installer-certified service representative shall inspect, maintain, and check each certified ignition interlock device for calibration accuracy and operational performance before the device is placed into, or returned to, service.
- B.** The installer-certified service representative shall perform each accuracy and compliance check in accordance with NHTSA specifications at a service center authorized by the installer and certified by the Division under R17-5-707.
- C.** The accuracy and compliance check performed under R17-5-610 shall include an inspection of the device to verify that it is properly functioning in accordance with all of the following criteria:
  1. Accuracy standards as prescribed under R17-5-603;
    - a. The device shall be calibrated before placed into, or returned to, service.
    - b. The device shall be subjected to a calibration test before returning it to service. This test shall consist of introducing to the device a known alcohol concentration from a reference sample device, the analysis of which indicates the device's agreement with the known concentration. The installer's software shall be capable of performing, documenting, and reporting the result of this calibration test. The test result described herein shall verify the accuracy of the ignition interlock device according to the standards prescribed under R17-5-603; and
  2. Anticircumvention standards and operational features as prescribed under R17-5-603.
- D.** The calibration test referenced under subsection (C)(1) shall be performed when the information uploaded from a device indicates that the device has experienced an interruption in service or was completely disconnected. Additionally, the complete device shall be examined for evidence of tampering and circumvention while it is still attached to the vehicle.
- E.** If calibration confirmation test results reveal that the device is not properly calibrated, the device shall be recalibrated to restore the accuracy standards prescribed under R17-5-603 before the device is returned to service.

- F.** If at any time an individual device fails to meet the provisions of this Section, the manufacturer, installer, service center, or installer-certified service representative shall either:
  1. Repair, recalibrate, and retest the device to ensure that it does meet all applicable standards; or
  2. Remove the device from service.

**Historical Note**

New Section recodified from R17-4-501 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 12 A.A.R. 2297, effective August 5, 2006 (Supp. 06-2). New Section made by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

**R17-5-707. Certification and Inspection of Service Centers; Application**

- A.** A service center, whether located on a fixed site or mobile, shall be approved and certified by the Division under this Article before it is used by an installer to conduct certified ignition interlock device related business in this state.
- B.** For Division approval and certification of a service center, an installer shall submit to the Division a separate application for each individual service center the installer intends to use for conducting certified ignition interlock device related business in this state.
- C.** On an application for the approval and certification of a service center, available from the Division, an installer shall identify:
  1. The physical location of the service center;
  2. The ignition interlock device, or devices, to be merchandised and serviced at the location; and
  3. The reference sample device, or devices, that will be used at the location.
- D.** An installer shall attach, to the application submitted to the Division under subsection (B), a statement from the manufacturer acknowledging that the installer is authorized to install the certified ignition interlock device, or devices, described on the application.
- E.** An installer applying for Division approval and certification of a service center shall agree to:
  1. Allow the Division access to the service center for inspection under subsection (G); and
  2. Comply with all provisions under this Article and A.R.S. Title 28, Chapter 4, Article 5.
- F.** For Division approval and certification of a service center, the installer's ignition interlock device testing facilities, equipment, and the procedures used in the service center shall meet the following conditions:
  1. A fixed-site service center shall be located in a facility that properly and successfully accommodates installing, inspecting, downloading, calibrating, repairing, monitoring, maintaining, servicing, and removing a specific ignition interlock device. The installer shall:
    - a. Provide a designated waiting area for the participant that is separate from the installation area; and
    - b. Ensure that no participant witnesses installation of the certified ignition interlock device.
  2. A mobile service center shall be equipped with the same materials and capacities prescribed under subsection (1). An installer or service representative operating a mobile service center shall:
    - a. Designate a waiting area for the participant that is separate from the area used for the installation; and
    - b. Ensure that no participant witnesses installation of the certified ignition interlock device.



3. The installer, whether operating a fixed-site service center, or mobile, shall ensure that its certified service representatives utilize all of the following:
  - a. The analysis of a reference sample such as head-space gas from a mixture of water and alcohol, the results of which shall agree with the reference sample predicted value, or other methodologies approved by the Division. The preparatory documentation on the reference sample solution, such as a certificate of analysis, shall be made available to the Division upon request.
  - b. The startup set point value established under R17-5-603. All analytical results shall be expressed in grams of alcohol per 210 liters of breath (g/210L).
  - c. The most current versions of manufacturer software and firmware to ensure continuous compliance under this Article and A.R.S. Title 28, Chapter 4, Article 5.
4. Only a properly trained installer-certified service representative shall perform certified ignition interlock device related services rendered through a service center.
  - a. The installer shall maintain sufficient staff at each service center to ensure an acceptable level of service. The service center shall always be staffed with at least one certified service representative.
  - b. The installer shall schedule accuracy and compliance checks at each service center in a manner that will not deprive a participant of an acceptable level of service.
  - c. The installer's software shall document the certified service representative performing each accuracy and compliance check and shall record the date each service is performed.
  - d. Division-certified installers may train potential certified service representatives in the service center only under the direct supervision of a currently certified service representative.
5. The installer shall agree to:
  - a. Submit a violation to the Division as prescribed under R17-5-610 no later than 24 hours after the installer discovers the violation;
  - b. Maintain complete records of each device installation for five years from the date of its removal;
  - c. Require each applicant seeking installer certification as a service representative to certify that he or she has not been convicted of a felony within the five years preceding the date of application;
  - d. Retain the five-year felony certification required of each installer-certified service representative under subsection (c) for five years after the date of the employee's separation from employment; and
  - e. Make available to the Division upon request, either by inspection or in hardcopy form, all records relating to the installer's ignition interlock device operations.
6. The installer shall ensure that all anticircumvention features are activated on each installed certified ignition interlock device.
7. The installer shall install and inspect each certified ignition interlock device as provided under this Article.
  - a. Each time an installer uploads the information from a participant's certified ignition interlock device, the installer-certified service representative shall perform a visual inspection of the vehicle, the device, and the device's wiring to ensure no tampering or circumvention has occurred during the monitoring period.
- b. The calibration test referenced under R17-5-706 shall be performed if the downloaded device information indicates that the device has experienced an interruption in service or was completely disconnected.
8. The installer shall agree to abide by conditions for the removal of an ignition interlock device, including but not limited to the following:
  - a. No ignition interlock device shall be removed without notifying the Division of the removal under R17-5-610.
  - b. A service representative or service center shall not remove the certified-ignition interlock device of another manufacturer, except in an emergency, or other special circumstance authorized by the Division. All such removals shall be documented and reported to the Division. All device removal records shall be retained as prescribed under R17-5-612.
  - c. When a participant requests to exchange one manufacturer's device for the device of another manufacturer, the installer of the original device shall notify the Division of the device removal under R17-5-610.
- G. The Division may cancel the certification of an installer or its service center if the installer or service center is found to be operating in violation of any provision under this Article or A.R.S. Title 28, Chapter 4, Article 5. To ensure continuous compliance with all provisions under this Article and A.R.S. Title 28, Chapter 4, Article 5, the Division's ignition interlock investigator may inspect an installer's service center under A.R.S. § 41-1009.
- H. An installer shall designate a custodian of records who shall, if required in an administrative hearing or court proceeding, provide testimony concerning the interpretation of data storage system records and answer questions concerning the installer's certification and compliance with the Division's ignition interlock program requirements.
- I. Before issuing certification, the Division may perform an onsite evaluation of a service center to verify compliance with this Article.
- J. After verifying compliance with subsections (A) through (F), the Division shall issue a certificate to the installer and each service center that shall remain valid until cancelled by the Division or terminated by the installer or service center. Issuance of a certificate to an installer or service center under this Section shall be evidence that the installer's service center has met all of the criteria necessary for approval and certification by the Division.
- K. Certification of the installer's service center is contingent upon the installer's agreement to conform with and abide by all directives, orders, and policies issued by the Division regarding any service center activities regulated by the Division under this Article and A.R.S. Title 28, Chapter 4, Article 5, which may include:
  1. Program administration,
  2. Reports,
  3. Records and forms,
  4. Inspections,
  5. Methods of operations and testing protocol,
  6. Personnel training and qualifications,
  7. Criminal history considerations for installer-certified service representatives, and
  8. Records custodian.

- L. Certification issued under this Section may be cancelled by the Division if the installer, service center, or installer-certified service representative violates or is not in compliance with a provision of this Article or A.R.S. Title 28, Chapter 4, Article 5, or the certified ignition interlock device equipment it is authorized by the manufacturer to install no longer meets the requirements provided under Article 6 of this Chapter.

#### Historical Note

New Section made by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

#### R17-5-708. Cease and Desist; Denial or Cancellation of Certification; Appeal; Hearing

- A. If the Director has reason to believe that a Division-certified installer or service center is operating in violation of a provision under this Article or A.R.S. Title 28, Chapter 4, Article 5, the Director shall immediately issue and serve a cease and desist order on the installer or service center by personal delivery or by mail to its last known address.
1. On receipt of a cease and desist order, an installer or service center shall immediately take action as specified in the order or cease and desist from engaging in any further activity authorized under this Article or A.R.S. Title 28, Chapter 4, Article 5.
  2. On failure of an installer or service center to comply with a cease and desist order, the Director shall issue an immediate cancellation of its installer or service center certification.
- B. Appeal of a denial of application or cancellation of certification. If the Division denies a pending application for certification, or cancels a certification previously issued to an installer or its service center, the installer or service center may appeal the action as follows:
1. Within 15 days after receipt of a notice of denial of application or a notice of cancellation of certification, the installer or service center may file a written request for a hearing on the issue of the denial or cancellation with Division's Executive Hearing Office as prescribed under 17 A.A.C. 1, Article 5.
  2. If a hearing on the issue of the denial or cancellation is timely requested, the Division's Executive Hearing Office shall conduct the hearing as prescribed under A.R.S. Title 41, Chapter 6, Article 6, and 17 A.A.C. 1, Article 5. The request for a hearing stays the summary cancellation of an installer or service center's certified activities.
  3. Within 10 days after a hearing, the Hearing Officer shall issue to the installer or service center a written decision, which shall:
    - a. Provide findings of fact and conclusions of law; and
    - b. Grant the application, deny the application, or cancel the certification.
  4. If the Hearing Officer affirms the denial of application or cancellation of certification, the installer or service center may seek judicial review under A.R.S. Title 12, Chapter 7, Article 6, within 30 days from the date of the decision and order. The denial of application or order of cancellation shall not be suspended during pendency of an appeal.
- C. After denial of an application, or cancellation of a certification, an installer or service center may reapply to the Division for a new certification by completing a new application and meeting all certification requirements under this Article. A cancellation does not prohibit a manufacturer, installer, or service center from submitting a subsequent application for certification if all certification requirements are met.

#### Historical Note

New Section made by final rulemaking at 13 A.A.R. 3499, effective December 1, 2007 (Supp. 07-4).

### ARTICLE 8. MANDATORY INSURANCE AND FINANCIAL RESPONSIBILITY

#### R17-5-801. Definitions

In addition to the definitions under A.R.S. §§ 28-101 and 28-4001, in this Chapter, unless otherwise specified:

"Company" means an insurance or indemnity company authorized to write motor vehicle liability coverage in Arizona.

"Customer number" means the system-generated, or other distinguishing number, assigned by the Division to each person conducting business with the Division. The customer number of a private individual is generally the person's driver license or non-operating identification license number. The customer number of a business is generally its federal employer identification number.

"Division" means the Arizona Department of Transportation's Motor Vehicle Division.

"EDI" means electronic data interchange, which is the transmission of data in a standardized format from one computer to another without the use of magnetic tape.

"EDI reporting" means the weekly computer-to-computer transmission of data from a company to the Division.

"Error return" means the immediate computer-to-computer transmission, from the Division to a company, of all data reporting errors received during EDI reporting.

"FEIN" means the federal employer identification number or federal tax identification number used to identify a business entity.

"FTP" means file transfer protocol, which is a common protocol used by the Division for exchanging files over any network that supports EDI reporting transmitted through the Internet or Intranet.

"Information exchange" means EDI reporting where a company or service provider transmits a report to the Division through a connection to a private information network.

"MVD" means the Arizona Department of Transportation's Motor Vehicle Division.

"NAIC" means the National Association of Insurance Commissioners.

"Private information network" means the value-added network used by a company or service provider to facilitate EDI transmissions to the Division and to provide other network services where fees are charged for the network connection based on the number of characters and messages transmitted.

"Reportable activity" means the information required to be transmitted to the Division under A.R.S. § 28-4148 and this Article.

"Self-insurer" means a person or entity that has met the qualifications, completed the application process, and received a certificate of self-insurance issued by the Division under Section R17-5-810.

"Service provider" means a person or entity that provides the connection to a private information network for EDI reporting.

"SR22" means a certification filed, by a company duly authorized to transact business in this state, as proof of financial

responsibility for the future, which guarantees that the insured owner or operator has in effect at least the minimum motor vehicle liability insurance coverage required under A.R.S. Title 28, Chapter 9, Article 3.

“SR26” means a certification filed by a company duly authorized to transact business in this state, which notifies the Division that an insured owner or operator required to maintain proof of financial responsibility for the future, under A.R.S. Title 28, Chapter 9, Article 3, is no longer covered under a previously reported SR22.

“Value-added Network” means a private network provider that is hired by a company to facilitate EDI or provide other network services.

“X12” means the American National Standards Institute, Accredited Standards Committee, uniform standards for the inter-industry electronic exchange of business transactions by EDI.

“X12 (TS811)” means X12 Transaction Set 811, Consolidated Service Invoice – Statement, version 3050, which is the specific set of EDI transactions developed for the insurance industry in the X12 standard format for automobile liability insurance reporting.

#### Historical Note

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

#### **R17-5-802. Insurance Company Electronic Reporting Requirement; Applicability**

- A. A company that provides motor vehicle liability insurance coverage for an Arizona vehicle shall electronically transmit to the Division all reportable activity under A.R.S. § 28-4148 and R17-5-803 using one of the authorized EDI reporting methods identified in R17-5-806. Each transmission shall include all of the applicable record matching criteria prescribed under R17-5-804 or R17-5-805.
- B. Effective May 1, 2007, a company that issues 1,000 or more SR22 policies per calendar year shall electronically transmit to the Division all SR22 and SR26 activity using one of the Division-authorized EDI reporting methods identified in R17-5-806. Each transmission shall include all of the applicable record matching criteria prescribed under R17-5-804 or R17-5-805.
- C. The Division shall not accept or record an out-of-state motor vehicle liability insurance policy for a passenger vehicle, even if written by a company authorized to transact business in this state.

#### Historical Note

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

#### **R17-5-803. Insurance Company Reportable Activity**

- A. A company shall transmit to the Division:
  1. All reportable activity, not previously reported, that was processed by the company seven or fewer days before each reporting date; or
  2. A statement of inactivity, if no reportable activity occurred by the reporting date.
- B. For the purpose of this Article, reportable activity shall include:
  1. A policy cancellation;
  2. A policy non-renewal;
  3. A new policy issuance;
  4. A vehicle added to a policy;
  5. A vehicle deleted from a policy;

6. A policy reinstatement; and
7. Effective May 1, 2007, all SR22 and SR26 filings by insurance companies issuing 1,000 or more SR22 policies per calendar year.

- C. Reportable activity does not include the addition or deletion of a vehicle to or from a non-vehicle-specific commercial policy.

#### Historical Note

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

#### **R17-5-804. Record Matching Criteria for a Vehicle-specific Policy**

For each vehicle-specific policy transmitted to the Division, a company shall include all of the following information to assist with the matching of policies to MVD customers:

1. The complete and valid vehicle identification number;
2. The policy number; and
3. The NAIC number of the reporting company.

#### Historical Note

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

#### **R17-5-805. Record Matching Criteria for a Non-vehicle-specific Commercial Policy**

- A. For each non-vehicle-specific commercial policy transmitted to the Division, a company shall include all of the following information to assist with the matching of policies to MVD customers:

1. The MVD Customer number of the insured:
  - a. If a policy covers all vehicles registered in the name of a business or organization, the Customer number is the FEIN of the business or organization; or
  - b. If a policy covers all vehicles registered in the name of a private individual, the Customer number is the Arizona Driver License number of the private individual;
2. The policy number; and
3. The NAIC number of the reporting company.

- B. If the MVD Customer number required under subsection (A)(1) is not available to a company, the company may provide the complete and valid vehicle identification number of each vehicle covered under the policy in-lieu of the MVD Customer number.

#### Historical Note

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

#### **R17-5-806. Division-authorized EDI Reporting Methods; Reporting Schedule**

- A. A company shall transmit to the Division all reportable activity listed in R17-5-803 using one of the following Division-authorized EDI reporting methods:
  1. EDI reporting by information exchange; or
  2. EDI reporting by encrypted FTP.
- B. A company shall transmit all reportable activity to the Division at least once every seven days.

#### Historical Note

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

#### **R17-5-807. X12 Data Format for Policy Receipt and Error Return**

- A. Reporting format. A company shall transmit to the Division all reportable activity using the format prescribed in the Arizona Mandatory Insurance Reporting System Guide for Insurance Companies provided by the Division.

- B.** Error return format. The Division shall return to a company all reporting errors received during a transmission of reportable activity using the format prescribed in the Arizona Mandatory Insurance Reporting System Guide for Insurance Companies.

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

**R17-5-808. Insurance Company Reporting Errors; Resolution; Noncompliance**

- A.** The Division shall:
1. Return to a company, using the X12 Error Return format provided in R17-5-807(B), all reporting errors received during a transmission; and
  2. Instruct the company to correct all reporting errors affecting the Division's processing of the required data.
- B.** All companies reporting electronic policy information shall notify the Division prior to making changes to any reporting systems, or previously established policy reporting formats, that may affect the Division's ability to match and process the information received.

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

**R17-5-809. Insurance Company Failure to Submit Required Data; Request for Hearing**

If a company fails to submit the data required under A.R.S. § 28-4148, and this Article, the Division shall:

1. Send to the company, a dated written notice, which:
  - a. Identifies the business week or reporting period in which the company did not submit the required information;
  - b. Instructs the company to submit the information for the identified business week or reporting period within seven days of the date of the notice;
  - c. Informs the company that a failure to respond to the Division's request within the allotted time-frame, shall result in a referral of the matter to the Arizona Department of Insurance, under A.R.S. § 20-237, which may result in a civil penalty of up to \$250 per day for each day the insurer is in violation of A.R.S. § 28-4148; and
  - d. Provides notice of the company's right to request a hearing with the Arizona Department of Insurance under A.R.S. § 20-237; and
2. Advise the Arizona Department of Insurance if the company fails to comply with the Division's written notice provided under this Section.

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

**R17-5-810. Self-insurance as Alternate Proof of Financial Responsibility; Provisions; Applicability**

- A.** Self-insurance applicant qualification. A person or entity may apply for self-insurance under this Section if the applicant:
1. Owns the minimum number of vehicles prescribed under A.R.S. § 28-4007(A) with current Arizona registration;
  2. Demonstrates minimum assets of \$1 million on documentation required under subsections (C) and (D);
  3. Meets any additional financial responsibility requirements under A.R.S. § 28-4033(A), according to the insured vehicle's weight and/or intended use; and
  4. Provides a business office contact for the company with a current phone number and mailing information.

- B.** A self-insurance applicant shall provide, on a self-insurance application form provided by the Division, the following information:

1. Applicant's name;
2. Business name, if applicable;
3. Mailing address, city, state, and ZIP code;
4. A selection of coverage type:
  - a. Public liability only; or
  - b. Public liability and property damage;
5. Number of vehicles in the applicant's fleet;
6. A selection list that describes the nature of the applicant's business;
7. A description of any hazardous materials transported by type, class, and weight;
8. A report of all accidents in the prior 39-month period before the application date;
9. The applicant's signature and official business title to certify that all information is true and correct; and
10. Acknowledgment by a notary public or by the signature of an authorized Motor Vehicle Division agent.

- C.** Supplementary documentation. In addition to a completed self-insurance application form, the applicant shall submit a profit and loss statement certified by a Certified Public Accountant for the 12-month period before the application date. The profit and loss statement shall include one of the following:

1. A balance sheet; or
2. An annual financial report.

- D.** On approval of an application, the Division shall issue a certificate of self-insurance that is continuously valid but shall require the self-insurer to submit a 12-month update of supplementary documentation prescribed under subsection (C) on or before July 1 of each successive year.

- E.** An initial self-insurance applicant or a self-insurer making an annual update shall submit documentation required under subsections (B) through (D) to the following address:

Motor Vehicle Division  
Financial Responsibility Unit  
P.O. Box 2100, Mail Drop 535M  
Phoenix, AZ 85001-2100

- F.** A self-insurer shall keep a copy of the self-insurance certificate in each covered vehicle at all times.

- G.** A self-insurer shall submit written notification to the Division of each vehicle to be added or removed from self-insurance coverage. The written notification shall include the vehicle identification number of each vehicle.

- H.** A self-insurer that terminates self-insurance shall provide new evidence of financial responsibility as required under A.R.S. § 28-4135 for each vehicle previously covered under a self-insurance certificate.

- I.** In addition to the reasonable grounds prescribed under A.R.S. § 28-4007(C), the Division may cancel a self-insurance certificate under the following circumstances:

1. A self-insurer fails to comply with provisions of the Division's annual update requirement under subsection (D), or
2. A self-insurer no longer owns the covered business or fleet.

- J.** For the purpose of A.R.S. § 28-4007(C) and this Section, the Division shall conduct a self-insurance cancellation hearing according to the provisions prescribed under 17 A.A.C. 1, Article 5.

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

**R17-5-811. Certificate of Deposit as Alternate Proof of Financial Responsibility; Applicability**

For the purpose of A.R.S. §§ 28-4076(2) and 28-4084, a person depositing a \$40,000 certificate of deposit with the state treasurer as alternate proof of financial responsibility may apply the certificate to a maximum of 25 non-commercial vehicles registered in the person's name.

**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

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Recodified

**TITLE 17. RECODIFIED**

**CHAPTER 9. RECODIFIED**

*Editor's Note: This Chapter was recodified to 13 A.A.C. 13 under A.R.S. § 41-1011(C) at 20 A.A.R. 2083 (Supp. 14-3).*

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**Supplement to the**

**Arizona Administrative Code**

The official compilation of Arizona Rules

**Arizona Secretary of State's Office**

Public Services Division

1700 W. Washington Street, Fl 7.

Phoenix, AZ 85007

***Replacement Check List***

For rules filed within the

Third

July 1, 2014 - September 30, 2014

**Code Release Number: Supp. 14-3**

Within the stated calendar quarter, this Title contains all rules made, amended, repealed, renumbered, and recodified; or rules that have expired or were terminated due to an agency being eliminated under sunset law. These rules were either certified by the Governor's Regulatory Review Council or the Attorney General's Office; or exempt from the rulemaking process, and filed with the Office of the Secretary of State. Refer to the historical notes for more information. Please note that some rules you are about to remove may still be in effect after the publication date of this Supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

**Follow the instructions to replace the updated Chapters.**

**TITLE 18. Environmental Quality**

**Chapter 13. Department of Environmental Quality - Solid Waste Management**

Sections, Parts, Exhibits, Tables or Appendices modified

R18-13-802

REMOVE Supp. 12-2

Pages: 1 - 40

REPLACE with Supp. 14-3

Pages: 1 - 41

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## Department of Environmental Quality – Solid Waste Management

**TITLE 18. ENVIRONMENTAL QUALITY****CHAPTER 13. DEPARTMENT OF ENVIRONMENTAL QUALITY  
SOLID WASTE MANAGEMENT**

*Editor's Note: The Office of the Secretary of State publishes all Chapters on white paper (Supp. 01-2).*

*Editor's Note: This Chapter contains rules which were adopted under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 49-701.01(C)(1) and (2). Exemption from A.R.S. Title 41, Chapter 6 means that the Department did not submit these rules to the Governor's Regulatory Review Council for review; the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; and the Department was not required to hold public hearings on these rules.*

**ARTICLE 1. RESERVED****ARTICLE 2. SOLID WASTE DEFINITIONS; EXEMPTIONS**

*Article 2, consisting of Section R18-13-201, adopted effective July 27, 1998, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 98-3).*

## Section

- R18-13-201. Land Application of Biosolids Exemption
- R18-13-202. Coal Slurry Discharges from Pipeline Leaks Exemption

**ARTICLE 3. REFUSE AND OTHER OBJECTIONABLE WASTES**

*Title 18, Chapter 13, Article 3, consisting of Sections R18-13-301 through R18-13-312, recodified from Title 18, Chapter 8, Article 5, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).*

## Section

- R18-13-301. Reserved
- R18-13-302. Definitions
- R18-13-303. Responsibility
- R18-13-304. Inspection
- R18-13-305. Collection Required
- R18-13-306. Notices
- R18-13-307. Storage
- R18-13-308. Frequency of Collection
- R18-13-309. Place of Collection
- R18-13-310. Vehicles
- R18-13-311. Disposal; General
- R18-13-312. Methods of Disposal

**ARTICLE 4. RESERVED****ARTICLE 5. REQUIREMENTS FOR SOLID WASTE FACILITIES SUBJECT TO SELF-CERTIFICATION**

*Article 5, consisting of Section R18-13-501, made by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).*

## Section

- R18-13-501. Solid Waste Facilities Requiring Self-Certification; Registration Fees

**ARTICLE 6. RESERVED****ARTICLE 7. SOLID WASTE FACILITY PLAN REVIEW FEES**

*Article 7, consisting of Sections R18-13-701 through R18-13-703, adopted effective July 1, 1996; filed in the Office of the Secretary of State December 1, 1995 (Supp. 95-4).*

## Section

- R18-13-701. Definitions
- R18-13-702. Solid Waste Facility Plan Review Fees
- R18-13-703. Review of Bill
- R18-13-704. Repealed
- R18-13-705. Repealed

R18-13-706. Repealed

**ARTICLE 8. GENERAL PERMITS**

*Article 8, consisting of Section R18-13-801, made by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).*

## Section

- R18-13-801. General Permit Fees
- R18-13-802. Disposal General Permit: Non-Municipal Solid Waste Landfills at Mining Operations

**ARTICLE 9. SOLID WASTE MANAGEMENT LANNING**

*Title 18, Chapter 13, Article 9, consisting of Section R18-13-902, recodified from Title 18, Chapter 8, Article 4, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).*

## Section

- R18-13-901. Reserved
- R18-13-902. Regional Boundaries

**ARTICLE 10. RESERVED****ARTICLE 11. COLLECTION, TRANSPORTATION, AND DISPOSAL OF HUMAN EXCRETA**

*Article 11 recodified from existing Sections in 18 A.A.C. 8, Article 6 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).*

## Section

- R18-13-1101. Reserved
- R18-13-1102. Definitions
- R18-13-1103. General Requirements; License Fees
- R18-13-1104. Repealed
- R18-13-1105. Reserved
- R18-13-1106. Inspection
- R18-13-1107. Reserved
- R18-13-1108. Repealed
- R18-13-1109. Reserved
- R18-13-1110. Reserved
- R18-13-1111. Reserved
- R18-13-1112. Sanitary Requirements
- R18-13-1113. Repealed
- R18-13-1114. Repealed
- R18-13-1115. Repealed
- R18-13-1116. Suspension and Revocation
- R18-13-1117. Reinstatement
- R18-13-1118. Repealed
- R18-13-1119. Repealed
- R18-13-1120. Repealed

**ARTICLE 12. WASTE TIRES**

*Title 18, Chapter 13, Article 12, consisting of Sections R18-13-1201 through R18-13-1210, recodified from Title 18, Chapter 8, Article 7, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).*

## Section

- R18-13-1201. Definitions
- R18-13-1202. Burial of Mining Waste Tires

## Department of Environmental Quality – Solid Waste Management

- R18-13-1203. Cover Requirements
- R18-13-1204. Annual Report
- R18-13-1205. Burial Cell Closure Certification
- R18-13-1206. Storage
- R18-13-1207. Maintenance of Records
- R18-13-1208. Inspections
- R18-13-1209. Repealed
- R18-13-1210. Waste Tire Cover
- R18-13-1211. Registration of New Waste Tire Collection Sites; Fee
- R18-13-1212. Registration of Outdoor Used Tire Sites; Fee
- R18-13-1213. Facilities Subject to More Than One Tire Site Registration; Single Fee

**ARTICLE 13. SPECIAL WASTE**

*Title 18, Chapter 13, Article 13, consisting of Sections R18-13-1301 through R18-13-1307, Table A, Exhibit 1, and Appendices A and B, recodified from Title 18, Chapter 8, Article 3, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).*

## Section

- R18-13-1301. Definitions
- R18-13-1302. Special Waste Generator Manifesting Requirements
- R18-13-1303. Special Waste Shipper Manifesting Requirements
- R18-13-1304. Special Waste Receiving Facility Manifesting Requirements
- R18-13-1305. Records
- R18-13-1306. Reserved
- R18-13-1307. Best Management Practices for Waste from Shredding Motor Vehicles
- Table A. Target Analyses and Sampling Frequency
- Exhibit 1. Selection of Sample Points, Shredder Waste Pile
- Appendix A. Application for Arizona Special Waste Identification Number
- Appendix B. Special Waste Manifest

**ARTICLE 14. BIOHAZARDOUS MEDICAL WASTE AND DISCARDED DRUGS**

*Article 14, consisting of Sections R18-13-1401 through R18-13-1420, adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).*

## Section

- R18-13-1401. Definitions
- R18-13-1402. Applicability
- R18-13-1403. Exemptions; Partial Exemptions
- R18-13-1404. Transition and Compliance Dates
- R18-13-1405. Biohazardous Medical Waste Treated On Site
- R18-13-1406. Biohazardous Medical Waste Transported Off Site for Treatment
- R18-13-1407. Packaging
- R18-13-1408. Storage
- R18-13-1409. Transportation; Transporter License; Annual Fee
- R18-13-1410. Storage, Transfer, Treatment, and Disposal Facilities; Facility Plan Approval
- R18-13-1411. Storage and Transfer Facilities; Design and Operation
- R18-13-1412. Treatment Facilities; Design and Operation
- R18-13-1413. Changes to Approved Medical Waste Facility Plans
- R18-13-1414. Alternative Medical Waste Treatment Methods: Registration and Equipment Specifications
- R18-13-1415. Treatment Standards, Quantification of Microbial Inactivation and Efficacy Testing Protocols
- R18-13-1416. Recycled Materials
- R18-13-1417. Disposal Facilities: Operation
- R18-13-1418. Discarded Drugs
- R18-13-1419. Medical Sharps

- R18-13-1420. Additional Handling Requirements for Certain Wastes

**ARTICLE 15. RECODIFIED**

*Editor's Note: The recodification at 7 A.A.R. 2522 described below erroneously moved Sections into 18 A.A.C. 9, Article 9. Those Sections were actually recodified to 18 A.A.C. 9, Article 10. See the Historical Notes for more information (Supp. 01-4).*

*Article 15, consisting of Sections R18-13-1501 through R18-13-1514 and Appendix A, recodified to 18 A.A.C. 9, Article 9 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2).*

*Article 15, consisting of Sections R18-13-1501 through R18-13-1514 and Appendix A, adopted effective April 23, 1996 (Supp. 96-2).*

## Section

- R18-13-1501. Recodified
- R18-13-1502. Recodified
- R18-13-1503. Recodified
- R18-13-1504. Recodified
- R18-13-1505. Recodified
- R18-13-1506. Recodified
- R18-13-1507. Recodified
- R18-13-1508. Recodified
- R18-13-1509. Recodified
- R18-13-1510. Recodified
- R18-13-1511. Recodified
- R18-13-1512. Recodified
- R18-13-1513. Recodified
- R18-13-1514. Recodified
- Appendix A. Recodified

**ARTICLE 16. BEST MANAGEMENT PRACTICES FOR PETROLEUM CONTAMINATED SOIL**

*Article 16, consisting of Sections R18-13-1601 through R18-13-1614, recodified from 18 A.A.C. 8, Article 16 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).*

## Section

- R18-13-1601. Definitions
- R18-13-1602. Applicability
- R18-13-1603. Exemptions
- R18-13-1604. Waste Determination
- R18-13-1605. Transportation
- R18-13-1606. Fees
- R18-13-1607. Facility Approval; Application
- R18-13-1608. General Design and Performance Standards
- R18-13-1609. Treatment Facility
- R18-13-1610. Temporary Treatment Facility
- R18-13-1611. Storage Facility
- R18-13-1612. Accumulation Sites
- R18-13-1613. Disposal
- R18-13-1614. Records

**ARTICLE 17. RESERVED****ARTICLE 18. RESERVED****ARTICLE 19. RESERVED****ARTICLE 20. RESERVED****ARTICLE 21. SOLID WASTE LANDFILL REGISTRATION FEES**

*Article 21, consisting of Sections R18-13-2101 through R18-13-2103, made by final rulemaking at 9 A.A.R. 1770, effective July 14, 2003 (Supp. 03-2).*

## Section

## Department of Environmental Quality – Solid Waste Management

- R18-13-2101. Definitions  
 R18-13-2102. Annual Registration Fee for an Existing Solid Waste Landfill  
 R18-13-2103. Annual Landfill Registration: Due Date and Fees

**ARTICLE 22. RESERVED****ARTICLE 23. RESERVED****ARTICLE 24. RESERVED****ARTICLE 25. RECYCLING**

*Article 25, consisting of Section R18-13-2501, adopted by final rulemaking at 5 A.A.R. 4654, effective November 15, 1999 (Supp. 99-4).*

## Section

- R18-13-2501. Recycling Emblem Description and Usage

**ARTICLE 26. EXPIRED**

*Article 26, consisting of Sections R18-13-2601 through R18-13-2604, expired at 16 A.A.R. 705, effective April 6, 2010 (Supp. 10-2).*

*Article 26, consisting of Sections R18-13-2601 through R18-13-2604, made by exempt rulemaking at 14 A.A.R. 4258, effective October 20, 2008 (Supp. 08-4).*

## Section

- R18-13-2601. Expired  
 R18-13-2602. Expired  
 R18-13-2603. Expired  
 R18-13-2604. Expired

**ARTICLE 27. SOLD WASTE FEES FOR FY 2011**

*Article 27 consisting of Sections R18-13-2701 through R18-13-2703, made by exempt rulemaking at 16 A.A.R. 848, effective July 1, 2010 (Supp. 10-2).*

## Section

- R18-13-2701. Special Waste Management Fees for Fiscal Year 2011  
 R18-13-2702. Increased Landfill Registration Fees for Fiscal Year 2011  
 R18-13-2703. Solid Waste Facility Plan Review Fees for Fiscal Year 2011

**ARTICLE 1. RESERVED**

*Editor's Note: Article 2, consisting of Section R18-13-201, was adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to A.R.S. § 49-701.01(C)(1) and (2). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit the rules to the Governor's Regulatory Review Council for review; and the Department was not required to hold public hearings on this Section (Supp. 98-3).*

**ARTICLE 2. SOLID WASTE DEFINITIONS; EXEMPTIONS**

*Editor's Note: The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act which means that these rules were not reviewed by the Governor's Regulatory Review Council; the agency did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; and the agency was not required to hold public hearings on these rules (Supp. 98-3).*

**R18-13-201. Land Application of Biosolids Exemption**

- A. This Section applies only to biosolids as defined in R18-13-1501(7). The land application of biosolids, when placed on or applied to the land in full conformity with 18 A.A.C. 13, Arti-

cle 15 and A.R.S. § 49-761(F), and if the site of land application has ceased to receive application of biosolids and all applicable site restrictions set by 18 A.A.C. have been satisfied, is exempt statewide from the definition of solid waste found at A.R.S. § 49-701.01(A). This exemption applies only when the biosolids and the soil to which it has been applied remain at the site of the application.

- B. This exemption does not alter or set any new standard for the soil remediation standards found at 18 A.A.C. 7, Article 2.

**Historical Note**

Adopted under and exemption from A.R.S. Title 41, Chapter 6, pursuant to A.R.S. § 49-701.01(C)(1) and (2), effective July 27, 1998 (Supp. 98-3). Amended by exempt rulemaking at 5 A.A.R. 4004, effective September 17, 1999 (Supp. 99-3).

**R18-13-202. Coal Slurry Discharges from Pipeline Leaks Exemption**

This Section applies only to coal slurry discharges onto the ground from pipeline leaks. Coal slurry discharges onto the ground from pipeline leaks are exempt statewide from the definition of solid waste prescribed in A.R.S. § 49-701.01(A) if both of the following conditions are met:

1. The discharge was the result of an accidental pipeline leak.
2. The thickness of the layer of coal slurry on the ground that resulted from the discharge is 3 inches or less.

**Historical Note**

New Section adopted by exempt rulemaking at 5 A.A.R. 4004, effective September 17, 1999 (Supp. 99-3).

**ARTICLE 3. REFUSE AND OTHER OBJECTIONABLE WASTES****R18-13-301. Reserved****R18-13-302. Definitions**

- A. "Approved" means acceptable to the Department.  
 B. "Ashes" means residue from the burning of any combustible material.  
 C. "Department" means the Department of Environmental Quality or a local health department designated by the Department of Environmental Quality.  
 D. "Garbage" means all animal and vegetable wastes resulting from the processing, handling, preparation, cooking, and serving of food or food materials.  
 E. "Manure" means animal excreta, including cleanings from barns, stables, corrals, pens, or conveyances used for stabling, transporting, or penning of animals or fowls.  
 F. "Person" means the state, a municipality, district or other political subdivision, a cooperative, institution, corporation, company, firm, partnership or individual.  
 G. "Refuse" means all putrescible and nonputrescible solid and semisolid wastes, except human excreta, but including garbage, rubbish, ashes, manure, street cleanings, dead animals, abandoned automobiles, and industrial wastes.  
 H. "Rubbish" means nonputrescible solid wastes, excluding ashes, consisting of both combustible and noncombustible wastes, such as paper, cardboard, waste metal, tin cans, yard clippings, wood, glass, bedding, crockery and similar materials.

**Historical Note**

Section recodified from A.A.C. R18-8-502, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-13-303. Responsibility**

- A. The owner, agent, or the occupant of any premises, business establishment, or industry shall be responsible for the sanitary condition of said premises, business establishment, or industry. No person shall place, deposit, or allow to be placed or deposited on his premises or on any public street, road, or alley any refuse or other objectionable waste, except in a manner described in these rules.
- B. The owner, agent, or the occupant of any premises, business establishment, or industry shall be responsible for the storage and disposal of all refuse accumulated, by a method or methods described in these rules.
- C. The collection and disposal of all refuse not acceptable for collection by a collection agency is the responsibility of each occupant, business establishment, or industry where such refuse accumulates, and all such refuse shall be stored, collected, and disposed of in a manner approved by the Department.
- D. All dangerous materials and substances shall, where necessary, be rendered harmless prior to collection and disposal.

**Historical Note**

Section recodified from A.A.C. R18-8-503, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-13-304. Inspection**

Representatives of the Department shall make such inspections of any premises, container, process, equipment, or vehicle used for collection, storage, transportation, disposal, or reclamation or refuse as are necessary to ensure compliance with these rules.

**Historical Note**

Section recodified from A.A.C. R18-8-504, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-13-305. Collection Required**

- A. Where refuse collection service is available, the following refuse shall be required to be collected: Garbage, ashes, rubbish, and small dead animals which do not exceed 75 pounds in weight.
- B. The following refuse is not considered acceptable for collection but may be collected at the discretion of the collection agency where special facilities or equipment required for the collection and disposal of such wastes are provided:
  1. Dangerous materials or substances, such as poisons, acids, caustics, infected materials, radioactive materials, and explosives.
  2. Materials resulting from the repair, excavation, or construction of buildings and structures.
  3. Solid wastes resulting from industrial processes.
  4. Animals exceeding 75 pounds in weight, condemned animals, animals from a slaughterhouse, or other animals normally considered industrial waste.
  5. Manure.

**Historical Note**

Section recodified from A.A.C. R18-8-505, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-13-306. Notices**

- A. All collection agencies shall provide each householder, or business establishment served, with a copy of the requirements governing the storage and collection of refuse which shall cover at least the following items:
  1. Definitions.
  2. Places to be served.
  3. Places not to be served.

4. Scheduled day or days of collection.
5. Materials acceptable for collection.
6. Materials not acceptable for collection.
7. Preparation of refuse for collection.
8. Types and size of containers permitted.
9. Points from which collections will be made.
10. Necessary safeguards for collectors.

- B. All such notices governing storage and collection shall conform to these rules.

**Historical Note**

Section recodified from A.A.C. R18-8-506, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-13-307. Storage**

- A. All refuse shall be stored in accordance with the requirements of this Section. The owner, agent, or occupant of every dwelling, business establishment, or other premises where refuse accumulates shall provide a sufficient number of suitable and approved containers for receiving and storing of refuse, and shall keep all refuse therein, except as otherwise provided by this Chapter.
- B. Garbage shall be stored in durable, rust resistant, nonabsorbent, watertight, and easily cleanable containers, with close fitting covers and having adequate handles or bails to facilitate handling. The size of the container shall be determined by the collection agency.
- C. Rubbish and ashes shall be stored in durable containers. Bulky rubbish such as tree trimmings, newspapers, weeds, and large cardboard boxes shall be handled as directed by the collection agency. Where garbage separation is not required, containers for the storage of mixed rubbish and garbage shall meet the requirements specified in subsection (B) above.
- D. Containers for the storage of refuse shall be maintained in such a manner as to prevent the creation of a nuisance or a menace to public health. Containers that are broken or otherwise fail to meet the requirements of the rules shall be replaced, by the owner of said containers, with approved containers.
- E. Manure and droppings shall be removed from pens, stables, yards, cages, conveyances, and other enclosures as often as necessary to prevent a health hazard or the creation of a nuisance. All material removed shall be handled and stored in a manner that will maintain the premises nuisance free.

**Historical Note**

Section recodified from A.A.C. R18-8-507, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-13-308. Frequency of Collection**

- A. The frequency of collection shall be in accordance with rules of the collection agency but not less than that shown in the following schedules:
  1. Garbage only -- twice weekly.
  2. Refuse with garbage -- twice weekly.
  3. Rubbish and ashes -- as often as necessary to prevent nuisances and fly breeding.
- B. A variance from the required frequency rate may be granted to allow for the collection of garbage once weekly. The variance may be granted by the Department of Environmental Quality upon submission of an acceptable plan approved by the local health department demonstrating that no public health hazards or nuisances will exist and that fly breeding will be controlled by either biological, chemical, or mechanical means. The variance may be revoked whenever the Department of Environmental Quality determines that the circumstances warranting the variance no longer exist.



## Department of Environmental Quality – Solid Waste Management

**Historical Note**

Section recodified from A.A.C. R18-8-508, filed in the  
Office of the Secretary of State September 29, 2000  
(Supp. 00-3).

**R18-13-309. Place of Collection**

- A. All refuse shall be properly placed on the premises for convenient collection as designated by the collection agency.
- B. Where alleys are provided, collection shall be made on the alley side of the premises.

**Historical Note**

Section recodified from A.A.C. R18-8-509, filed in the  
Office of the Secretary of State September 29, 2000  
(Supp. 00-3).

**R18-13-310. Vehicles**

- A. Vehicles used for collection and transportation of garbage, or refuse containing garbage, shall have covered, watertight, metal bodies of easily cleanable construction, shall be cleaned frequently to prevent a nuisance or insect breeding, and shall be maintained in good repair.
- B. Vehicles used for collection and transportation of refuse shall be loaded and moved in such a manner that the contents, including ashes, will not fall, leak, or spill therefrom. Where spillage does occur, it shall be picked up immediately by the collector and returned to the vehicle or container.
- C. Vehicles used for collection and transportation of rubbish or manure shall be of such construction as to prevent leakage or spillage, and shall provide a cover to prevent blowing of materials or creating a nuisance.

**Historical Note**

Section recodified from A.A.C. R18-8-510, filed in the  
Office of the Secretary of State September 29, 2000  
(Supp. 00-3).

**R18-13-311. Disposal; General**

- A. All refuse shall be disposed of by a method or methods included in these rules and shall include rodent, insect, and nuisance control at the place or places of disposal. Approval must be obtained from the Department for all new disposal sites and may change in the method of disposal prior to use.
- B. Carcasses of large dead animals shall be buried or cremated, unless satisfactory arrangements have been made for disposal by rendering or other approved methods.
- C. All public "dumping grounds", provided in compliance with A.R.S. § 9-441, shall be maintained and operated in accordance with the requirements of these rules.
- D. Manure shall be disposed of by sanitary landfill, composting, incineration, or used as fertilizer in such a manner as not to create insect breeding or a nuisance.

**Historical Note**

Section recodified from A.A.C. R18-8-511, filed in the  
Office of the Secretary of State September 29, 2000  
(Supp. 00-3).

**R18-13-312. Methods of Disposal**

Approval must be obtained from the Department for any method or methods used for the disposal of refuse prior to the start of operations, and shall be accomplished by one or more of the methods listed below:

1. Sanitary landfill -- Consists of the disposal of refuse on land and the daily compaction and covering of the refuse with 6 to 12 inches of earth so as to prevent a health hazard or nuisance. The final compacted earth cover shall be a minimum of 2 feet in depth. Where sanitary landfill operations are proposed, the Department will require the following:
  - a. The landfill shall be located so that seepage will not create a health hazard, nuisance, or cause pollution of any watercourse or water bearing strata.
  - b. Adequate and proper surface drainage shall be provided to prevent ponding or erosion by rainwater of the finished fill.
  - c. Provision shall be made for the control of insects, rodents, wind blown refuse, and accidental fire.
  - d. Burning of refuse is prohibited.
  - e. An all weather access road is required.
  - f. Suitable equipment and operating personnel shall be provided.
  - g. Salvaging, if permitted, shall be rigidly controlled.
  - h. A variance from the daily compaction and covering requirement may be granted for sites serving less than 2,000 people by the Department of Environmental Quality upon submission of an acceptable plan approved by the local health department demonstrating that no public health hazards or nuisances will exist. The variance will allow for compaction and cover every two weeks at sites serving less than 500 people; weekly compaction and cover for sites serving from 500 to 1,000 people; and twice weekly compaction and cover for sites serving from 1,000 to 2,000 people. The variance may be revoked whenever the Department of Environmental Quality determines that the circumstances warranting the variance no longer exist.

2. Incineration -- Where incineration is to be employed, the plans and specifications, along with any other information necessary to evaluate the project, shall be submitted to the Department and approval received prior to construction. In addition, an approved method for the disposal of non-combustible refuse is required. Where incineration is proposed, the following items shall be provided:
  - a. The capacity of the incinerator shall be sufficient for the maximum production of refuse expected.
  - b. Noncombustible refuse shall be disposed of by methods approved by the Department.
  - c. Skilled personnel to assure the proper operation and maintenance of the facilities in a nuisance-free manner.
3. Composting -- This method of disposal is acceptable to the Department under the following conditions:
  - a. That plans and specifications and other information necessary to evaluate the project are submitted to the Department and approval received prior to start of construction.
  - b. That provisions are made for the proper disposal of all refuse not considered suitable for composting.
  - c. Skilled personnel shall be provided to assure the proper operation and maintenance of the facilities in a nuisance-free manner.
4. Garbage grinding -- This method, involving the separate collection and disposal of garbage into a community sewerage system through commercial type grinders or mandatory community-wide installation of individual household grinders, will be acceptable to the Department provided that suitable means shall be provided for the disposal of all remaining refuse.
5. Hog feeding -- This method of disposal will only be approved under the following conditions:
  - a. The garbage is collected and stored in suitable containers.
  - b. Only approved type vehicles are used for collection.

- c. All garbage is effectively heat-treated in accordance with Title 24, Chapter 7, Article 3 (A.R.S. §§ 24-941 through 24-949).
- d. All remaining refuse, including nonedible garbage, is collected and disposed of separately by methods approved by the Department.
- 6. Manure disposal -- Manure shall be disposed of by sanitary landfill, composting, incinerating, or used as a fertilizer in such a manner as not to create insect breeding or a nuisance.

#### Historical Note

Section recodified from A.A.C. R18-8-512, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

#### ARTICLE 4. RESERVED

#### ARTICLE 5. REQUIREMENTS FOR SOLID WASTE FACILITIES SUBJECT TO SELF-CERTIFICATION

##### R18-13-501. Solid Waste Facilities Requiring Self-Certification; Registration Fees

- A. The following solid waste facilities requiring self-certification under A.R.S. § 49-762.01 shall register with the Department and pay registration fees as provided in this Section by September 30, 2012, and annually thereafter by September 30th:
  - 1. A transfer facility with a daily throughput of more than 180 cubic yards, including a material recovery facility, but not including:
    - a. A material recovery facility where the incoming materials are primarily source separated recyclables; or
    - b. Community or neighborhood recycling bins including drop boxes, roll off containers, plastic containers used to collect residential, business, and/or governmental recyclable solid waste.
  - 2. A facility storing 5,000 or more waste tires on any one day and not required to obtain plan approval.
  - 3. A waste tire shredding and processing facility.
- B. Initial registration for a new facility. The owner or operator of a planned new facility identified in subsection (A) shall submit the following information to the Department before beginning construction:
  - 1. The name of the solid waste facility.
  - 2. The name, mailing address and telephone number of each owner and operator of the solid waste facility.
  - 3. The physical location of the solid waste facility by physical address, latitude and longitude, or legal description. If none of these are practical, by driving directions from the nearest city or town.
  - 4. A brief description of operations, including waste management methods, types and volumes of waste handled, waste storage and treatment equipment, and the length of time the waste remains onsite.
  - 5. A diagram of the property showing its approximate size and the planned location of the solid waste facility or facilities.
  - 6. Documentation that the facility will comply with local zoning laws or, if the owner is an agency or political subdivision of this state, with A.R.S. § 49-767.
  - 7. Documentation that the facility has any other environmental permit that is required by statute.
  - 8. A copy of the public notice in a newspaper of general circulation in the area where the facility will be located stating the intent to construct and operate a new solid waste facility pursuant to A.R.S. § 49-762.05.
- C. Initial and annual registration for an existing facility. The owner or operator of an existing facility shall submit the following information to the Department annually on a form approved by the Department and note any changes since the last registration:
  - 1. The name of the solid waste facility.
  - 2. The name, address and telephone number of each owner and operator of the solid waste facility.
  - 3. The physical location of the solid waste facility by physical address, latitude and longitude, or legal description. If none of these are practical, by driving directions from the nearest city or town.
  - 4. A brief description of operations, including waste management methods, types and volumes of waste handled, waste storage and treatment equipment, and the length of time the waste remains onsite.
  - 5. A diagram of the property showing its approximate size and the location of the solid waste facility or facilities.
  - 6. Documentation that the facility remains in compliance with the most current local zoning laws or with A.R.S. § 49-767, as applicable.
  - 7. Documentation that the facility continues to hold any other environmental permit that is required by statute.
- D. Self-certification. With each registration under subsection (B) or (C), the owner or operator shall certify that the information submitted is true, accurate, and complete to the best of the person's knowledge and belief.
- E. Registration fees. The owner or operator of a transfer facility under subsection (A)(1) shall pay the Department \$1,000 for the initial registration of a new or existing facility, and \$500 for each annual registration thereafter. The owner or operator of a tire facility under subsection (A)(2) or (3) shall pay the Department \$1,000 for the initial registration of a new or existing facility, and \$250 for each annual registration thereafter.
- F. As used in this Section:
  - 1. "Department" means the Arizona Department of Environmental Quality.
  - 2. "Material recovery facility" means a transfer facility that collects, compacts, repackages, sorts, or processes commingled recyclable solid waste generated offsite for the purpose of recycling and transport, or where source separated recyclable solid waste is processed for sale to various markets, and where the incoming materials are predominantly recyclable solid waste.
  - 3. "Recyclable solid waste" means a product or material described in subsection (F)(3)(a) or (b), and for which subsection (F)(3)(c) is true:
    - a. A product with no useful life remaining for the purposes for which it was produced, or if useful life remains, the product will not, due to location, quantity, or owner choice, remain in use or be reused for a purpose for which it was produced.
    - b. A material that is a result of a process or activity whose purpose was to produce something else.
    - c. The product or material retains some economic value, with or without further processing, as a raw material or feedstock in some process other than incineration or combustion.

#### Historical Note

New Section made by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

#### ARTICLE 6. RESERVED

## Department of Environmental Quality – Solid Waste Management

**ARTICLE 7. SOLID WASTE FACILITY PLAN  
REVIEW FEES****R18-13-701. Definitions**

In addition to the definitions provided in A.R.S. §§ 49-701, 49-701.01, and 49-851, and 18 A.A.C. 13, the following definitions apply in this Article:

1. “Aquifer Protection Permit” or “APP” means the permit that is required pursuant to A.R.S. § 49-241.
2. “MSWLF” means a municipal solid waste landfill as defined in A.R.S. § 49-701.
3. “Non-APP requirements for Non-MSWLFs” means 40 CFR 257 requirements and the restrictive covenant and location restrictions required in A.R.S. Title 49, Chapter 4.
4. “Non-MSWLF” means a landfill that is not a municipal solid waste landfill as defined in A.R.S. § 49-701.
5. “RD&D” means research, development, and demonstration.
6. “Review hours” means the hours or portions of hours that the Department’s staff spends on a request for a plan review. Review hours include the time spent by the project manager and technical review team members, and if requested by the applicant, the supervisor or unit manager.
7. “Review-related costs” means any of the following costs applicable to a specific plan review:
  - a. Presiding officer services for public hearings on a plan review decision,
  - b. Court reporter services for public hearings on a plan review decision,
  - c. Facility rentals for public hearings on a plan review decision,
  - d. Charges for laboratory analyses performed during the plan review,
  - e. Other reasonable and necessary review-related expenses documented in writing by the Department and agreed to by an applicant.
8. “Solid waste facility plan” means a plan or the individual components of a plan, such as the design, operational, closure, or post-closure plan, or the demonstration of financial responsibility as required by A.R.S. § 49-770, submitted to the Department for review and plan approval.

**Historical Note**

Adopted effective July 1, 1996; filed in the Office of the Secretary of State December 1, 1995 (Supp. 95-4).  
Amended effective May 15, 1997 (Supp. 97-2). Amended by exempt rulemaking at 8 A.A.R. 3747, effective November 1, 2002 (Supp. 02-3). Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

**R18-13-702. Solid Waste Facility Plan Review Fees**

- A.** With each application submitted for approval pursuant to A.R.S. § 49-762.03, the applicant shall remit an initial fee in accordance with one of the fee tables in this subsection, unless otherwise provided in subsection (B). This subsection also lists the maximum fees that the Department will bill the applicant. All fees paid shall be payable to the state of Arizona. The Department shall deposit the fees paid into the Solid Waste Fee Fund established pursuant to A.R.S. § 49-881, unless otherwise authorized or required by law.

**Fee Tables**

Fees for Plan Review of New Solid Waste Facilities		
	Initial	Maximum

Solid Waste Landfills	\$20,000	\$200,000
Non-APP requirements for Non-MSWLFs operating under an APP	\$2,000	\$50,000
Other Solid Waste Facilities Subject to Plan Approval	\$10,000	\$100,000

Fees for Modifications to Solid Waste Facility Plans		
	Initial	Maximum
Solid Waste Landfills - Type IV	\$1,500	\$150,000
Solid Waste Landfills - Type IV - RD&D	\$15,000	\$150,000
Solid Waste Landfills - Type III	\$750	\$75,000
Other Solid Waste Facilities Subject to Plan Approval - Type IV	\$750	\$75,000
Other Solid Waste Facilities Subject to Plan Approval - Type III	\$500	\$50,000

Fees for Review of Financial Responsibility Plans for Solid Waste Facilities		
	Initial	Maximum
Annual Review for Solid Waste Landfills	\$600 Flat Fee	N/A
Other Solid Waste Facilities	\$200	\$5,000

- B.** The Department shall bill an applicant for plan review services, subject to an hourly rate, no more than monthly, but at least semi-annually. The following information shall be included in each bill:
1. The dates of the billing period;
  2. After January 1, 2013, the date and number of review hours performed during the billing period itemized by employee name, position type and specifically describing:
    - a. Each review task performed,
    - b. The facility and operational unit involved, and
    - c. The hourly rate;
  3. A description and amount of any other reasonable review-related cost; and
  4. The total fees paid to date, the total fees due for the billing period, the date when the fees are due, and the maximum fee for the project.
- C.** Within 30 days after the Department makes a final determination whether to approve or disapprove of the facility plan, or when an applicant withdraws or closes the application for review, the Department shall prepare and issue a final itemized bill of its review. If the Department determines that the actual cost of reviewing the plan is less than the initial fee and any interim fees paid, the Department shall refund the difference to the applicant within 30 days after the issuance of the approval or disapproval of the application. If the Department determines that the actual cost of plan review is greater than the corresponding amount listed, the Department shall list the amount that the applicant owes on the final itemized bill, except that the final itemized bill shall not exceed the applicable maximum fee specified in subsection (A). The applicant shall pay in full the amount due within 30 days of receipt of the final itemized bill.
- D.** If the final bill is not paid within the 30 days, the Department shall mail a second notice to the applicant. Failure to pay the amount due within 60 days of receipt of the notice shall result in the Department initiation of proceedings for suspension of the approval, in accordance with A.R.S. § 49-782. The suspension shall continue until full payment is received at the Department.

ment. If full payment is not received at the Department within 365 days of the date of the approval, the approval shall be revoked in accordance with A.R.S. § 49-782. The Department shall not review any further plans for an entity which has not paid all fees due for a previous review of a solid waste facility plan.

- E. When determining actual cost under subsection (C), the Department shall use an hourly billing rate for all review hours spent working on the review of a plan, and add review-related costs which were incurred but are not included in the hourly billing rate.
- F. The hourly rate is \$122.00, beginning July 1, 2012, and shall remain in effect until it is either changed or repealed.

#### Historical Note

Adopted effective July 1, 1996; filed in the Office of the Secretary of State December 1, 1995 (Supp. 95-4). Corrected typographical error “facilities” in Schedules A, B, and C, to reflect Section filed in the Office of the Secretary of State December 1, 1995. Section amended effective May 15, 1997; except for special waste management plan component fees listed in Schedules A, B, and C, which become effective July 1, 1997 (Supp. 97-2). Amended by exempt rulemaking at 5 A.A.R. 3869, effective October 1, 1999 (Supp. 99-3). Amended by exempt rulemaking at 8 A.A.R. 3747, effective November 1, 2002 (Supp. 02-3). Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

#### R18-13-703. Review of Bill

- A. An applicant who disagrees with the final bill received from the Department for plan review and issuance or denial of a solid waste facility plan approval under this Article may make a written request to the Director for a review of the bill and may pay the bill under protest. The request for review shall specify the matters in dispute and shall be received by the Department within 10 working days of the date of receipt of the final bill.
- B. Unless the Department and applicant agree otherwise, the review shall take place within 30 days of receipt by the Department of the request. The Director shall make a final decision as to whether the time and costs billed are correct and reasonable. The final decision shall be mailed to the applicant within 10 working days after the date of the review and is subject to appeal pursuant to A.R.S. § 49-769.

#### Historical Note

Adopted effective July 1, 1996; filed in the Office of the Secretary of State December 1, 1995 (Supp. 95-4). Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

#### R18-13-704. Repealed

#### Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 3747, effective November 1, 2002 (Supp. 02-3). Section repealed by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

#### R18-13-705. Repealed

#### Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 3747, effective November 1, 2002 (Supp. 02-3). Section repealed by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

#### R18-13-706. Repealed

#### Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 3747, effective November 1, 2002 (Supp. 02-3). Section repealed by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

### ARTICLE 8. GENERAL PERMITS

#### R18-13-801. General Permit Fees

- A. The Department shall assess annual fees for operation under a general permit established in rule as described in the Table below.
- B. In addition to the technical requirements proposed for any general permit to be included in this Article, the Department shall propose the category to be assigned to the permit according to the Table below.
- C. An applicant shall pay the initial fee when approval to operate is requested. The Department shall bill an annual fee to facilities that have not notified the Department that they are no longer operating and have met the closure requirements of this Chapter.
- D. For the purpose of this Article, “complex” has the meaning in A.A.C. R18-1-501. “Standard” is any facility that is not complex.

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Category	Initial Fee	Annual Fee
Collection, Storage and Transfer-Standard	\$750	\$100
Collection, Storage and Transfer-Complex	\$7,500	\$1,000
Treatment-Standard	\$1,000	\$100
Treatment-Complex	\$10,000	\$1,000
Disposal	\$15,000	N/A

#### Historical Note

New Section made by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

#### R18-13-802. Disposal General Permit: Non-Municipal Solid Waste Landfills at Mining Operations

- A. This general permit is adopted pursuant to A.R.S. § 49-706 as an alternative to plan approvals for facilities identified in A.R.S. § 49-762(A)(1). This general permit authorizes disposal of solid waste in a landfill at a mining operation if the landfill meets one of the following criteria:
  1. The landfill is identified as a discharging facility in an area-wide aquifer protection permit and is located within the pollutant management area developed for that permit; or
  2. The landfill is located within the pollutant management area of an area-wide aquifer protection permit but is exempt from the permit requirement because it contains only inert material as defined in A.R.S. § 49-201; or
  3. The landfill is located at a site qualifying as a groundwater protection permit facility as defined in A.R.S. § 49-241.01(C) and the site has submitted an administratively complete application for an aquifer protection permit that has not been denied. Landfills that are located at mining operations and that are subject to best management practices under A.R.S. § 49-762.02(6) are required to comply with those practices and do not require coverage under this general permit.
- B. Authorized and prohibited materials.
  1. Disposal of the following is allowed under this general permit:

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- a. Solid waste generated at the mining operation where the landfill is located; and
  - b. Incidental amounts of putrescible waste generated at the mining operation where the landfill is located. For the purposes of this Section, "putrescible waste" means solid waste which contains organic matter capable of being decomposed by microorganisms and of such a character and proportion as to be capable of attracting or providing food for birds.
2. Disposal of the following is prohibited under this general permit:
  - a. Used oil as defined in A.R.S. § 49-801(3).
  - b. Human excreta as defined in R18-13-1102.
  - c. Special waste as defined in A.R.S. § 49-851(A)(5).
  - d. Biohazardous medical waste as defined in R18-13-1401.
  - e. Radioactive waste material regulated for disposal pursuant to Title 12, Chapter 1 of the Arizona Administrative Code.
  - f. Hazardous waste as defined in A.R.S. § 49-921(5), including hazardous waste generated by a conditionally exempt small quantity generator.
  - g. Bulk or noncontainerized liquid waste.
  - h. Waste containing polychlorinated biphenyls regulated for disposal pursuant to 40 CFR 761.
- C. A person may operate a landfill at a mining operation under this general permit if:
  1. Operation of the landfill complies with the requirements of this Section;
  2. The person files a Notice of Intent to Operate that complies with subsections (D) and (E);
  3. The person satisfies any requests for additional information from the Department regarding the Notice of Intent to Operate landfill operation and receives a written Authorization to Operate from the Director; and
  4. The person submits the applicable fee established in R18-13-801 for the Disposal category.
- D. Notice of Intent to Operate. An applicant shall submit to the Department a Notice of Intent to Operate under this general permit. The Notice shall contain:
  1. The name, address, and telephone number of the applicant;
  2. The name, address, and telephone number of a contact person familiar with the operation of the facility;
  3. The legal description of the landfill area, latitude and longitude coordinates, a detailed figure(s) showing both the existing landfill boundary and the anticipated future waste footprint of the landfill at the time of closure, and a map showing the location of the landfill within the mining operation;
  4. A description of how the applicant will meet the public access restrictions in subsection (H)(3);
  5. A description of how the applicant will meet the cover requirements in subsection (H)(4);
  6. A description of how the applicant will meet the methane requirements in subsection (H)(5). For landfills that have accepted waste prior to the effective date of this Section only, the applicant shall include recent methane monitoring sampling results from either:
    - a. One (1) measurement per acre of landfill waste footprint; or
    - b. A minimum of four (4) monitoring probes installed to the depth of refuse around the perimeter of the landfill and measured quarterly for the presence of methane gas for a period of one (1) year;
7. A narrative description of the landfill, including whether the landfill is existing or planned, the acreage of the current and planned waste footprint, estimated disposal capacity in cubic yards, expected lifespan, projected rate of waste disposal in tons per day or per week, and sources of solid waste generation;
8. A listing of any other federal or state environmental permits issued for or needed by the landfill, including any individual plan approval, APP, Groundwater Quality Protection Permit, or Notice of Disposal; and
9. A signature on the Notice of Intent to Operate certifying that the applicant agrees to comply with all terms of this general permit.
- E. Existing facility application deadline. Existing facilities that qualify for coverage under subsections (A)(1), (A)(2), or (A)(3) on the effective date of this rule shall submit a Notice of Intent to Operate within 2 years of the effective date of this rule to obtain coverage. The Director may extend this date in individual cases if the facility could not have submitted an administratively complete Notice in time with reasonable diligence.
- F. Authorization review.
  1. Inspection. The Department may inspect the facility to determine that the applicable terms of this general permit are being met.
  2. Authority to Operate issuance.
    - a. If the Department determines, based on its review and an inspection, if conducted, that the facility conforms to the requirements of this general permit, the Director shall issue an Authority to Operate.
    - b. The Authority to Operate authorizes the person to operate the landfill under the terms of this general permit.
  3. Authority to Operate denial. If the Department determines, based on its review and an inspection, if conducted, that the facility does not conform to the requirements of this general permit, the Director shall notify the person of the decision not to issue the Authority to Operate and the person shall not operate the landfill under this general permit. The notification shall inform the person of:
    - a. The reason for the denial with reference to the statute or rule on which the denial is based;
    - b. The person's right to appeal the denial, including the number of days the applicant has to file a protest challenging the denial and the name and telephone number of the Department contact person who can answer questions regarding the appeals process; and
    - c. The person's right to request an informal settlement conference under A.R.S. §§ 41-1092.03(A) and 41-1092.06.
- G. Statutory requirements. The landfill shall be:
  1. Located according to the applicable location restrictions in A.R.S. § 49-772; and
  2. Subject to a restrictive covenant recorded pursuant to A.R.S. § 49-771.
- H. Operational requirements.
  1. Inspect the landfill at least quarterly and after large storm events for overall integrity and condition of the facility, including stormwater diversions, and conduct maintenance and repairs as needed. For the purposes of this Section, a "large storm event" is defined as one-half inch of precipitation in any 24-hour period.
  2. Direct storm water runoff from surrounding areas away from the landfill.

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3. Restrict public access to the landfill or to the mining operation site by signs or physical barriers, including natural barriers.
4. Apply cover at such frequencies and in such a manner as to control windblown dispersion of waste, reduce the risk of fire and impede disease vectors' access to the waste, taking into account the types and volumes of waste placed in the landfill, the frequency of disposal, and other relevant considerations. The Department may allow other techniques that are demonstrated to be equally protective as applying cover material.
5. Concentrations of methane gas shall not exceed 25% of the lower explosive limit in facility structures within 100 feet of the landfill boundary and shall not exceed the lower explosive limit beyond the landfill boundary.
6. Methane monitoring.
  - a. For landfills that have accepted waste prior to the effective date of this Section only, the applicant shall include recent methane monitoring data as described in subsection (D)(6) with the Notice of Intent to Operate.
    - i. If the data demonstrate that concentrations of methane gas do not exceed 25% of the lower explosive limit, then no methane monitoring is required in order to operate under this permit.
    - ii. If the data demonstrate that concentrations of methane gas exceed 25% of the lower explosive limit, then annual methane monitoring using one of the data gathering methods described in subsection (D)(6) is required in order to operate under this permit. Results of such annual methane monitoring shall be submitted to the Department.
      - (1) A person operating a landfill subject to annual methane monitoring may reduce monitoring to once every five years if the results of three consecutive annual sampling events demonstrate that concentrations of methane gas do not exceed 25% of the lower explosive limit.
      - (2) A person operating a landfill subject to annual methane monitoring may request the Department to reduce or eliminate such monitoring based on any other methods approved by the Department, including consideration of the potential for methane gas to be present in facility structures within 100 feet of the landfill boundary at concentrations exceeding 25% of the lower explosive limit.
  - b. For landfills that have not accepted waste prior to the effective date of this Section, no methane monitoring is required in order to obtain coverage or operate under this permit.
7. Maintain an operating record that documents compliance with the conditions in this permit.
- I. Recordkeeping. A permittee shall maintain the following information for at least 10 years and make it available to the Department upon request:
  1. Landfill construction drawings and as-built plans, if available;
  2. The operating record required by subsection (H)(7); and
  3. Methane monitoring results, if any, obtained under subsection (H)(6).
- J. Reporting requirements. A permittee shall report the following to the Department:
  1. Methane monitoring concentrations that exceed those listed in subsection (H)(5) within 7 days of the determination.
  2. A change in ownership or expansion of the planned waste footprint as soon as practicable. These events shall require the filing of a new Notice of Intent to Operate.
- K. General applicability. Landfills covered under this general permit:
  1. Are not subject to rules adopted by the Department under A.R.S. § 49-761.
  2. Are exempt from the solid waste facility plan requirements in A.R.S. §§ 49-762.03 and 49-762.04 as provided in A.R.S. § 49-762(B).
- L. For the purposes of this Section, "mining" has the definition at A.R.S. § 27-301.

**Historical Note**

New Section made by final rulemaking at 20 A.A.R. 2679, effective November 9, 2014 (Supp. 14-3).

**ARTICLE 9. SOLID WASTE MANAGEMENT PLANNING****R18-13-901. Reserved****R18-13-902. Regional Boundaries**

- A. To facilitate solid waste management, the following regional boundary designations are established for planning purposes:
  1. The state of Arizona shall be divided into six districts comprised of the following counties:
    - I Maricopa
    - II Pima
    - III Apache, Coconino, Navajo, Yavapai
    - IV Mohave, Yuma
    - V Gila, Pinal
    - VI Cochise, Graham, Greenlee, Santa Cruz
  2. Petitions for a change in regional boundaries may be submitted to the Director. If the Director finds that the request is justified, he may adopt the revision as a new rule in accordance with Department procedures for adoption of rules.
  3. The Director may revise the regional boundary rules if he finds that such revision is necessary to accomplish a workable statewide comprehensive solid waste management plan. Such revisions shall be made in accordance with Department procedures for adoption of rules.
- B. To facilitate statewide hazardous waste management the state of Arizona shall be undivided and shall constitute one district for hazardous waste management planning purposes.

**Historical Note**

Section recodified from A.A.C. R18-8-402, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**ARTICLE 10. RESERVED****ARTICLE 11. COLLECTION, TRANSPORTATION, AND DISPOSAL OF HUMAN EXCRETA**

*Article 11 recodified from existing Sections in 18 A.A.C. 8, Article 6 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).*

**R18-13-1101. Reserved****R18-13-1102. Definitions**

- A. "Chemical toilet" means a toilet with a watertight, impervious pail or tank that contains a chemical solution placed directly under the seat and a pipe or conduit that connects the riser to the tank.
- B. "Department" means the Department of Environmental Quality or a local health department designated by the Department.

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- C. “Earth-pit privy” means a device for disposal of human excreta in a pit in the earth.
- D. “Human excreta” means human fecal and urinary discharges and includes any waste that contains this material.
- E. “License” means a stamp, seal, or numbered certificate issued by the Department.
- F. “Pail or can type privy” means a privy equipped with a water-tight container, located directly under the seat for receiving deposits of human excreta, that provides for removal of a waste receptacle that can be emptied and cleaned.
- G. “Person” means the state, a municipality, district or other political subdivision, a cooperative, institution, corporation, company, firm, partnership, or individual.
- H. “Sewage” means the waste from toilets, baths, sinks, lavatories, laundries, and other plumbing fixtures in residences, institutions, public and business buildings, mobile homes, and other places of human habitation, employment, or recreation.

**Historical Note**

Recodified from R18-8-602 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Amended by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

**R18-13-1103. General Requirements; License Fees**

- A. Any person owning or operating a vehicle or appurtenant equipment used to store, collect, transport, or dispose of sewage or human excreta that is removed from a septic tank or other onsite wastewater treatment facility; earth pit privy, pail or can type privy, or other type of privy; sewage vault; or fixed or transportable chemical toilet shall obtain a license for each vehicle from the Department. The person shall apply, in writing, on forms furnished by the Department and shall demonstrate that each vehicle is designed and constructed to meet the requirements of this Article.
- B. A person shall operate and maintain the vehicle and equipment so that a health hazard, environmental nuisance, or violation of a water quality standard established under 18 A.A.C. 11 is not created.
- C. License terms.
  - 1. For each vehicle newly licensed after June 30, 2012, the initial license fee shall be \$250 and shall be submitted with the license application. After initial licensure of a vehicle, the Department will renew the license annually after payment of a \$75 fee according to subsection (C)(3). The licensee shall submit the Department approved renewal form and annual license fee to the Department no later than 30 days before expiration.
  - 2. For those vehicles licensed before July 1, 2012, the initial license fee shall be \$75 and shall be paid within 30 days of receipt of an invoice from the Department. The license shall be valid for one year. The licensee shall submit the Department approved renewal form and the annual license fee of \$75 to the Department no later than 30 days before expiration.
  - 3. Each vehicle license may be renewed if:
    - a. The annual license fee is paid,
    - b. The owner or operator is in compliance with subsection (D),
    - c. The vehicle is operated by the same person for the same purpose, and
    - d. The vehicle is maintained according to this Article.
  - 4. The license is not transferable either from person to person or from vehicle to vehicle.
  - 5. The license holder shall ensure that the license number is plainly and durably inscribed in contrasting colors on the side door panels of the vehicle and the rear face of the

tank in figures not less than 3 inches high, and that the numbers are legible at all times.

- D. Any person owning or operating a vehicle or appurtenant equipment used to collect, store, transport, or dispose of sewage or human excreta shall obtain any required permit from the local county authority in each county in which the person proposes to operate.

**Historical Note**

Recodified from R18-8-603 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Section repealed; new Section made by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2). Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

**R18-13-1104. Repealed****Historical Note**

Recodified from R18-8-604 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Section repealed by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

**R18-13-1105. Reserved****R18-13-1106. Inspection**

The Department may inspect vehicles and appurtenant equipment used to collect, store, transport, or dispose sewage or human excreta as necessary to assure compliance with this Article.

**Historical Note**

Recodified from R18-8-606 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Amended by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

**R18-13-1107. Reserved****R18-13-1108. Repealed****Historical Note**

Recodified from R18-8-608 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Section repealed by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

**R18-13-1109. Reserved****R18-13-1110. Reserved****R18-13-1111. Reserved****R18-13-1112. Sanitary Requirements**

- A. A person owning or operating a vehicle or appurtenant equipment to collect, store, transport, or dispose of sewage or human excreta shall ensure that:
  - 1. Sewage and human excreta is collected, stored, transported, and disposed of in a sanitary manner and does not endanger the public health or create an environmental nuisance;
  - 2. The vehicle is equipped with a leak-proof and fly-tight container that has a capacity of at least 750 gallons and all portable containers, pumps, hoses, tools, and other implements are stored within a covered and fly-tight enclosure when not in use;
  - 3. Contents intended for removal are transferred as quickly as possible by means of a portable fly-tight container or suction pump and hose to the transportation container.
  - 4. The transportation container is tightly closed and made fly-tight immediately after the contents have been transferred,

5. Portable containers are kept fly-tight while being transported to and from the vehicle,
  6. Any waste dropped or spilled in the process of collection is cleaned up immediately and the area disinfected;
  7. The vehicle, tools, and equipment are maintained in good repair at all times and, at the end of each day's work, all portable containers, transportation containers, suction pumps, hose, and other tools are cleaned and disinfected; and
  8. All wastes collected are disposed of according to the recommendations of the local county health department and that no change in the recommended method of disposal is made without its prior approval. The local county health department shall recommend disposal by one of the following methods:
    - a. At a designated point into a sewage treatment facility or sewage collection system with the approval of the owner or operator of the facility or system,
    - b. By burying all wastes from chemical toilets in an area approved by the local county health department, or
    - c. Into a sanitary landfill with approval of the owner or operator of the landfill and following any precautions designated by the owner and operator to protect the health of the workers and the public.
- B.** Open dumping is prohibited except in designated areas approved by the local county health department.

**Historical Note**

Recodified from R18-8-612 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Amended by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

**R18-13-1113. Repealed****Historical Note**

Recodified from R18-8-613 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Section repealed by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

**R18-13-1114. Repealed****Historical Note**

Recodified from R18-8-614 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Section repealed by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

**R18-13-1115. Repealed****Historical Note**

Recodified from R18-8-615 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Section repealed by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

**R18-13-1116. Suspension and Revocation**

- A.** If a Department inspection indicates that a licensed vehicle is not maintained and operated or work cannot be performed according to this Article, the Department shall notify the owner in writing of all violations noted.
- B.** The Department shall give the owner a reasonable period of time to correct the violations and comply with the provisions of this Article. If the owner fails to comply within the time limit specified, the Department may suspend or revoke the vehicle license based on the number and severity of violations. The Department shall follow the provisions of A.R.S. Title 41,

Chapter, Article 10 in any suspension or revocation proceeding.

- C.** The Department shall consider the revocation or suspension of a permit by a local health department for violation of this Article as grounds for revocation of the vehicle license. The local health department shall immediately suspend both the vehicle license and the permit issued by the local health department for gross violation of this Article if in the opinion of the local health department a serious health hazard or environmental nuisance exists.
- D.** The owner of the vehicle whose license is suspended or revoked may appeal the final administrative decision as permitted under A.R.S. § 41-1092.08.

**Historical Note**

Recodified from R18-8-616 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Amended by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

**R18-13-1117. Reinstatement**

Upon request of the vehicle owner, the Department may reinstate a suspended or revoked vehicle license following a Department reinspection and based on an evaluation of compliance with the requirements of this Article.

**Historical Note**

Recodified from R18-8-617 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Amended by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

**R18-13-1118. Repealed****Historical Note**

Recodified from R18-8-618 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Section repealed by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

**R18-13-1119. Repealed****Historical Note**

Recodified from R18-8-619 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Section repealed by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

**R18-13-1120. Repealed****Historical Note**

Recodified from R18-8-620 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Section repealed by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

**ARTICLE 12. WASTE TIRES****R18-13-1201. Definitions**

In addition to the definitions provided in A.R.S. § 44-1301, the following definitions apply in this Article:

“Aquifer protection permit” means an authorization issued by the Department under A.R.S. § 49-241 et seq.

“Burial cell” means an area where mining waste tires are placed in or on the land for burial.

“Mining” means activities dedicated to the exploration, extraction, beneficiation, and processing, including smelting and refining, of metallic ores.

“Mining facility” means any land, building, installation, structure, equipment, device, conveyance, or area dedicated to mining.



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“Mining waste tire” means an off-road tire that is greater than three feet in outside diameter that was used in mining.

“Operator” means an owner, part owner, management agency, or lessee of a mining facility, a person responsible for the overall operation or control of a mining facility, or an authorized representative of the operator.

“Person” is defined in A.R.S. § 49-201.

“Waste tire cover” means waste tires that are chopped or shredded into pieces that do not exceed four inches in diameter used for cover at a solid waste landfill.

**Historical Note**

Section recodified from A.A.C. R18-8-701, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3). Amended by final rulemaking at 7 A.A.R. 5695, effective November 27, 2001 (Supp. 01-4).

**R18-13-1202. Burial of Mining Waste Tires**

- A. The operator shall file with the Director a one-time notice within 24 hours after commencement of burial of mining waste tires consisting of a map of the mining facility that clearly identifies the locations and dimensions of each burial cell and the estimated number of mining waste tires that will be buried in each cell. The operator shall identify each burial cell using an alphabetical or numeric identifier. If a mining facility uses a new burial cell not included in the commencement of burial notice, the operator shall notify the Department within 24 hours after commencement of burial in that cell.
- B. An operator shall only permit burial of mining waste tires in areas that are, or will be, included in an aquifer protection permit issued for the mining facility. An operator shall not permit burial of mining waste tires in leach areas unless prior to burial the Department issues an aquifer protection permit covering the leach area.
- C. An operator shall not permit a burial cell to be located within 10 feet of another burial cell.
- D. An operator shall not permit the burial of mining waste tires unless the tires are waste generated at the mining facility or another mining facility of the same owner.

**Historical Note**

Section recodified from A.A.C. R18-8-702, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3). Amended by final rulemaking at 7 A.A.R. 5695, effective November 27, 2001 (Supp. 01-4).

**R18-13-1203. Cover Requirements**

- A. The operator shall cover all mining industry off-road motor vehicle waste tires buried pursuant to this Article with a minimum of 6 inches of earthen material within 50 days of placement, or sooner if necessary, to prevent vector breeding or fire.
- B. The operator shall place final cover over the off-road motor vehicle waste tires within 180 days after placement of the last tire which will be buried in a cell. The final cover shall consist of earthen material which is at least 3 feet deep or which complies with the requirements of the aquifer protection permit for the area where the burial cell is located.
- C. The operator shall maintain final cover in compliance with this Section for as long as the mining industry off-road motor vehicle waste tires remain in the burial cell.

**Historical Note**

Section recodified from A.A.C. R18-8-703, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-13-1204. Annual Report**

By March 30 of each year, until a burial cell closure certification is

filed with the Department, the operator of the mining facility shall file an annual report with the Director which documents the location of each burial cell established during the preceding calendar year, the alphabetical or numerical identifier of each burial cell, and the number of off-road motor vehicle waste tires which were placed in each burial cell for burial during the preceding calendar year. If no tires were placed in the burial cell for burial during the preceding year, the annual report shall so indicate.

**Historical Note**

Section recodified from A.A.C. R18-8-704, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-13-1205. Burial Cell Closure Certification**

An operator shall file with the Director a burial cell closure certification within 30 days after placing final cover over the mining waste tires under R18-13-1203(B). The certificate shall contain a statement by the operator that no additional tires will be buried in the burial cell and a statement by an Arizona registered engineer certifying that the cover requirements of R18-13-1203 have been met.

**Historical Note**

Section recodified from A.A.C. R18-8-705, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3). Amended by final rulemaking at 7 A.A.R. 5695, effective November 27, 2001 (Supp. 01-4).

**R18-13-1206. Storage**

At no time shall more than 500 mining industry off-road motor vehicle waste tires be stored at the mining facility outside of a burial cell unless the mining facility has Department approval to operate a waste tire collection facility, pursuant to A.R.S. §§ 44-1304 and 49-762.

**Historical Note**

Section recodified from A.A.C. R18-8-706, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-13-1207. Maintenance of Records**

For at least three years after the burial cell closure certification is filed with the Department, the mining facility operator shall maintain, at the mining facility, records which document the number of tires buried in each cell.

**Historical Note**

Section recodified from A.A.C. R18-8-707, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-13-1208. Inspections**

The Department may inspect a mining facility, during regular operating hours, to determine whether mining industry off-road motor vehicle waste tire burial is in compliance with this Article.

**Historical Note**

Section recodified from A.A.C. R18-8-708, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-13-1209. Repealed****Historical Note**

Section recodified from A.A.C. R18-8-709, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3). Section repealed by final rulemaking at 7 A.A.R. 5695, effective November 27, 2001 (Supp. 01-4).

**R18-13-1210. Waste Tire Cover**

Waste tires used as cover at a solid waste landfill shall be used according to the solid waste facility plan required by A.R.S. § 49-762. An operator shall not permit mining waste tires to be used as cover at a solid waste landfill for more than two consecutive days at

a time.

#### Historical Note

Section recodified from A.A.C. R18-8-710, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3). Amended by final rulemaking at 7 A.A.R. 5695, effective November 27, 2001 (Supp. 01-4).

#### R18-13-1211. Registration of New Waste Tire Collection Sites; Fee

- A. A new waste tire collection site shall not begin operation after July 20, 2011, until the owner or operator registers with the Department. The owner or operator shall register on a form approved by the Department that includes a statement that the site is in compliance with A.R.S. § 49-762.07(F) and A.R.S. Title 44, Chapter 9, Article 8, as applicable. The owner or operator of a new waste tire collection site that begins operation after July 20, 2011, shall pay an initial registration fee of \$500 within 30 days of invoice receipt. For purposes of this Section, “new waste tire collection site” means a waste tire collection site as defined in A.R.S. § 44-1301 that did not operate as a collection site on or before July 20, 2011.
- B. The owner or operator shall pay a \$75 registration fee annually thereafter within 30 days of invoice receipt.

#### Historical Note

New Section made by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

#### R18-13-1212. Registration of Outdoor Used Tire Sites; Fee

- A. A person shall not store 100 or more used tires outdoors until the person registers with the Department. A person that stores 100 or more used tires outdoors after July 20, 2011, shall pay an initial registration fee of \$500 within 30 days of invoice receipt. The person shall register on a form approved by the Department that includes a statement that the site is in compliance with A.R.S. § 49-762.07(F) and A.R.S. Title 44, Chapter 9, Article 8, as applicable.
- B. A \$75 registration fee shall be paid annually thereafter within 30 days of invoice receipt.
- C. For the purposes of this Section:
  1. “Used tire” means any tire which has been used for more than one day on a motor vehicle.
  2. “Outdoors” means other than inside a building with a weatherproof roof.

#### Historical Note

New Section made by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

#### R18-13-1213. Facilities Subject to More Than One Tire Site Registration; Single Fee

A person who is required to register a tire facility under more than one of the Sections listed in subsections (1) through (3) shall register and follow procedures under each Section, but is only required to pay the registration fees under the Section with the highest fees.

1. R18-13-1211.
2. R18-13-1212.
3. R18-13-501.

#### Historical Note

New Section made by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

### ARTICLE 13. SPECIAL WASTE

#### R18-13-1301. Definitions

In addition to the terms prescribed in A.R.S. § 49-851, the terms in this Article shall have the following meanings:

1. “Disposal” means discharging, depositing, injecting, dumping, spilling, leaking, or placing special waste into

or on land or water so that the special waste or any constituent of the special waste may enter the environment, be emitted into the air, or discharged into any waters, including groundwater.

2. “Exception report” means a report that a generator shall submit to the Director which notifies the Director that the generator has not received a copy of the special waste manifest from the primary or alternate special waste receiving facility to which the special waste was sent pursuant to the generator’s instructions on the special waste manifest, or from any special waste receiving facility to which special waste was sent.
3. “Generator” means a person whose act or process onsite produces a special waste listed in, or designated pursuant to, A.R.S. §§ 49-852, 49-854, and 49-855, or whose act or process first causes such special waste to be subject to regulation.
4. “Identification number” means an alphanumeric identifier issued by the Department to each generator, special shipper, and special waste receiving facility to be used on documents, as required pursuant to this Article, in conjunction with shipment of special waste.
5. “Off-site consignment” means a generator’s delivery of materials or wastes for transport off-site to a special waste receiving facility within Arizona for treatment, storage, recycling, or disposal.
6. “Off-site” means any property located within Arizona that is not onsite as defined in A.R.S. § 49-851(3).
7. “Operator” means a person who owns and controls all or part of a special waste receiving facility, or who leases, operates, or controls such facility, a person responsible for the overall operation of such a facility, a management agency, or an authorized representative.
8. “Recycling” means recycling as defined in A.R.S. § 49-831(21).
9. “Shredder residue” means waste from the shredding of motor vehicles.
10. “Significant manifest discrepancy” means a difference of more than 10% by weight for bulk shipments, any variation in a piece count for a batch delivery, or any difference in the type of special waste received as compared to the type of special waste listed on the manifest.
11. “Special waste receiving facility” means an off-site location to which special waste is sent to be treated, recycled, stored, or disposed.
12. “Special waste manifest” means a form provided by the Department, shown as Exhibit A to this Article, and used to identify the origin, quantity, composition, routing, and destination of special waste during its transportation from a generator’s facility to a special waste receiving facility.
13. “Special waste shipper” means a person who transports special waste for off-site treatment, recycling, storage, or disposal.
14. “Treatment” means any method, technique, or process designed to change the physical, chemical, or biological character or composition of special waste.

#### Historical Note

Section recodified from A.A.C. R18-8-301, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

#### R18-13-1302. Special Waste Generator Manifesting Requirements

- A. A generator shall request a generator identification number on a form provided by the Director, and shown as Exhibit B to this Article, prior to shipping special waste. Within 30 days of

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receiving the completed form, the Director shall issue the identification number to the generator.

- B. Prior to off-site consignment of special waste, the generator shall do all of the following:
  1. Complete and sign the "Generator" section of a special waste manifest.
  2. Obtain the handwritten signature of the special waste shipper on the special waste manifest.
  3. Retain the generator's copy of the special waste manifest.
  4. Give the special waste manifest and the remaining attached copies to the special waste shipper or forward it to the receiving facility.
- C. Within 14 days after shipment was accepted by a special waste shipper for off-site consignment, the generator shall submit to the Director one legible copy of each special waste manifest with the generator's section completed and containing signatures of the generator and special waste shipper.
- D. If, within 35 days after the date the waste was accepted by the initial special waste shipper, the generator does not receive a completed copy of this special waste manifest with the handwritten signature of the special waste receiving facility operator, the generator shall contact the special waste shipper and the special waste receiving facility operator to determine the status of the special waste.
- E. The generator shall submit an exception report to the Director if the generator does not receive a completed, signed, legible copy of the special waste manifest within 45 days of the date the waste was accepted by the initial special waste shipper for off-site consignment. The exception report shall contain both of the following:
  1. A cover letter, signed by the generator, which explains the efforts made to locate the special waste and the results of those efforts.
  2. A legible copy of the special waste manifest which was signed by the generator and the special waste shipper and retained by the generator.
- F. The generator shall retain a legible copy of each signed special waste manifest for at least three years from the date of acceptance of a shipment of special waste for off-site consignment.
- G. If a person is required to have a manifest, shipping paper or shipping record under federal law for the special waste, the federal manifest, shipping paper, or shipping record may be used in lieu of the Arizona special waste manifest form so long as the federal manifest, shipping paper, or shipping record includes all the information required on the Arizona special waste manifest form.

**Historical Note**

Section recodified from A.A.C. R18-8-302, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-13-1303. Special Waste Shipper Manifesting Requirements**

- A. A special waste shipper who receives special waste in Arizona for transport to a special waste receiving facility in Arizona shall request a special waste shipper identification number on a form provided by the Director and shown as Exhibit B to this Article. The Director shall issue an identification number within 30 days of receipt of the completed form.
- B. A special waste shipper shall:
  1. Accept special waste for intrastate shipment to a special waste receiving facility only if the waste is accompanied by a special waste manifest which is completed and signed in accordance with the provisions of R18-8-302.
  2. Deliver the entire shipment of special waste to a special waste receiving facility as designated on the special waste

manifest. If unable to deliver the special waste to the primary or alternate special waste receiving facility designated on the special waste manifest:

- a. Return the special waste to the generator, or
  - b. Contact the generator and obtain instructions for an alternate special waste receiving facility and deliver the waste accordingly.
- C. Shipments of special waste between facilities owned by the same generator shall be exempt from the requirements of rules adopted pursuant to A.R.S. § 49-856.

**Historical Note**

Section recodified from A.A.C. R18-8-303, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-13-1304. Special Waste Receiving Facility Manifesting Requirements**

- A. A special waste receiving facility shall request an identification number on a form provided by the Director, and shown as Exhibit B to this Article, and obtain the number prior to receiving special waste. The Department shall issue the identification number within 30 days of receipt of the completed form.
- B. A special waste receiving facility shall receive only special waste for which it has a special waste manifest signed and dated by the generator and special waste shipper. In the "Facility" section of the special waste manifest, the operator of the special waste receiving facility shall do all of the following:
  1. Enter the identification number.
  2. Sign and date each copy of a special waste manifest to certify that the type and amount of special waste, as stated on the special waste manifest, was received.
  3. Indicate on the special waste manifest any significant discrepancies between the description, volume, or weight of the special waste as stated on the special waste manifest and the special waste received.
- C. After completing the "Facility" portion of the special waste manifest, the operator of the special waste receiving facility shall send one legible copy each of the signed special waste manifest to the Director and the generator within 30 days of the delivery of the special waste.
- D. Upon discovery of a significant manifest discrepancy in the special waste manifest and the special waste received, the operator of the special waste receiving facility shall:
  1. Contact the generator and special waste shipper to attempt to reconcile the discrepancy.
  2. If the discrepancy cannot be resolved within 15 days after receiving the waste, submit a letter to the Director, along with the special waste manifest within five days. The letter shall describe the significant manifest discrepancy and all attempts to reconcile it.

**Historical Note**

Section recodified from A.A.C. R18-8-304, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-13-1305. Records**

All records required by this Article shall be retained for at least three years. If notification of an enforcement action by the Department has been received, the records shall be retained until a final determination has been made in the matter or in accordance with the final determination.

**Historical Note**

Section recodified from A.A.C. R18-8-305, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**R18-13-1306. Reserved****R18-13-1307. Best Management Practices for Waste from Shredding Motor Vehicles**

A. A generator of shredder residue shall follow sampling protocol as follows or submit to the Department for review and approval, at least two weeks prior to the sampling event, an alternative written sampling plan which is consistent with requirements set forth in "Test Methods for Evaluating Solid Waste," EPA SW-846, 3rd Edition, Volume II, Chapter Nine, Sampling Plan, Physical/Chemical Method, EPA, Office of Solid Waste and Emergency Response, Washington, D.C., September 1986, and updated November 1990, and no future editions or amendments, ("EPA Sampling Plan"), herein incorporated by reference and on file with the Department and the Office of the Secretary of State:

1. Sample collection shall be done in accordance with one of the following:
  - a. Sampling procedure 1, consisting of both of the following steps:
    - i. The generator shall collect samples from a shredder residue sampling pile which shall consist of the average amount of shredder residue from eight hours of operation of the shredder. The shredder residue sampling pile shall be formed into a square shape for sampling purposes. Refer to Exhibit 1.
    - ii. One 2,000-gram sample shall be collected from each sample point as indicated in Exhibit 1. Samples from sample points A-1, B-1, and C-1 shall be collected from the top of the pile. Samples from sample points A-2, B-2, and C-2 shall be collected from the base of the pile. A sample from sample point C-3 shall be collected at the vertical midpoint at the center of the pile. The seven 2,000-gram samples shall be numbered consecutively. Three of the seven 2,000-gram samples shall then be chosen at random by selecting numbers from a calculator programmed to generate random numbers. The samples shall be analyzed for the constituents and at the frequencies listed in Table A of this Section.
  - b. Sampling procedure 2, consisting of both of the following steps:
    - i. The generator shall collect seven 2,000-gram samples during or immediately following the normal generation of shredder residue. For each sample, shredder residue shall be collected for 8 to 12 minutes, during which a minimum of 500 pounds shall be generated. This process shall be performed seven times to create seven 500-pound amounts. Each 500-pound amount shall be formed into a square shape for sampling purposes. Refer to Exhibit 1.
    - ii. Twenty 100-gram samples shall be collected from throughout each of the seven 500-pound piles generated. Upon completion of collection, all 20 samples from each of the seven 500-pound piles shall be combined together into seven separate 2,000-gram samples and numbered consecutively. Three of the seven 2,000-gram samples shall then be chosen at random by selecting numbers from a calculator programmed to generate random numbers. The samples shall be analyzed for the constituents

and at the frequencies listed in Table A of this Section.

2. Each 2,000 grams of shredder residue collected shall include both large and small particles, in proportion to shredder residue generated. The generator shall use a container which is large enough to hold the entire amount of shredder residue collected from each sample point.
3. The generator shall comply with requirements for sample preservation, temperature, and holding times, as set forth in the EPA Sampling Plan.
4. Each one of the three 2,000-gram samples selected at random shall be divided into four equal 500-gram portions and a 200-gram subsample shall be taken from each of the four equal 500-gram portions. Each subsample shall then be passed through a 9.5mm screen. All particles which do not pass through the 9.5mm screen shall be hand cut until small enough to pass through the screen. All four 200-gram subsamples shall then be remixed together and redivided into four equal 200-gram portions. The following amounts shall be taken for constituent sampling:
  - a. 10-15 grams per 200-gram subsample for a total of 40-60 grams per 2,000-gram sample for Polychlorinated Biphenyls (PCB) analysis as set forth in subsection (A)(10).
  - b. 25 grams per 200-gram subsample for a total of 100 grams per sample for toxicity characteristic leaching procedure extractions for contaminants as set forth in 40 CFR 261.24, Table 1 (incorporated by reference in R18-8-261(A)), as set forth in subsection (A)(7).
  - c. 1.25 grams per 200-gram subsample for a total of 5 grams per 2,000-gram sample for extraction fluid determination.
5. Each constituent sample shall be put into a container. Container labeling and chain-of-custody documentation shall be consistent with the requirements in the EPA Sampling Plan.
6. The constituent samples shall be analyzed by a laboratory licensed by the Arizona Department of Health Services in accordance with A.R.S. § 36-495.
7. Of the three samples selected at random, one sample amount required by subsection (A)(4)(b) shall be analyzed for the extractable heavy metals arsenic, barium, cadmium, chromium, lead, mercury, selenium, and silver, as set forth in 40 CFR 261.24, Table 1. The remaining two samples shall each be analyzed for extractable cadmium and lead.
8. If the results of all three of the analyses for any extractable heavy metal in subsection (A)(7) above are below the Regulatory Level of the Maximum Concentration of Contaminants for the Toxicity Characteristic as set forth in 40 CFR 261.24, Table 1, the simple arithmetic mean of the extractable cadmium and lead and the single analysis for the remaining six extractable heavy metals shall be used to determine if the sampled shredder residue will be classified as hazardous waste.
9. If the analyses of any one of three selected samples exceeds the regulatory level as set forth in 40 CFR 261.24, Table 1, an additional subsample from the sample in question shall be subjected to confirmation analysis. If the confirmation sample analysis totals are in excess of the regulatory level as set forth in 40 CFR 261.24, Table 1, the remaining four of the original seven samples shall be analyzed for those extractable heavy metals which exceed the regulatory level as set forth in 40 CFR 261.24,

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Table 1. The simple arithmetic mean of the results of all seven samples shall be used to determine if the sampled shredder residue will be classified as hazardous waste.

10. The three samples selected at random shall be analyzed for PCB concentration in the amounts required by subsection (A)(4)(a). If the samples contain concentrations of PCB less than 50 mg/kg, the simple arithmetic mean of the three samples shall be used for reporting to the Director. If any one of the three samples contains concentrations of PCB greater than 50 mg/kg, an additional subsample from the sample in question shall be subjected to confirmation analysis. If the PCB concentration for that sample exceeds 50 mg/kg, the remaining four of the original seven samples shall be analyzed for PCB, in amounts required by subsection (A)(4)(a), and the simple arithmetic mean of all the samples shall be used to determine if the sampled shredder residue will be classified as hazardous waste.

- B. Shredder residue determined to be hazardous waste shall be managed in accordance with A.R.S. § 49-921 et seq. and R18-8-260 et seq.

- C. The generator shall do all of the following:

1. Secure the facility to prevent unauthorized entry;
2. Cover or otherwise manage the shredder residue pile to prevent wind dispersal;
3. Place the shredder residue pile on a surface with a permeability coefficient equal to or less than  $1 \times 10^{-7}$  cm/s;
4. Design, construct, operate, and maintain a run-on control system capable of preventing flow onto the waste pile during peak discharge from, at a minimum, a 25-year storm;
5. Design, construct, operate, and maintain a run-off management system to collect and control at a minimum, the water volume resulting from a 24-hour, 25-year storm;
6. Provide collection and holding facilities for run-on and run-off control systems, which shall have a permeability coefficient equal to or less than  $1 \times 10^{-7}$  cm/s;
7. Record the date accumulation of shredder residue begins.

- D. Shredder residue shall be treated, recycled, sorted, stored, or disposed at a Department-approved special waste facility approved in accordance with A.R.S. § 49-857. A facility which seeks to become a special waste facility shall submit a special waste management plan to the Department to ensure compliance with subsection (C) of this Section.

- E. A generator shall not store shredder residue for longer than 90 days. A special waste facility shall not store shredder residue for longer than one year.

- F. The owner or operator of a special waste facility shall pay, to the Department, the fees required by A.R.S. §§ 49-855(C)(2) and 49-863 as follows:

1. \$1.49 per cubic yard of uncompacted shredder residue; or
2. \$3.38 per cubic yard of compacted shredder residue received; or
3. \$4.50 per ton; and
4. Not more than \$45,000 per generator site per year for shredder residue that is transported to a facility regulated by the Department for treatment, storage or disposal.

- G. Shredder residue which has been determined to be nonhazardous pursuant to this Section shall be transported in accordance with the requirements for transportation of garbage as set forth in R18-13-310.

**Historical Note**

Section recodified from A.A.C. R18-8-307, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3). Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

**Table A. Target Analyses and Sampling Frequency**

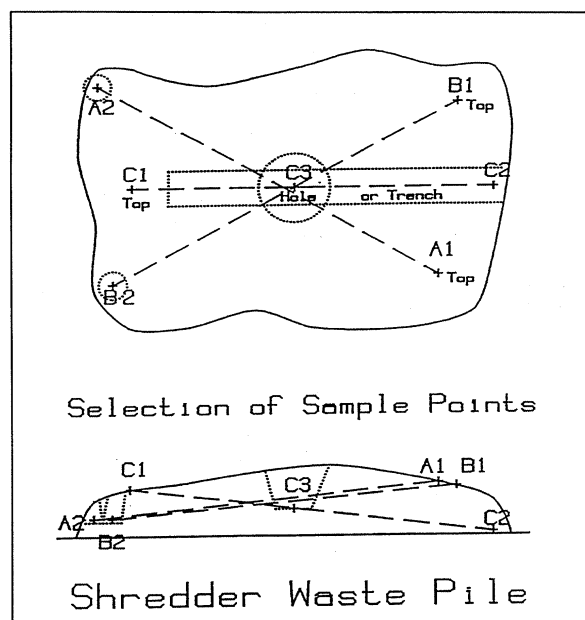
Constituents	Frequency
* TCLP Metals	Quarterly
* TCLP Volatiles	Annually
* TCLP Semi-volatiles	Annually
Polychlorinated Biphenyls (PCB)	Quarterly

\* Toxicity Characteristic Leaching Procedure (TCLP)

**Historical Note**

Table A recodified from 18 A.A.C. 8, Article 3, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**Exhibit 1. Selection of Sample Points, Shredder Waste Pile**



**Historical Note**

Exhibit 1 recodified from 18 A.A.C. 8, Article 3, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

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## Appendix A. Application for Arizona Special Waste Identification Number

Please refer to the instructions on the accompanying page before completing this form.	<b>ADEQ</b>	Application for Arizona Special Waste Identification Number	Date Received: (Do not write here official use only)
1. Mark Appropriate Box: <input type="checkbox"/> Generator <input type="checkbox"/> Shipper <input type="checkbox"/> Receiving Facility <input type="checkbox"/> Multiple			
2. Company/Agency Name			
3. Company/Agency Address (Physical Address, not P.O. Box or Route Number).			
4. Company/Agency Mailing Address (If different than above).			
5. Company/Agency Contact (Person to contact regarding special waste activities). Name:   Job Title: _____ Phone Number: (    ) _____			
6. Company/Agency Contact Address.			
7. Name and Address of Company's/Agency's Legal Owner.   Phone Number: (    ) _____			
Certification: I certify under penalty of law that I have personally examined and am familiar with the information submitted in this form and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of civil penalties.			
8. Signature: _____ 9. Name and Official Title: (Type or Print) _____ 10. Date Signed: _____			
11. Please list special wastes generated, transported, stored, or received by applicant.			

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**Instructions for the Completion of the ADEQ Application for the Arizona Special Waste Identification Number.**

1. Place an “X” in the appropriate box indicating which type of operation you will be performing.
2. Enter the complete company/agency name.
3. Enter the complete address. Do not use P.O. Box or Route Number.
4. Enter the complete address if it is different than the address listed in item 3.
5. Enter the name, job title, and complete phone number of the person who will act as the company/agency contact.
6. Enter the complete address of the company/agency contact listed in item 5.
7. Enter the name, complete address, and phone number of the company’s/agency’s legal owner.
8. Enter the signature of the person who will assume the responsibility of completion of this form and its contents.
9. Enter the name and title of the responsible person listed in item 8.
10. Enter the date that the responsible person signed the document.
11. List all special wastes that the applicant generates, transports, stores, or receives.

**Historical Note**

Appendix A recodified from 18 A.A.C. 8, Article 3, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

## Department of Environmental Quality – Solid Waste Management

## Appendix B. Special Waste Manifest

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY  
SPECIAL WASTE MANIFEST

G e n e r a t o r	1. Generator's AZ ID No.		Emergency Response Notification Phone Number	
	3. Generator's Name and Mailing Address			
	Generator's Phone Number and Area Code			
	4. Transporter 1 Company Name and Mailing Address		Transporter's AZ ID No.	
			Transporter's Phone No.	
	5. Transporter 2 Company Name and Mailing Address		Transporter's AZ ID No.	
			Transporter's Phone No.	
	6. Primary Receiving Facility Name and Address (physical site location, if different)		Facility's AZ ID No.	
			Facility's Phone No.	
	7. Alternate Receiving Facility Name and Address (physical site location, if different)		Facility's AZ ID No.	
		Facility's Phone No.		
8. U.S. DOT description, (if applicable) (Non-DOT regulated materials enter shipping name, physical state and description of all contents of waste)		Containers No.	Total Quantity	Unit Wt/Vol
		Mark "X" if Haz Mat		
9. Additional information on transportation, treatment, storage, or disposal				
10. GENERATOR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled and are in all respects in proper condition for transport by highway according to applicable international and governmental regulations.				
				Date
Printed/Typed Name		Signature		
T r a n s p o r t	11. Transporter 1 Acknowledgment of Receipt of Materials			
	Date			
	Printed/Typed Name		Signature	
F a c i l i t y	12. Transporter 2 Acknowledgment of Receipt of Materials			
	Date			
	Printed/Typed Name		Signature	
13. Discrepancy Indication Space				
14. Facility Owner or Operator: Certification of receipt of special waste materials covered by this manifest except as noted in above item.				
				Date
Printed/Typed Name		Signature		



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**Instructions for the Completion of the ADEQ Special Waste Manifest**

1. Enter the generator's Arizona Identification Number in box 1.
2. Enter the Emergency Response Notification Phone Number in box 2.
3. Enter the generator's name and complete mailing address, including city, state, and zip code, along with the generator's phone number, including the area code, in box 3.
4. Enter the transporter's name, transporter's Arizona identification number, and telephone number, including the area code, in box 4.
5. Complete this box if a second transporter is to be used to transport the special waste to the receiving facility, following the instructions outlined in number 4 in box 5.
6. Enter the name, address, and physical site location of the primary special waste receiving facility. In the appropriate spaces, include the facility's Arizona identification number and the telephone number, including the area code, in box 6.
7. Enter the name, address, and physical site location of the alternate special waste receiving facility. In the appropriate spaces, include the facility's Arizona identification number and the telephone number, including the area code, in box 7.
8. Enter United States Department of Transportation description (Including proper shipping name, hazard class, and identification number, if applicable) (For all non-Department of Transportation-regulated materials, enter the proper name, physical state, and description of all contents of the waste).

Mark an "X" in this column if waste is classified as a hazardous material.

**Container Number**

Enter the number of containers being shipped for each waste.

**Total Quantity**

Numerical value representing the number of containers multiplied by the container size. Answer will be listed in pounds, gallons, or cubic yards.

**Unit weight or volume**

P - Pounds

G - Gallons

Y - Cubic Yards

9. Use this space to indicate special transportation, treatment, storage, or disposal information. Emergency response telephone numbers or similar information may be included here in box 9.
10. Print or type the generator's name followed by their signature and date in box 10.
11. Print or type the primary transporter's name followed by their signature and date in box 11.
12. Print or type the secondary transporter's name followed by their signature and date in box 12.
13. Indicate significant discrepancies in this box. Significant manifest discrepancy is defined as "a difference of more than 10% by weight for bulk shipments, any variation in a piece count for batch deliveries, or an obvious difference in a special waste type is discovered by inspection or analysis between the type or amount of a special waste designated in a special waste manifest, and the type or amount received by a special waste receiving facility" in box 13.
14. Print or type the receiving facility's owner or operator name followed by their signature and date in box 14.

**Historical Note**

Appendix B recodified from 18 A.A.C. 8, Article 3, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

**ARTICLE 14. BIOHAZARDOUS MEDICAL WASTE AND DISCARDED DRUGS**

**R18-13-1401. Definitions**

In addition to the definitions in A.R.S. § 49-701, the following definitions apply in this Article:

1. "Administrative consent order" means a bilateral agreement between the consenting party and the Department. A bilateral agreement is not subject to administrative appeal.
2. "Alternative treatment technology" means a treatment method other than autoclaving or incineration, that achieves the treatment standards described in R18-13-1415.
3. "Approved medical waste facility plan" means the document that has been approved by the Department under A.R.S. § 49-762.04, and that authorizes the operator to accept biohazardous medical waste at its solid waste facility.

4. "Autoclaving," means using a combination of heat, steam, pressure, and time to achieve sterile conditions.
5. "Biohazardous medical waste" is composed of one or more of the following:
  - a. Cultures and stocks: Discarded cultures and stocks generated in the diagnosis, treatment or immunization of a human being or animal or in any research relating to that diagnosis, treatment or immunization, or in the production or testing of biologicals.
  - b. Human blood and blood products: Discarded products and materials containing free-flowing blood or free-flowing blood components.
  - c. Human pathologic wastes: Discarded organs and body parts removed during surgery. Human pathologic wastes do not include the head or spinal column.
  - d. Medical sharps: Discarded sharps used in animal or human patient care, medical research, or clinical lab-

- oratories. This includes hypodermic needles; syringes; pipettes; scalpel blades; blood vials; needles attached to tubing; broken and unbroken glassware; and slides and coverslips.
- e. Research animal wastes: Animal carcasses, body parts, and bedding of animals that have been infected with agents that produce, or may produce, human infection.
6. "Biologicals" means preparations made from living organisms or their products, including vaccines, cultures, or other biological products intended for use in diagnosing, immunizing, or treating humans or animals or in research pertaining to these activities.
  7. "Biological indicator" means a representative microorganism used to evaluate treatment efficacy.
  8. "Blood and blood products" means discarded human blood and any product derived from human blood, including but not limited to blood plasma, platelets, red or white blood corpuscles, and other derived products.
  9. "C.F.R." means the Code of Federal Regulations.
  10. "Chemotherapy waste" means any discarded material that has come in contact with an agent that kills or prevents the reproduction of malignant cells.
  11. "Dedicated vehicle" means a motor vehicle or trailer that is pulled by a motor vehicle used by a transporter for the sole purpose of transporting biohazardous medical waste.
  12. "Discarded drug" means any prescription medicine, over-the-counter medicine, or controlled substance, used in the diagnosis, treatment, or immunization of a human being or animal, that the generator intends to abandon. The term does not include hazardous waste or controlled substances regulated by the United States Drug Enforcement Agency.
  13. "Disposal facility" means a municipal solid waste landfill that has been approved by the Department under A.R.S. § 49-762.04 to accept untreated biohazardous medical waste for disposal.
  14. "Facility plan" has the meaning given to it in A.R.S. § 49-701.
  15. "Free flowing" means liquid that separates readily from any portion of a biohazardous medical waste under ambient temperature and pressure.
  16. "Generator" means a person whose act or process produces biohazardous medical waste, or a discarded drug, or whose act first causes medical waste or a discarded drug to become subject to regulation.
  17. "Hazardous waste" has the meaning prescribed in A.R.S. § 49-921.
  18. "Health care worker" means, with respect to R18-13-1403(B)(5), a person who provides health care services at an off-site location that is none of the following: a residence, a facility where health care is normally provided, or a facility licensed by the Arizona Department of Health Services.
  19. "Improper disposal of biohazardous medical waste" means the disposal by a person of untreated or inadequately treated biohazardous medical waste at any place that is not approved to accept untreated biohazardous medical waste.
  20. "Independent testing laboratory" means a testing laboratory independent of oversight activities by a provider of alternative treatment technology.
  21. "Medical sharps container" means a vessel that is rigid, puncture resistant, leak proof, and equipped with a locking cap.
  22. "Medical waste," as defined in A.R.S. § 49-701, means *"any solid waste which is generated in the diagnosis, treatment or immunization of a human being or animal or in any research relating to that diagnosis, treatment or immunization, or in the production or testing of biologicals, and includes discarded drugs but does not include hazardous waste as defined in A.R.S. § 49-921 other than conditionally exempt small quantity generator waste."*
  23. "Medical waste treatment facility" or "treatment facility" means a solid waste facility approved by the Department under A.R.S. § 49-762.04 to accept and treat biohazardous medical waste from off-site generators.
  24. "Multi-purpose vehicle" means any motor vehicle operated by a health care worker, where the general purpose is the non-commercial transporting of people and the hauling of goods and supplies, but not solid waste. A multi-purpose vehicle is limited to hauling biohazardous medical waste generated off site by health workers in providing services. "Off site" for purposes of this definition means a location other than a hospital or clinic.
  25. "Off site" means a location that does not fall within the definition of "on site" contained in A.R.S. § 49-701.
  26. "Packaging" or "properly packaged" means the use of a container or a practice under R18-13-1407.
  27. "Putrescible waste" means waste materials capable of being decomposed rapidly by microorganisms.
  28. "Radioactive material" has the meaning under A.R.S. § 30-651.
  29. "Secure" means to lock out or otherwise restrict access to unauthorized personnel.
  30. "Spill" means either of the following:
    - a. Any release of biohazardous medical waste from its package while in the generator's storage area.
    - b. Any release of biohazardous medical waste from its package or the release of packaged biohazardous medical waste by the transporter at a place or site that is not a medical waste treatment or disposal facility.
  31. "Store" or "storage" means, in addition to the meaning under A.R.S. § 49-701, either of the following:
    - a. The temporary holding of properly packaged biohazardous medical waste by a generator in a designated accumulation area awaiting collection by a transporter.
    - b. The temporary holding of properly packaged biohazardous medical waste by a transporter or a treater at an approved medical waste storage facility or treatment facility.
  32. "Technology provider" means a person that manufactures, or a vendor who supplies alternative medical waste treatment technology.
  33. "Tracking document" means the written instrument that signifies acceptance of biohazardous medical waste by a transporter, or a transfer, storage, treatment, or disposal facility operator.
  34. "Transportation management plan" means the transporter's written plan consisting of both of the following:
    - a. The procedures used by the transporter to minimize the exposure to employees and the general public to biohazardous medical waste throughout the process of collecting, transporting, and handling.
    - b. The emergency procedures used by the transporter for handling spills or accidents.
  35. "Transporter" means a person engaged in the hauling of biohazardous medical waste from the point of generation

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- to a Department-approved storage facility or to a Department-approved treatment or disposal facility.
36. “Treat” or “treatment” means, with respect to the methods used to render biohazardous medical waste less infectious: incinerating, autoclaving, or using the alternative treatment technologies prescribed in this Article.
  37. “Treated medical waste” means biohazardous medical waste that has been treated and that meets the treatment standards of R18-13-1415. Treated medical waste that requires no further processing is considered solid waste.
  38. “Treater” means a person, also known as an operator, who receives solid waste facility plan approval for the purpose of operating a medical waste treatment facility to treat biohazardous medical waste that is generated off site.
  39. “Treatment certification statement” means the written document provided by either a generator who treats biohazardous medical waste on site or by a treater, to inform a solid waste disposal or recycling facility that biohazardous medical waste has been treated as prescribed in this Article, and therefore is no longer subject to regulation under this Article.
  40. “Treatment standards” mean the levels of microbial inactivation, prescribed in R18-13-1415, to be achieved for a specific type of biohazardous medical waste.
  41. “Universal biohazard symbol” or “biohazard symbol” means a representation that conforms to the design shown in 29 CFR 1910.145(f)(8)(ii) (Office of the Federal Register, National Archives and Records Administration, July 1, 1998) and which is incorporated by reference in this rule. This incorporation does not include any later amendments or editions. Copies of the incorporated material are available for inspection at the Department of Environmental Quality and the Office of the Secretary of State.
  42. “Vehicle not dedicated to the transportation of biohazardous medical waste but which is engaged in commerce” means a motor vehicle or a trailer pulled by a motor vehicle whose primary purpose is the transporting of goods that are not solid waste or biohazardous medical waste and that is used by a transporter for the temporary transportation of biohazardous medical waste.
  6. A person in possession of biohazardous medical waste if the waste does not meet the treatment standards in R18-13-1415.
  7. An operator of a Department-approved disposal facility who accepts untreated biohazardous medical waste.
  8. A person who generates medical sharps in the preparation of human remains.
  9. A person who generates medical sharps in the treatment of animals.
  10. A generator of discarded drugs not returned to the manufacturer.
- B.** The requirements for biohazardous medical waste set out for collection do not apply to the manner in which the generator collects, or handles biohazardous medical waste inside the generator’s place of business.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

**R18-13-1403. Exemptions; Partial Exemptions**

- A.** The following persons are exempt from the requirements of this Article:
1. Law enforcement personnel handling biohazardous medical waste for law enforcement purposes.
  2. A person in possession of radioactive materials.
  3. A person who returns unused medical sharps to the manufacturer.
  4. A household generator residing in a private, public, or semi-public residence who generates biohazardous medical waste in the administration of self care or the agent of the household generator who administers the medical care. This exemption does not apply to the facility in which the person resides if that facility is licensed by the Arizona Department of Health Services.
  5. A generator that separates medical devices from the medical waste stream that are sent out for re-processing and returned to the generator.
  6. A person in possession of human bodies regulated by A.R.S. Title 36.
  7. A person who sends used medical sharps via the United States Postal Service or private shipping agent to a treatment facility.
- B.** The following are conditionally exempt from the requirements of this Article:
1. A person who prepares human corpses, remains, and anatomical parts that are intended for interment or cremation. However, if medical sharps are generated during the preparation of the human remains, they must be disposed of as prescribed by this Article.
  2. A person who operates an emergency rescue vehicle, an ambulance, or a blood service collection vehicle if the biohazardous medical waste is returned to the home facility for disposal. This facility is considered to be the point of generation for packaging, treatment, and disposal.
  3. A person who discharges discarded drugs and liquid and semi-liquid biohazardous medical wastes, excluding cultures and stocks, to the sanitary sewer system if the operator of the wastewater sewer system and treatment facility allows, permits, authorizes, or otherwise approves of the discharges.
  4. A person who possesses hazardous waste regulated by A.R.S. Title 49, Chapter 5.
  5. A health care worker who uses a multi-purpose vehicle in the conduct of routine business other than transporting waste, is exempt from the requirements of R18-13-1409

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

**R18-13-1402. Applicability**

- A.** This Article applies to the following:
1. A generator who treats biohazardous medical waste on site, before disposing of it as treated medical waste, and to any equipment used for that purpose. Specific requirements for a generator who treats on site are prescribed in R18-13-1405.
  2. A generator who contracts with a medical waste treatment facility for the purpose of treating biohazardous medical waste. Specific requirements for such a generator are prescribed in R18-13-1406.
  3. A person who transports biohazardous medical waste and any motor vehicle used for that purpose.
  4. A medical waste treatment facility operator, a medical waste treatment facility, and any equipment used for medical waste treatment.
  5. A person who provides alternative medical waste treatment technology for the purpose of treatment, and to any technology used for treatment.

if the health care worker complies with all of the following:

- a. Packages the biohazardous medical waste according to R18-13-1407.
  - b. Secures the packaged biohazardous medical waste within the vehicle so as to minimize spills.
  - c. Transports the biohazardous medical waste to the place of business or to a medical waste treatment or disposal facility.
  - d. Cleans the vehicle when it shows visible signs of contamination.
  - e. Secures the vehicle to prevent unauthorized contact with the biohazardous medical waste.
6. A person who transports biohazardous medical waste between multiple properties separated by a public thoroughfare and which is owned or operated by the same owner or governmental entity is exempt from the requirements of R18-13-1409 if the person complies with R18-13-1403(B)(5)(a) through (e).
  7. A hospital that chooses to accept medical sharps from staff physicians who generate medical sharps in a private practice is exempt from the requirement to obtain facility plan approval as long as the hospital collects medical sharps for off-site treatment or disposal.
- C. The following are exempt from some of the requirements of this Article:
1. A generator who treats biohazardous medical waste on site and who accepts for treatment medical waste described in R18-13-1403(A)(4) is exempt from the requirement to obtain solid waste facility plan approval prescribed in R18-13-1410.
  2. A generator who self-hauls biohazardous medical waste to a Department-approved medical waste treatment, storage, transfer, or disposal facility is exempt from the requirements of R18-13-1409 if the generator complies with R18-13-1403(B)(5)(a) through (e).

#### Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

#### R18-13-1404. Transition and Compliance Dates

- A. Unless otherwise specified in subsections (B) through (H), the date for compliance with this Article by generators, transporters, treaters, providers of alternative medical waste technology, and persons in possession of untreated biohazardous medical waste is the effective date of this Article.
- B. A person who provides alternative medical waste treatment technology used by a generator before the effective date of this Article shall perform all of the following:
  1. Register the alternative medical waste technology with the Department as prescribed in R18-13-1414 within 90 days after the effective date of this Article.
  2. Not provide alternative technology 90 days after the effective date of this Article unless a Departmental registration certificate is received.
  3. After receipt of the Departmental registration certificate, provide to all generators using the alternative treatment technology a copy of the registration certificate and the alternative technology manufacturer's specifications.
- C. A generator who utilizes alternative medical waste treatment technology before the effective date of this Article shall obtain, within 180 days after the effective date of this Article, the Departmental registration number and equipment specifications, described in R18-13-1414, from the technology provider. If documentation of Departmental registration is not on file with the generator, the Department shall classify biohaz-

ardous medical waste treated 180 days after the effective date of this Article using the unregistered alternative treatment technology as untreated biohazardous medical waste.

- D. A generator who utilizes incineration or autoclaving for onsite treatment of biohazardous medical waste before the effective date of this Article may continue to do so after the effective date if the treatment requirements of R18-13-1415 and the onsite treatment requirements of R18-13-1405 are met.
- E. A transporter of biohazardous medical waste in business on the effective date of this Article shall register, within 90 days after the effective date of this Article, as required in R18-13-1409(A).
- F. An operator of a medical waste storage facility, who has obtained approval for a solid waste facility under A.R.S. § 49-762.04 on or before the effective date of this Article, may continue to store biohazardous medical waste if the facility complies with the design and operation standards prescribed in R18-13-1411. The addition of a refrigeration unit is a Type II change as described in R18-13-1413(A)(2).
- G. An operator of a medical waste transfer facility shall obtain solid waste facility plan approval that meets the requirements of R18-13-1410 within 180 days after the effective date of this Article.
- H. An operator of a medical waste treatment facility who has obtained Departmental plan approval to operate a medical waste treatment facility on or before the effective date of this Article may continue to operate under that plan approval if both of the following are met:
  1. The treater complies with the treatment standards of R18-13-1415 and the recordkeeping requirements of R18-13-1412, except as noted in the subsection below.
  2. If the treater determines that the waste is not being treated to the applicable treatment standards of R18-13-1415, the treater informs the Department within two working days after the date on the determination, and within 30 working days enters into an administrative consent order to bring the facility into compliance.
- I. An operator of an existing municipal solid waste landfill who intends to accept untreated biohazardous medical waste shall submit a notice of a Type III change and an amended facility plan within 180 days after the effective date of this Article.
- J. Notwithstanding subsection (H), if the Department determines that an updated solid waste facility plan is required, a treater shall submit an updated plan within 180 days after the date on the Department's determination. The treater may continue to operate under the conditions specified in subsection (H) of this Section while the Department reviews and determines whether to approve or deny the updated plan.
- K. After the effective date of this Article, solid waste facility plan approval under A.R.S. § 49-762.04 is required for a new medical waste treatment or disposal facility before construction.

#### Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

#### R18-13-1405. Biohazardous Medical Waste Treated On Site

- A. A person who treats biohazardous medical waste on site shall use incineration, autoclaving, or an alternative medical waste treatment method that meets the treatment standards prescribed in R18-13-1415.
- B. A generator who uses:
  1. Incineration shall follow the requirements of subsections (C), (F), (G), and (H),
  2. Autoclaving shall follow the requirements of subsections (D), (F), (G) and (H), or

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3. An alternative treatment method shall follow the requirements of subsections (E), (F), (G), and (H).
- C. A generator who incinerates biohazardous medical waste on site shall comply with all of the following requirements:
  1. Obtain a permit if required by the local or state air quality agency having jurisdiction.
  2. Reduce the biohazardous medical waste, excluding metallic items, into carbonized or mineralized ash.
  3. Determine whether incinerator ash is hazardous waste as required by hazardous waste rules promulgated under A.R.S. Title 49, Chapter 5.
  4. Dispose of the non-hazardous waste incinerator ash at a Department-approved municipal solid waste landfill.
- D. A generator who autoclaves biohazardous medical waste on site shall comply with all of the following requirements:
  1. Further process by grinding, shredding, or any other process, any recognizable animals and human tissue, organs, or body parts, to render such waste non-recognizable and ensure effective treatment.
  2. Operate the autoclave at the manufacturer's specifications appropriate for the quantity and density of the load.
  3. Keep records of operational performance levels for six months after each treatment cycle. Operational performance level recordkeeping includes all of the following:
    - a. Duration of time for each treatment cycle.
    - b. The temperature and pressure maintained in the treatment unit during each cycle.
    - c. The method used to determine treatment parameters in the manufacturer's specifications.
    - d. The method in manufacturer's specifications used to confirm microbial inactivation and the test results.
    - e. Any other operating parameters in the manufacturer's specifications for each treatment cycle.
  4. Keep records of equipment maintenance for the duration of equipment use that include the date and result of all equipment calibration and maintenance.
- E. A generator who uses an alternative treatment method on site shall comply with all of the following requirements:
  1. Use only alternative treatment methods registered under R18-13-1414.
  2. Further process by grinding, shredding, or any other process, any recognizable animals and human tissue, organs, or body parts, to render this waste non-recognizable and ensure effective treatment.
  3. Follow the manufacturer's specifications for equipment operation.
  4. Supply upon request all of the following:
    - a. The Departmental registration number for the alternative medical waste treatment technology and the type of biohazardous medical waste that the equipment is registered to treat.
    - b. The equipment specifications that include all of the following:
      - i. The operating procedures for the equipment that enable the treater to comply with the treatment standards described in this Article for the type of waste treated.
      - ii. The instructions for equipment maintenance, testing, and calibration that enable the treater to comply with the treatment standards described in this Article for the type of waste treated.
  5. Maintain a training manual regarding the proper operation of the equipment.
  6. Maintain a treatment record consisting of a log of the volume of medical waste treated and a schedule of calibration and maintenance performed under the manufacturer's specifications.
  7. Maintain treatment records for six months after the treatment date for each load treated.
  8. Maintain the equipment specifications for the duration of equipment use.
  - F. A generator shall do all of the following:
    1. Package the treated medical waste according to the waste collection agency's requirements;
    2. Attach to the package or container a label, placard, or tag with the following words: "This medical waste has been treated as required by the Arizona Department of Environmental Quality standards" before placing the treated medical waste out for collection as a general solid waste. The generator shall ensure that the treated medical waste meets the standards of R18-13-1415.
    3. Upon request of the solid waste collection agency or municipal solid waste landfill, provide a certification that the treated medical waste meets the standards of R18-13-1415.
    4. Make treatment records available for Departmental inspection upon request.
  - G. A generator of medical sharps shall handle medical sharps as prescribed in R18-13-1419.
  - H. A generator of chemotherapy waste, cultures and stocks, or animal waste shall handle that waste as prescribed in R18-13-1420.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

**R18-13-1406. Biohazardous Medical Waste Transported Off Site for Treatment**

- A. A generator of biohazardous medical waste shall package the waste as prescribed in R18-13-1407 before self-hauling or before setting the waste out for collection by a transporter.
- B. A generator shall obtain a copy of the tracking document signed by the transporter signifying acceptance of the biohazardous medical waste. A generator shall keep a copy of the tracking document for one year from the date of acceptance by the transporter. The tracking document shall contain all of the following information:
  1. Name and address of the generator, transporter, and medical waste treatment, storage, transfer, or disposal facility, as applicable.
  2. Quantity of biohazardous medical waste collected by weight, volume, or number of containers.
  3. Identification number attached to bags or containers.
  4. Date the biohazardous medical waste is collected.
- C. A generator of chemotherapy waste, cultures and stocks, or animal waste shall handle the waste as prescribed in R18-13-1420.
- D. A generator of medical sharps shall handle the waste as prescribed in R18-13-1419.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

**R18-13-1407. Packaging**

- A. A generator who sets biohazardous medical waste out for collection for off-site treatment or disposal shall package the biohazardous medical waste in either of the following:
  1. A red disposable plastic bag that is:
    - a. Leak resistant,
    - b. Impervious to moisture,

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- c. Of sufficient strength to prevent tearing or bursting under normal conditions of use and handling,
  - d. Sealed to prevent leakage during transport,
  - e. Puncture resistant for sharps, and
  - f. Placed in a secondary container. This container shall be constructed of materials that will prevent breakage of the bag in storage and handling during collection and transportation and bear the universal biohazard symbol. The secondary container may be either disposable or reusable.
2. A reusable container that bears the universal biohazard symbol and that is:
- a. Leak-proof on all sides and bottom, closed with a fitted lid, and constructed of smooth, easily cleanable materials that are impervious to liquids and resistant to corrosion by disinfection agents and hot water, and
  - b. Used for the storage or transport of biohazardous medical waste and cleaned after each use unless the inner surfaces of the container have been protected by disposable liners, bags, or other devices removed with the waste. "Cleaning" means agitation to remove visible particles combined with one of the following:
    - i. Exposure to hot water at a temperature of at least 180 degrees Fahrenheit for a minimum of 15 seconds.
    - ii. Exposure to an EPA-approved chemical disinfectant used under established protocols and regulations.
    - iii. Any other method that the Department determines is acceptable, if the determination of acceptability is made in advance of the cleaning.
- B. A generator shall handle any container used for the storage or transport of biohazardous medical waste that is not capable of being cleaned as described in subsection (A)(2)(b), or that is disposable packaging, as biohazardous medical waste.
- C. A generator shall not use reusable containers described in subsection (A)(2) for any purpose other than the storage of biohazardous medical waste.
- D. A generator shall not reuse disposable packaging and liners and shall manage such items as biohazardous medical waste.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

**R18-13-1408. Storage**

- A. A generator may place a container of biohazardous medical waste alongside a container of solid waste if the biohazardous medical waste is identified and not allowed to co-mingle with the solid waste. The storage area shall not be used to store substances for human consumption or for medical supplies.
- B. Once biohazardous medical waste has been packaged for shipment off site, a generator shall provide a storage area for biohazardous medical waste until the waste is collected and shall comply with both of the following requirements:
- 1. Secure the storage area in a manner that restricts access to, or contact with the biohazardous medical waste to authorized persons.
  - 2. Display the universal biohazard symbol and post warning signs worded as follows for medical waste storage areas: (in English) "CAUTION -- BIOHAZARDOUS MEDICAL WASTE STORAGE AREA -- UNAUTHORIZED PERSONS KEEP OUT" and (in Spanish) "PRECAUCION -- ZONA DE ALMACENAMIENTO DE DES-

PERDICIOS BIOLÓGICOS PELIGROSOS -- PROHIBIDA LA ENTRADA A PERSONAS NO AUTORIZADAS."

- C. Beginning at the time the waste is set out for collection, a generator who stores biohazardous medical waste shall comply with all of the following requirements:
- 1. Keep putrescible biohazardous medical waste unrefrigerated if it does not create a nuisance. However, refrigerate at 40° F. or less putrescible biohazardous medical waste kept more than seven days.
  - 2. Store biohazardous medical waste for 90 days or less unless the generator has obtained facility plan approval under A.R.S. § 49-762.04 and is in compliance with the design and operational requirements prescribed in R18-13-1412.
  - 3. Keep the storage area free of visible contamination.
  - 4. Protect biohazardous medical waste from contact with water, precipitation, wind, or animals. A generator shall ensure that the waste does not provide a breeding place or a food source for insects or rodents.
  - 5. Handle spills by re-packaging the biohazardous medical waste, re-labeling the containers and cleaning any soiled surface as prescribed in R18-13-1407(A)(2)(b).
  - 6. Notwithstanding subsection (C)(1), if odors become a problem, a generator shall minimize objectionable odors and the off-site migration of odors. If the Department determines that a generator has not acted or adequately addressed the problem, the Department shall require the waste to be removed or refrigerated at 40° F or less.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

**R18-13-1409. Transportation; Transporter License; Annual Fee**

- A. A transporter shall obtain a transporter license from the Department as provided under subsections (B), (C), and (D) below in addition to possessing a permit, license, or approval if required by a local health department, environmental agency, or other governmental agency with jurisdiction.
- B. Beginning on July 1, 2012, a transporter shall pay an annual fee of \$750 for every calendar year according to the following schedule, except that no transporter shall pay more than one annual fee in any calendar year:
- 1. Transporters registered with the Department before July 1, 2012, shall pay by December 31st of each year until their registration expires and shall apply for a license according to subsections (C) and (D) of this Section no more than 60 days before their registration expires.
  - 2. Transporters who have been issued a license or renewal of a license under this Section and have paid the licensing year fee as provided in subsection (D) shall pay the annual fee by December 31st of each year thereafter.
  - 3. A transporter that has not been registered with the Department shall apply and obtain a license according to subsections (C) and (D) of this Section and pay an annual fee by December 31st of each year thereafter.
- C. To apply for or to renew a transporter license, an applicant shall submit all of the following on a form approved by the Department:
- 1. The name, address, and telephone number of the transportation company or entity.
  - 2. All owners' names, addresses, and telephone numbers.
  - 3. All names, addresses, and telephone numbers of any agents authorized to act on behalf of the owner.

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4. A copy of either the certificate of disclosure required by A.R.S. § 49-109 or a written acknowledgment that this disclosure is not required.
  5. Photocopies or other evidence of the issuance of a permit, license, or approval if required by a local health department, environmental agency, or other governmental agency with jurisdiction.
  6. A copy of the transportation management plan that meets the requirements in subsection (I).
  7. A list identifying each dedicated vehicle.
  8. An application fee of \$2,000 which shall apply toward the licensing year fee in subsection (D)(3).
- D.** The Department may only issue a transporter license, including a renewal, after all of the following:
1. All of the items in subsection (C) have been received and determined to be correct and complete;
  2. A Department inspection of each transporting vehicle shows that the vehicle is in compliance with this Article; and
  3. The applicant has paid a licensing year fee consisting of:
    - a. An amount based on the expenses associated with inspecting each transporting vehicle, evaluating the application, and approving the license, minus the application fee. The amount shall be calculated using a rate of \$122 per hour, multiplied by the number of personnel hours used in these duties.
    - b. The annual fee of \$750 for the year as provided for in subsection (B).
    - c. The maximum fee for both subsections (D)(3)(a) and (b) shall be \$20,000.
- E.** A transporter license is valid for five years after issuance. To renew the license, the licensee shall submit an application under subsection (C) no later than 60 days before expiration. Renewals shall be issued after payment of a licensing year fee as provided in subsection (D)(3).
- F.** Amendments. After issuance, the licensee shall submit to the Department any change to the information listed in subsection (C) within 30 days of its occurrence. Vehicles may only be added to the license after a Department inspection shows that the vehicle is in compliance with this Article. Amendments to the transportation management plan or amendments adding vehicles shall be processed after payment of inspection fees and other expenses at the rate listed in subsection (D)(3), except that the application fee shall be \$100 and the maximum fee \$5,000.
- G.** An applicant who disagrees with the final bill received from the Department for the amendment, issuance, renewal or denial of a transporter license or vehicle inspections may make a written request to the Director for a review of the bill and may pay the bill under protest. The request for review shall specify the matters in dispute and shall be received by the Department within 10 working days of the date of receipt of the final bill.
- H.** Unless the Department and applicant agree otherwise, the review shall take place within 30 days of receipt by the Department of the request. The Director shall make a final decision as to whether the time and costs billed are correct and reasonable. The final decision shall be mailed to the applicant within 10 working days after the date of the review and is subject to appeal pursuant to A.R.S. § 49-769.
- I.** A person who transports biohazardous medical waste shall maintain in each transporting vehicle at all times a transportation management plan consisting of both of the following:
1. Routine procedures used to minimize the exposure of employees and the general public to biohazardous medical waste throughout the process of collecting, transporting, and handling.
  2. Emergency procedures used for handling spills or accidents.
- J.** A transporter who accepts biohazardous medical waste from a generator shall leave a copy of the tracking document described in R18-13-1406(B) with the person from whom the waste is accepted. A transporter shall ensure that a copy of the tracking document accompanies the person who has physical possession of the biohazardous medical waste. Upon delivery to a Department-approved transfer, storage, treatment, or disposal facility, the transporter shall obtain a copy of the tracking document, signed by a person representing the receiving facility, signifying acceptance of the biohazardous medical waste.
- K.** A transporter who transports biohazardous medical waste in a vehicle dedicated to the transportation of biohazardous medical waste shall ensure that the cargo compartment can be secured to limit access to authorized persons at all times except during loading and unloading. In addition, the cargo compartment shall be constructed in compliance with one of the following:
1. Have a fully enclosed, leak-proof cargo compartment consisting of a floor, sides, and a roof that are made of a non-porous material impervious to biohazardous medical waste and physically separated from the driver's compartment.
  2. Haul a fully enclosed, leak-proof cargo box made of a non-porous material impervious to biohazardous medical waste.
  3. Tow a fully enclosed leak-proof trailer made of a non-porous material impervious to biohazardous medical waste.
- L.** A person who transports biohazardous medical waste in a vehicle not dedicated to the transportation of biohazardous medical waste, but that is used longer than 30 consecutive days, shall comply with the following:
1. Subsections (A) and (I) through (M).
  2. Clean the vehicle as prescribed in R18-13-1407(A)(2)(b) before it is used for another purpose.
- M.** A person who transports biohazardous medical waste shall comply with all of the following:
1. Accept only biohazardous medical waste packaged as prescribed in R18-13-1407.
  2. Accept biohazardous medical waste only after providing the generator with a signed tracking form as prescribed in R18-13-1406(B), and keep a copy of the tracking document for one year.
  3. Deliver biohazardous medical waste to a Department-approved biohazardous medical waste storage, transfer, treatment, or disposal facility within 24 hours of collection or refrigerate the waste for not more than 90 days at 40° F or less until delivery.
  4. Not hold biohazardous medical waste longer than 96 hours in a refrigerated vehicle unless the vehicle is parked at a Department-approved facility.
  5. Not unload, reload, or transfer the biohazardous medical waste to another vehicle in any location other than a Department-approved facility, except in emergency situations. Combination vehicles or trailers may be uncoupled and coupled to another cargo vehicle or truck trailer as long as the biohazardous medical waste is not removed from the cargo compartment.
- N.** As used in this Section, "licensing year" means the calendar year in which the Department issues a license or a renewal of a license under this Section.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).  
Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

**R18-13-1410. Storage, Transfer, Treatment, and Disposal Facilities; Facility Plan Approval**

- A. A person shall obtain solid waste facility plan approval from the Department as prescribed in A.R.S. § 49-762.04 to construct any facility that will be used to store, transfer, treat, or dispose of biohazardous medical waste that was generated off site. Plan approval shall be obtained before starting construction of the medical waste treatment or disposal facility. This requirement also applies to solid waste facilities for which an operator self-certifies under A.R.S. § 49-762.05, if the facility also will receive biohazardous medical waste.
- B. If an air quality permit is required for the facility under A.R.S. Title 49, Chapter 3, the person shall include evidence of that air quality permit, or evidence of an air quality permit application with the application for solid waste facility plan approval.
- C. A person applying for facility plan approval shall ensure that the plan contains information demonstrating how the plan will comply with this Article.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

**R18-13-1411. Storage and Transfer Facilities; Design and Operation**

An operator of a storage facility or transfer facility shall comply with all of the following design and operation requirements:

1. Design the facility so that biohazardous medical waste is always handled and stored separately from other types of solid waste if accepted at the facility.
2. Display prominently the universal biohazard symbol as prescribed in R18-13-1401.
3. Construct the storage area from smooth, easily cleanable non-porous material that is impervious to liquids and resistant to corrosion by disinfecting agents and hot water.
4. Protect biohazardous medical waste from contact with water, precipitation, wind, or animals.
5. Specify in the application for facility plan approval the maximum storage time that biohazardous medical waste will remain at the facility. If the biohazardous medical waste will be stored for more than 24 hours, the operator shall equip the facility with a refrigerator to refrigerate the biohazardous medical waste. The operator of the facility shall maintain the temperature in the refrigerator at 40° F. or less.
6. Accept biohazardous medical waste only if it is accompanied by the tracking form. The operator shall sign the tracking form and keep a copy of the acceptance documentation for one year;
7. Accept biohazardous medical waste if it is packaged as described in R18-13-1407. If a biohazardous medical waste container is damaged or leaking, improperly labeled, or otherwise unacceptable, a transfer facility operator shall do one of the following:
  - a. Reject the waste and return it to the transporter.
  - b. Accept the waste and immediately repackage it as prescribed in R18-13-1407(A).
8. Clean the storage area daily as prescribed in R18-13-1407(A)(2).

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

**R18-13-1412. Treatment Facilities; Design and Operation**

- A. An operator who applies for facility plan approval shall comply with all of the following:
  1. Submit to the Department the following documentation:
    - a. Equipment specifications that identify the proper type of medical waste to be treated in the equipment and any design or equipment restrictions.
    - b. Manufacturer's specifications and operating procedures for the equipment that describe the type and volume of waste to be treated, monitoring data of the treatment process, and calibration and testing of the equipment, providing specific details about the capability of the equipment to achieve the treatment standards prescribed in R18-13-1415.
    - c. Instructions for equipment maintenance, testing, and calibration that ensure the equipment achieves the treatment standards prescribed in R18-13-1415.
    - d. Training manual for the equipment.
    - e. Written certification from the manufacturer stating that the equipment, when operated properly, is capable of achieving the treatment standards prescribed in R18-13-1415.
  2. Submit to the Department and have readily available at the facility, an operations procedure manual describing how the waste will be handled from the time it is accepted by the treater through the treatment process and final disposition of the treated waste. The operations procedure manual shall include all of the following:
    - a. Provisions for treating biohazardous medical waste within 24 hours of receipt or refrigerating immediately at 40° F. or less upon determination that treatment or disposal will not occur within 24 hours.
    - b. A contingency plan if the treatment equipment is out of service for an extended period of time. The plan shall address the manner and length of time for storage of the waste. An operator shall not store biohazardous medical waste more than 90 days. The plan shall be based on the capacity of the treatment equipment to treat all waste at the facility, including any backlog of stored waste and any new waste intake. If the 90-day time-frame will be exceeded, the operator shall either stop accepting waste until the backlog is treated, or contract with another treatment facility for treating the waste.
    - c. Procedures for handling hazardous chemicals, radioactive waste, and chemotherapy waste. The plan shall provide for scanning biohazardous medical waste with a Geiger counter and handling waste that measures above background level in a manner that complies with state and federal law.
  3. Have on hand written procedures stating that biohazardous medical waste is to be accepted from a transporter only if the waste is accompanied by a tracking form, and written procedures that require compliance with both of the following:
    - a. The treater or the treater's authorized agent shall sign the tracking document and keep a copy of the acceptance documentation for one year.
    - b. If a biohazardous medical waste container is damaged or leaking, improperly labeled, or otherwise unacceptable, a treater shall do one of the following:
      - i. Reject the waste and return it to the transporter.



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- ii. Accept the waste and transfer it directly from the transporting vehicle to the treatment processing unit.
    - iii. If the waste will not be treated immediately, repackage the waste for storage.
  4. Assure that the facility is designed to meet both of the following requirements:
    - a. Any floor or wall surface in the processing area of the facility which may come into contact with biohazardous medical waste is constructed of a smooth, easily cleanable non-porous material that is impervious to liquids.
    - b. The floor surface in the treatment and storage area either has a curb of sufficient height to contain spills or slopes to a drain that connects to an approved sanitary sewage system, septic tank system, or collection device.
  5. Store biohazardous medical waste as required in R18-13-1408.
  6. Comply with all of the following if the treatment method is incineration:
    - a. Reduce the incinerated medical waste, excluding metallic items, into carbonized or mineralized ash by incineration.
    - b. Determine whether the ash is hazardous waste as required under R18-8-262.
  7. Conduct any autoclaving according to the manufacturer's specifications for the unit.
  8. Use only alternative medical waste treatment methods that achieve the treatment standards in R18-13-1415(A).
  9. Treat animal waste, chemotherapy waste, and cultures and stocks as prescribed in R18-13-1420.
  10. Treat medical sharps as prescribed in R18-13-1419.
  11. Keep records of equipment maintenance and operational performance levels for three years. The records shall include the date and result of all equipment calibration and maintenance. Operational performance level records shall indicate the duration of time for each treatment cycle and:
    - a. For steam treatment and microwaving treatment records, both the temperature and pressure maintained in the treatment unit during each cycle and the method used for confirmation of temperature and pressure.
    - b. For chemical treatment, a description of the solution used.
    - c. For incineration, the temperature maintained in the treatment unit during operation.
    - d. Any other operating parameters in the manufacturer's specifications.
    - e. A description of the treatment method used and a copy of the maintenance test results.
  12. Not open the red bag prior to treatment unless opening the bag is required to treat the contents. Transfer of the entire contents, when performed as part of the treatment process, is permitted.
- B.** The treater shall make treatment records available for Departmental inspection upon request.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

**R18-13-1413. Changes to Approved Medical Waste Facility Plans**

- A.** As required by A.R.S. § 49-762.06, before making any change to an approved facility plan a treatment facility owner or operator shall submit a notice to the Department stating which of the following categories of change is requested:

1. A Type I change to an approved medical waste facility plan is a change not described in subsection (A)(2), (3), or (4).
2. A Type II change to an approved medical waste facility plan is a change in which treatment equipment is replaced with equal or like equipment, resulting in either no increase to treatment capacity or the addition of equipment that is not directly used in the treatment process.
3. A Type III change to an approved medical waste facility plan is a change described by one of the following:
  - a. Treatment equipment is added, resulting in less than a 25% increase in treatment capacity.
  - b. The storage area is enlarged resulting in less than a 25% increase in storage capacity.
  - c. Treatment technology is changed.
4. A Type IV change to an approved medical waste facility plan is a change described by one of the following:
  - a. Treatment equipment is added, resulting in a 25% or more increase in treatment capacity.
  - b. The storage area is enlarged resulting in a 25% or more increase in storage capacity.
  - c. Treatment equipment is added that requires an environmental permit.
  - d. An expansion of the treatment facility onto land not previously described in the approved plan.

- B.** As required by A.R.S. § 49-762.06, a treatment facility operator who has identified a change under subsection (A) shall comply with one of the following:

1. For a Type I change, make the change without notice to, or approval by the Department.
2. For a Type II change, before making any change, provide written notification that describes the change to the Department. The addition of refrigeration units only for compliance with this Article is a Type II change for which no Departmental approval is required.
3. For a Type III or Type IV change, submit an amended plan to the Department for approval before making any change. Departmental approval is required prior to making any change.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

**R18-13-1414. Alternative Medical Waste Treatment Methods: Registration and Equipment Specifications**

- A.** A manufacturer or its agent who applies for alternative medical waste treatment method registration shall submit to the Department all of the following:
1. The manufacturer or company name and address.
  2. The name, address, and telephone number of the person who submits the application.
  3. A description of the alternative medical waste treatment method.
  4. A list of any other states in which the treatment method is used, including a copy of any state approvals.
  5. A description of by-products generated as result of the alternative treatment method.
  6. A certification statement that the contents of the application are true and accurate to the knowledge and belief of the applicant.
  7. Written documentation demonstrating that the alternative medical waste treatment method is capable of compliance with the treatment standards in this Article for the type of waste treated. The manufacturer shall employ a labora-

tory independent of any oversight activities by the manufacturer to provide this analysis.

8. The manufacturer's equipment specifications for the alternative medical waste treatment method being registered, including all of the following:
  - a. Unit model number, or serial number.
  - b. Equipment specifications that identify the proper type of biohazardous medical waste to be treated by the equipment and any design or equipment restrictions.
  - c. Operating procedures for the equipment that ensure the equipment complies with the treatment standards prescribed in this Article for the type of waste treated.
  - d. Instructions for equipment maintenance, testing, and calibration that ensure the equipment complies with the treatment standards prescribed in this Article for the type of waste treated.
9. Written documentation of registration if required by A.R.S. § 3-351.
- B. The Department shall make a determination whether to approve the registration application. If the Department approves the application, it shall issue to the applicant a certification of registration containing an alternative medical waste treatment method registration number. Only an alternative technology method with a valid Department issued registration number meets the requirements of this Article.

#### Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

#### R18-13-1415. Treatment Standards, Quantification of Microbial Inactivation and Efficacy Testing Protocols

- A. A treater using an alternative treatment technology shall ensure that treatment achieves either of the following treatment standards:
  1. A 6 log<sub>10</sub> inactivation in the concentration of vegetative microorganisms.
  2. A 4 log<sub>10</sub> inactivation in the concentration of *Bacillus stearothermophilus* or *Bacillus subtilis* as is appropriate to the technology.
- B. A treater utilizing an alternative treatment method shall conduct efficacy studies to demonstrate that the treatment mechanisms are capable of achieving the standards in subsection (A) through either of the following:
  1. Mycobacterial species used as indicators of vegetative microorganisms:
    - a. *Mycobacterium phlei*, or
    - b. *Mycobacterium bovis* (BOG) (ATCC 35743)
  2. Spore suspensions of one of the following two bacterial species, as appropriate to the technology, used as biological indicators in efficacy tests of thermal, chemical, and irradiation treatment systems. Studies shall demonstrate a 4 log<sub>10</sub> reduction in the concentration of viable spores, through the use of an initial inoculum suspension of 5 log<sub>10</sub> or greater of:
    - a. *Bacillus stearothermophilus* (ATCC 7953), or
    - b. *Bacillus subtilis* (ATCC 19659).
- C. A treater utilizing an alternative treatment method shall quantify microbial inactivation as follows:
  1. Microbial inactivation, or "kill" efficacy is equated to "Log<sub>10</sub> Kill" that is defined as the difference between the logarithms of the number of viable test microorganisms before and after treatment. This definition is stated as:  

$$\text{Log}_{10}\text{Kill} = \text{Log}_{10}(\text{cfu/g "I"}) - \text{Log}_{10}(\text{cfu/g "R"})$$
 where:

Log<sub>10</sub>Kill is equivalent to the term Log<sub>10</sub> reduction, "I" is the number of viable test microorganisms introduced into the treatment unit, "R" is the number of viable test microorganisms recovered from the treatment unit, and "cfu/g" are colony forming units per gram of waste solids.

2. For those treatment processes that can maintain the integrity of the biological indicator carrier of the desired microbiological test strain, biological indicators of the required strain and concentration may be used to demonstrate microbial inactivation. Quantification is evaluated by growth or no growth of the cultured biological indicator.
3. For those treatment mechanisms that cannot ensure or provide integrity of the biological indicator, quantitative measurement of microbial inactivation requires a two-step approach: Step 1 "Control" and Step 2 "Test". The purpose of Step 1 is to account for the reduction of test microorganisms due to loss by dilution or physical entrapment.
  - a. Step 1:
    - i. Use microbial cultures of a predetermined concentration necessary to ensure a sufficient microbial recovery at the end of this step.
    - ii. Add suspension to a standardized medical waste load that is to be processed under normal operating conditions without the addition of the treatment agent (that is, heat, chemicals).
    - iii. Collect and wash waste samples after processing to recover the biological indicator organisms in the sample.
    - iv. Plate the recovered microorganism suspensions to quantify microbial recovery. The number of viable microorganisms recovered serves as a baseline quantity for comparison to the number of recovered microorganisms from wastes processed with the treatment agent.
    - v. The required number of recovered viable indicator microorganisms from Step 1 must be equal to or greater than the number of microorganisms required to demonstrate the prescribed Log reduction, either a 6 Log<sub>10</sub> reduction for vegetative microorganisms or a 4 Log<sub>10</sub> reduction for bacterial spores. This can be defined by the following equation:  

$$\text{Log}_{10}\text{RC} = \text{Log}_{10}\text{IC} - \text{Log}_{10}\text{NR}$$
 or  

$$\text{Log}_{10}\text{NR} = \text{Log}_{10}\text{IC} - \text{Log}_{10}\text{RC}$$
 where:  
 Log<sub>10</sub>RC is greater than 6 for vegetative microorganisms and greater than 4 for bacterial spores and where:  
 Log<sub>10</sub>RC is the number of viable "control" microorganisms in colony forming units per gram of waste solids recovered in the non-treated, processed waste residue;  
 Log<sub>10</sub>IC is the number of viable "control" microorganisms in colony forming units per gram of waste solids introduced into the treatment unit;  
 Log<sub>10</sub>NR is the number of "control" microorganisms in colony forming units per gram of waste solids which were not recovered in the non-treated, processed waste residue. Log<sub>10</sub>NR

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represents an accountability factor for microbial loss.

- b. Step 2:
  - i. Use microbial cultures of the same concentration as in Step 1.
  - ii. Add suspension to the standardized medical waste load that is to be processed under normal operating conditions with the addition of the treatment agent.
  - iii. Collect and wash waste samples after processing to recover the biological indicator organisms in the sample.
  - iv. Plate recovered microorganism suspensions to quantify microbial recovery.
  - v. From data collected from Step 1 and Step 2, the level of microbial inactivation, “Log<sub>10</sub> Kill”, is calculated by employing the following equation:  

$$\text{Log}_{10}\text{Kill} = \text{Log}_{10}\text{IT} - \text{Log}_{10}\text{NR} - \text{Log}_{10}\text{RT}$$
 where:  
 Log<sub>10</sub>Kill is equivalent to the term Log<sub>10</sub> reduction;  
 Log<sub>10</sub>IT is the number of viable “Test” microorganisms in colony forming units per gram of waste solids introduced into the treatment unit.  

$$\text{Log}_{10}\text{IT} = \text{Log}_{10}\text{IC};$$
  
 Log<sub>10</sub>NR is the number of “Control” microorganisms in colony forming units per gram of waste solids which were not recovered in the non-treated, processed waste residue;  
 Log<sub>10</sub>RT is the number of viable “Test” microorganisms in colony forming units per gram of waste solids recovered in treated, processed waste residue.

- D. A treater shall employ the appropriate methodology to determine efficacy of the treatment technology following the protocols in subsection (C) that are congruent with the treatment method.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R.  
3776, effective September 17, 1999 (Supp. 99-3).

**R18-13-1416. Recycled Materials**

- A. Once a generator places biohazardous medical waste in a red bag as required in R18-13-1407, a person shall not remove any of the biohazardous medical waste from the bag until the biohazardous medical waste has been treated as required in R18-13-1415.
- B. A generator of biohazardous medical waste intending to recycle any portion of the biohazardous medical waste shall segregate that portion of biohazardous medical waste from the portion of biohazardous medical waste that will not be recycled. The generator shall do either of the following:
  1. Treat the biohazardous medical waste intended for recycling as required in R18-13-1415 before sending the treated medical waste to a recycler.
  2. Follow the requirements in R18-13-1406, R18-13-1407, and R18-13-1408, before either contracting with a transporter to haul or self-hauling the biohazardous medical waste to a treatment facility for treatment. After treatment, the treated medical waste may be sent to a recycler.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R.  
3776, effective September 17, 1999 (Supp. 99-3).

**R18-13-1417. Disposal Facilities: Operation**

An operator of a municipal solid waste landfill that accepts untreated biohazardous medical waste shall comply with all the following in design and operational requirements:

1. Accept biohazardous medical waste only if packaged according to R18-13-1407.
2. Keep the biohazardous medical waste disposal area separate from the general purpose disposal area.
3. Clearly label the biohazardous medical waste disposal area, informing persons that the disposal area contains untreated medical waste.
4. Not drive directly over deposited medical waste. The operator shall achieve compaction by first spreading a layer of soil that is sufficiently thick to prevent compaction equipment from coming into direct contact with the waste, or dragging waste over the area.
5. Cover the biohazardous medical waste with 6 inches of compacted soil at the end of the working day or more often as necessary to prevent vector breeding and odors.
6. Not allow salvaging of untreated biohazardous medical waste from the landfill.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R.  
3776, effective September 17, 1999 (Supp. 99-3).

**R18-13-1418. Discarded Drugs**

- A. A generator of discarded drugs not returned to the manufacturer shall destroy the drugs on site prior to placing the waste out for collection. A generator shall destroy the discarded drugs by any method that prevents the drug's use. If federal or state law prescribes a specific method for destruction of discarded drugs, the generator shall comply with that law.
- B. A generator of discarded drugs may flush them down a sanitary sewer if allowed by the wastewater treatment authority.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R.  
3776, effective September 17, 1999 (Supp. 99-3).

**R18-13-1419. Medical Sharps**

Medical sharps shall be handled as follows:

1. A generator who treats biohazardous medical waste on site shall place medical sharps in a sharps container after rendering them incapable of creating a stick hazard by using an encapsulation agent or any other process that prevents a stick hazard. Medical sharps encapsulated or processed in this manner are considered to be solid waste.
2. A generator who ships biohazardous medical waste off site for treatment shall either:
  - a. Place medical sharps in a medical sharps container and follow the requirements of R18-13-1406, or
  - b. Package and send medical sharps to a treatment facility via a mail-back system as prescribed by the instructions provided by the mail-back system operator. An Arizona treatment facility shall render medical sharps incapable of creating a stick hazard by using an encapsulation agent or any other process that prevents a stick hazard.
3. A person operating a treatment facility who accepts medical sharps for treatment shall either:
  - a. Encapsulate medical sharps to prevent stick hazard, or
  - b. Use any other process that prevents a stick hazard.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R.  
3776, effective September 17, 1999 (Supp. 99-3).

**R18-13-1420. Additional Handling Requirements for Certain Wastes**

- A. A person who treats the following biohazardous medical waste categories shall meet the following additional requirements:
1. Cultures and stocks shall be incinerated, autoclaved, or treated by an alternative medical waste treatment method that meets the treatment standards set forth in R18-13-1415(A) and packaged inside a watertight primary container with absorbent packing materials if shipped off site for treatment or disposal. The primary container shall be placed inside a secondary inner container that is then placed inside an outer container. If federal or state law prescribes specific requirements for packaging and transporting this waste, the treater shall comply with that law.
  2. Chemotherapy waste shall be incinerated or disposed of in either an approved solid waste or hazardous waste disposal facility.
  3. Experimental or research animal waste shall be handled as follows:
    - a. Autoclave bedding on site or package as described in R18-13-1407 for off-site treatment or landfilling.
    - b. Incinerate animal carcasses on site, or if taken off site for treatment, comply with one of the following requirements:
      - i. Package the waste in a leakproof, covered container, label the contents and send to an incinerator or a Department-approved landfill, or
      - ii. If treated by a method other than incineration, pre-process by grinding, then treat by a method that achieves the standards of R18-13-1415(A).
- B. If a treater uses grinding in combination with another treatment method described in this Article, the treater shall conduct it in a closed system to prevent humans from being exposed to the release of the waste into the environment. If grinding is used for medical sharps, the grinding shall render the medical sharps incapable of creating a stick hazard.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

**ARTICLE 15. RECODIFIED**

*Editor's Note: The recodification at 7 A.A.R. 2522 described below erroneously moved Sections into 18 A.A.C. 9, Article 9. Those Sections were actually recodified to 18 A.A.C. 9, Article 10. See the Historical Notes for more information (Supp. 01-4).*

*Article 15, consisting of Sections R18-13-1501 through R18-13-1514 and Appendix A, recodified to 18 A.A.C. 9, Article 9 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2).*

**R18-13-1501. Recodified****Historical Note**

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-902 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1002 (Supp. 01-4).

**R18-13-1502. Recodified****Historical Note**

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-901 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1001 (Supp. 01-4).

**R18-13-1503. Recodified****Historical Note**

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-903 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1003 (Supp. 01-4).

**R18-13-1504. Recodified****Historical Note**

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-904 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1004 (Supp. 01-4).

**R18-13-1505. Recodified****Historical Note**

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-905 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1005 (Supp. 01-4).

**R18-13-1506. Recodified****Historical Note**

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-906 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1006 (Supp. 01-4).

**R18-13-1507. Recodified****Historical Note**

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-907 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1007 (Supp. 01-4).

**R18-13-1508. Recodified****Historical Note**

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-908 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1008 (Supp. 01-4).

**R18-13-1509. Recodified****Historical Note**

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-909 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1009 (Supp. 01-4).

**R18-13-1510. Recodified****Historical Note**

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-910 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1010 (Supp. 01-4).

**R18-13-1511. Recodified****Historical Note**

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-911 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1011 (Supp. 01-4).

**R18-13-1512. Recodified****Historical Note**

Adopted effective April 23, 1996 (Supp. 96-2). Section

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recodified to R18-9-912 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1012 (Supp. 01-4).

**R18-13-1513. Recodified****Historical Note**

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-913 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1013 (Supp. 01-4).

**R18-13-1514. Recodified****Historical Note**

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-914 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1014 (Supp. 01-4).

**Appendix A. Recodified****Historical Note**

Appendix A, "Procedures to Determine Annual Biosolids Application Rates", adopted effective April 23, 1996 (Supp. 96-2). Appendix A recodified to 18 A.A.C. 9, Article 9 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to 18 A.A.C. 9, Article 10 (Supp. 01-4).

**ARTICLE 16. BEST MANAGEMENT PRACTICES FOR PETROLEUM CONTAMINATED SOIL**

*Article 16, consisting of Sections R18-13-1601 through R18-13-1614, recodified from 18 A.A.C. 8, Article 16 at 8 A.A.R. 5172, effective November 27, 2002; Section and subsection citations within this Article were also updated under A.R.S. § 41-1011(C) (Supp. 02-4).*

**R18-13-1601. Definitions**

In addition to definitions in A.R.S. § 49-851 and A.A.C. R18-13-1301, the terms in this Article shall have the following meanings:

1. "Accumulation site" means an area or site at which PCS from one or more points of generation under the control of the generator of PCS is accumulated for more than 12 hours but less than 90 days prior to treatment, storage, or disposal.
2. "Containment system" means a system designed to contain an accumulation of special waste which meets the design and performance standards in R18-13-1608 and either R18-13-1609 or R18-13-1611.
3. "Excavated" means removed from the earth by scraping or digging a hole or cavity in the earth's surface or otherwise removed from the earth's surface.
4. "Facility" or "special waste receiving facility" means a treatment facility, storage facility, or disposal facility which has been approved by the Director in accordance with A.R.S. § 49-857 or has qualified for Interim Use Facility status pursuant to A.R.S. § 49-858.
5. "Hazardous waste" means hazardous waste as defined in A.R.S. § 49-921(5).
6. "Non-fuel, non-solvent petroleum product" means a petroleum-based substance refined from virgin crude oil that is not used as a solvent or fuel including mineral oils and hydraulic oils.
7. "Non-regulated soils" means soils contaminated with total petroleum hydrocarbon (TPH) levels equal to or less than 100 mg/kg which are neither hazardous waste, PCS, nor solid waste PCS, and which do not constitute an environmental nuisance pursuant to A.R.S. §§ 49-141 through 49-144.

8. "PCS" means petroleum-contaminated soils, which are not hazardous waste or solid waste PCS, which are excavated for storage, treatment, or disposal, and which contain contaminants as described by any of the following:
  - a. TPH which exceeds concentrations of 5,000 mg/kg,
  - b. Benzene which exceeds concentrations of 0.13 mg/kg,
  - c. Toluene which exceeds concentrations of 200 mg/kg,
  - d. Ethylbenzene which exceeds concentrations of 68 mg/kg,
  - e. Total xylene which exceeds concentrations of 44 mg/kg.
9. "PCS disposal facility" means a site or special waste receiving facility at which the disposal of PCS has been approved by the Director pursuant to A.R.S. § 49-857 or has qualified for Interim Use Facility status pursuant to A.R.S. § 49-858.
10. "Petroleum" means petroleum as defined in A.R.S. § 49-1001(11).
11. "Point of compliance" means point of compliance as defined in A.R.S. § 49-244.
12. "Special waste shipper" means a person who transports special waste for off-site treatment, storage, or disposal.
13. "Solid waste PCS" means excavated soils contaminated with petroleum, which are not hazardous waste and which meet any of the following:
  - a. Have TPH concentrations which exceed 100 mg/kg but which are at or below 5,000 mg/kg;
  - b. Are soils contaminated with non-fuel, non-solvent petroleum products with a TPH which exceeds 100 mg/kg.
14. "Storage" means the holding of PCS for a period of more than 90 days but less than one year.
15. "Storage facility" means a special waste receiving facility which engages in storage and which has been approved by the Director pursuant to A.R.S. § 49-857 or has qualified for Interim Use Facility status pursuant to A.R.S. § 49-858.
16. "Temporary treatment facility" means an on-site treatment facility, or an off-site treatment facility owned or operated by the generator of PCS, where the PCS is treated to reduce TPH, benzene, toluene, ethylbenzene, or total xylene concentrations and which complies with the requirements of R18-13-1610.
17. "Total petroleum hydrocarbons" or "TPH" means the sum of the aliphatic and aromatic hydrocarbon constituents contained in petroleum, as determined through laboratory testing.
18. "Treatability study" means a study in which a special waste is subjected to a treatment process to determine any one or more of the following:
  - a. Whether the waste is amenable to the treatment process,
  - b. What pretreatment is required,
  - c. The optimal process conditions needed to achieve the desired treatment,
  - d. The efficiency of a treatment process,
  - e. The characteristics and volumes of residual contaminants from a particular treatment process,
  - f. Toxicological and health effects.
19. "Treatment facility" means a special waste receiving facility which has been approved by the Director pursuant to A.R.S. § 49-857 or has qualified for Interim Use Facility status pursuant to A.R.S. § 49-858, and at which PCS

receives treatment to reduce TPH or benzene, toluene, ethylbenzene, or total xylene concentrations.

#### Historical Note

Recodified from R18-8-1601 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

#### R18-13-1602. Applicability

- A. The Director declares that PCS, as defined in R18-13-1601(8), constitutes a special waste as defined in A.R.S. § 49-851(A)(9). Except as otherwise provided in this Section and R18-13-1603, PCS shall be treated, stored, and disposed of in accordance with this Article. PCS shall not be diluted with any material or substance for purposes of avoiding applicability of these rules.
- B. PCS which is used in a treatability study shall comply with all of the following:
  1. The owner or operator of the facility where a treatability study is to be conducted shall notify the Department of its intent to conduct a treatability study at least 30 days prior to the commencement of the treatability study.
  2. The total quantity of PCS used in the treatability study shall not exceed 5000 kilograms, unless evidence is provided which justifies the need for a larger quantity and permission to use a larger amount is granted by the Director.
  3. The owner or operator of the facility shall maintain records detailing the treatability study and the results obtained in accordance with R18-13-1614.
  4. The treatability study shall be completed and the PCS shall be removed from the site within one year from commencement of the study.
  5. Upon completion of the treatability study, the owner or operator of a facility shall dispose of the PCS used in the treatability study in accordance with this Article.
  6. Sampling of the PCS shall be conducted in accordance with R18-13-1604(B) and (C) before and after the treatability study is performed.
  7. The performance of the treatability study shall not result in an environmental nuisance pursuant to A.R.S. §§ 49-141 through 49-144.
- C. PCS which is excavated pursuant to the requirements of A.R.S. Title 49, Chapter 6, Underground Storage Tank Regulation, and which is not removed from the site, shall comply with the requirements of R18-13-1610 and R18-13-1612.
- D. PCS incorporated into asphalt for use in paving is not subject to other provisions of this Article if the owner or operator of the facility where the asphalt is produced does all of the following:
  1. Notifies the Department in writing at least 30 days prior to commencing such incorporation,
  2. Maintains records in accordance with R18-13-1614,
  3. Stores the PCS prior to incorporation in accordance with R18-13-1611,
  4. Uses only soil characterized as PCS based on TPH concentrations as set forth in R18-13-1601(8)(a).

#### Historical Note

Recodified from R18-8-1602 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

#### R18-13-1603. Exemptions

- A. Solid waste PCS are exempt from the provisions of this Article, except for the requirements in R18-13-1604, and are subject to A.R.S. § 49-761 et seq.
- B. Non-regulated soils are exempt from the provisions of this Article, except for the requirements in R18-13-1604, and are exempt from the requirements of A.R.S. § 49-761 et seq.

- C. Asphaltic cement which is not hazardous waste is exempt from the requirements of this Article.
- D. Soils which are contaminated with petroleum, which have been generated by households, and which are not hazardous waste, shall be exempt from the requirements of this Article.
- E. Soil characterized as PCS solely because the TPH concentration exceeds 5,000 mg/kg may be disposed in accordance with A.R.S. § 49-761 et seq. and shall be exempt from the requirements of this Article, except that the generator shall comply only with the requirements for accumulation sites in R18-13-1612, if either of the following conditions are met:
  1. The mathematical product of the TPH (mg/kg) and the number of tons excavated is less than 10,000.
  2. The mathematical product of the TPH (mg/kg) and the number of cubic yards excavated is less than 8,500.

#### Historical Note

Recodified from R18-8-1603 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

#### R18-13-1604. Waste Determination

- A. A generator of excavated soil contaminated with petroleum shall determine whether the soil is PCS, solid waste PCS, or non-regulated soil. The basis for the determination shall be maintained for at least three years and shall be made available to the Department upon request. The generator shall make such determination using either of the following methods:
  1. Testing the soil pursuant to subsection (B) of this Section. Laboratory analysis of these samples shall be performed by a laboratory licensed by the Arizona Department of Health Services. Approved testing methods, which identify concentrations for total recoverable extraction of contaminants, shall be used.
  2. Application of knowledge of the characteristics of the contaminated soil in light of the known or potential source of the contamination. The Department may require sampling to confirm the accuracy of applied knowledge.
- B. Sampling of soils contaminated with petroleum shall be performed in accordance with a site-specific written sampling plan which is consistent with the requirements set forth in either of the following:
  1. "Test Methods for Evaluating Solid Waste", EPA SW-846, 3rd Edition Volume II: Field Manual, Physical/Chemical Method, Chapter Nine (SW-846 Third Edition), 1986, Environmental Protection Agency, Washington, D.C. and no future editions or amendments, incorporated herein by reference and on file with the Department and the Office of the Secretary of State.
  2. "Quality Assurance Project Plan", Chapter 9, May 1991 Edition, Arizona Department of Environmental Quality, Phoenix, Arizona and no future editions or amendments incorporated herein by reference and on file with the Department and the Office of the Secretary of State.
- C. Where multiple samples are collected from a stockpile of contaminated soil generated from a single source, the stockpile shall be considered as PCS if the arithmetic mean of the TPH concentrations of the samples exceeds 5,000 mg/kg. A sample having a concentration of total petroleum hydrocarbons which is below the analytical method detection limit or reporting limit shall be assigned a concentration which is 1/2 of the reported analytical method detection limit or reporting limit.
- D. If soil excavated during the initial investigation of a site to determine the extent of contamination is PCS, the PCS may be returned into the excavation site from which the soil was removed if all of the following conditions are met:

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1. There is no freestanding liquid within the excavation, unless the State Fire Marshal or other jurisdictional fire authority directs otherwise, and the requirements of subsections (2) and (3) of this subsection are met.
2. The owner or operator provides notification to the Department that the PCS has been returned to the excavation within 14 days after the return of the PCS to the excavation.
3. The owner or operator completes a site characterization within 120 days and implements remediation within 150 days after the date the site characterization began.

**Historical Note**

Recodified from R18-8-1604 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-13-1605. Transportation**

- A. PCS transported to a special waste receiving facility in Arizona shall be transported by a special waste shipper which has met the requirements of R18-13-1303.
- B. A special waste shipper shall transport the PCS in closed containers pursuant to R18-13-1611(E) or shall ensure that any vehicle used to transport the PCS is loaded and covered in such a manner that the contents will not blow, fall, leak, or spill from the vehicle.
- C. A special waste shipper transporting PCS to a special waste receiving facility in Arizona, except a facility located on Indian country, shall deliver PCS to a special waste receiving facility approved by the Department.

**Historical Note**

Recodified from R18-8-1605 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-13-1606. Fees**

In accordance with A.R.S. §§ 49-855(C)(2) and 49-863, the treatment, storage, or disposal facility in this state that first receives a shipment of PCS shall remit to the Department a fee of \$4.50 per ton but not more than \$45,000 per generator site per year for PCS that is transported to the facility.

**Historical Note**

Recodified from R18-8-1606 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

**R18-13-1607. Facility Approval; Application**

- A. PCS shall be treated, stored, or disposed only at a PCS disposal facility, storage facility, treatment facility, or temporary treatment facility. A facility shall not be constructed or operated prior to obtaining written approval from the Department, except as provided for in A.R.S. § 49-858.
- B. The owner or operator of a PCS treatment, storage, or disposal facility shall submit an application to the Department which contains all of the information required in accordance with A.R.S. § 49-762.
- C. In addition to the requirements specified in A.R.S. § 49-762, the application shall contain all of the following:
  1. A vicinity map, in a scale not over 1:24,000, which shows where the facility is located with respect to the surroundings, including an indication of the use of the adjacent properties.
  2. An engineering report which includes all of the following:
    - a. Detailed plans and specifications for the entire facility including manufacturer's performance data and design features of treatment, pollution control, and monitoring equipment.

- b. A site description which includes general information on the geology, hydrogeology, soils, and land use. If a facility is located within the pollution management area of a facility for which an aquifer protection permit has been issued under A.R.S. § 49-241 et seq., then the applicant may resubmit or incorporate by reference the general information.
- c. A background soil sampling plan and results which characterize the site, including the rationale used to determine the locations, depths, and number of samples.
3. A site map, in a scale not to exceed 1:2,400, which clearly identifies where the PCS shall be deposited, containment berms, fencing and security measures, access roads, any improvements, wells, and location of surface water courses.
4. An operational plan which includes all of the following:
  - a. General description of the daily operations of the facility and the processes, techniques, or methods to be employed;
  - b. The source, amount, concentration of contaminants, and any other relevant information concerning the PCS to be handled;
  - c. The schedule for sampling the PCS during treatment to evaluate treatment methods;
  - d. Description of plans for final use and disposal of PCS and remediated soil, liners, piping, carbon canisters, and any other contaminated equipment;
  - e. Procedures to ensure that only waste which has been characterized is received and that hazardous waste is not received;
  - f. Procedures for random inspection of incoming loads to verify that only waste which has been characterized is accepted;
  - g. Procedures for collecting and managing run-off which comes in contact with PCS;
  - h. Procedures for recordkeeping of all inspection results, training of personnel, and sampling results;
  - i. Procedures to control public access, and prevent unauthorized entry and illegal dumping.
5. A contingency plan for emergency preparedness which describes alternatives for storage, treatment, or disposal.
6. A closure plan which includes:
  - a. A description of the steps necessary to close the facility, the specific proposed closure activities, and an implementation schedule;
  - b. Information on site conditions and characterization of the waste received during the life of the facility;
  - c. A description of the sampling plan utilized to sample background soil beneath the site following closure;
  - d. A description of plans for use of the land site after closure;
  - e. A description of post-closure care.
7. An affidavit that the proposed facility is in compliance with local zoning requirements in effect at the time the application is submitted.
- D. Following completion of construction of a facility and prior to placement of PCS on the site, the owner or operator shall submit to the Department a construction certification report, including as-built plans which indicate any changes to the design or operational plans for the facility.
- E. Plans required in accordance with this Section shall be sealed by a professional engineer registered in the state of Arizona, if required by statute.

- F. A facility shall be in compliance with all other applicable federal, state, and local approvals or permits which are required for the design, construction, and operation of the facility.

#### Historical Note

Recodified from R18-8-1607 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

#### R18-13-1608. General Design and Performance Standards

- A. A facility which receives PCS for treatment, storage, or disposal shall be designed and operated to ensure compliance with the following performance standards relating to aquifer protection:
1. Pollutants discharged shall in no event cause or contribute to a violation of Aquifer Water Quality Standards, at the applicable point of compliance, or, if the facility is a municipal solid waste landfill, it shall comply with the requirements of A.R.S. § 49-761.01(C).
  2. Any pollutant discharged shall not further degrade, at the applicable point of compliance, the quality of any aquifer that already violates an Aquifer Water Quality Standard for that pollutant.
- B. A facility which receives PCS for treatment, storage, or disposal shall meet the general design criteria of either subsection (B)(1) or (2) as follows:
1. The PCS shall be held within a containment system designed and constructed to preclude the migration of contaminants into subsurface soil, groundwater, or surface water. The containment system shall meet the following criteria:
    - a. Maintain a maximum hydraulic conductivity of no more than  $1 \times 10^{-7}$  cm/sec;
    - b. Be designed to provide structural integrity throughout the life of the facility;
    - c. Be designed in accordance with the applicable design criteria set forth in subsection (C) of this Section and R18-13-1609 through R18-13-1613; or
  2. An alternative design shall contain, at a minimum, all of the following and shall demonstrate that the design will limit discharges listed in A.R.S. § 49-243(D) to the maximum extent practicable:
    - a. The hydrogeologic setting of the facility and the capacity of the liner and soils to preclude discharge to groundwater or surface water;
    - b. The operating methods, processes, or other alternatives to be used at the facility;
    - c. Additional factors which would influence the quality and mobility of the leachate produced and the potential for that leachate to migrate to groundwater or surface water.
- C. A PCS treatment, storage, or disposal facility shall meet the following general design criteria:
1. The facility shall be designed to prevent run-on and run-off. The design shall provide run-on control for the peak discharge from a 24-hour, 25-year storm event. Run-off shall be collected and controlled for at least the water volume resulting from a 24-hour, 25-year storm event.
  2. The facility shall not restrict the flow of the 100-year floodplain, reduce temporary water storage capacity of the floodplain, or be maintained in a manner which results in a washout or inundation of the PCS.
  3. The owner or operator shall control public access and shall prevent unauthorized vehicular traffic and illegal dumping.
  4. The owner or operator shall manage any standing water that has come into contact with the PCS in accordance

with rules promulgated pursuant to A.R.S. § 49-761 et seq.

- D. A facility which manages PCS in accordance with the requirements of this Article shall be exempt from the aquifer protection permit requirements in accordance with A.R.S. § 49-250(B)(21).
- E. A facility which has been issued an aquifer protection permit from the Department shall be exempt from the requirements of subsections (A) and (B) of this Section but shall comply with the requirements of subsection (C).

#### Historical note

Recodified from R18-8-1608 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

#### R18-13-1609. Treatment Facility

- A. The owner or operator of a PCS treatment facility shall obtain approval from the Department prior to commencement of construction or operation and shall comply with all of the following:
1. Not dilute PCS as a method of treatment, except as allowed in the approved plan for the facility;
  2. Treat the PCS or, if the chosen treatment process fails to remediate the soil to below the regulatory thresholds, dispose of the PCS pursuant to R18-13-1613.
  3. Sample the treated soil and provide the results of the sampling to the Department within 45 days of completion of the treatment.
- B. A PCS treatment facility designed in accordance with R18-13-1608(B)(1) shall comply with the following specific design criteria:
1. At a minimum, a containment system shall include a clay, synthetic, concrete, or asphalt liner component which is placed upon a foundation or prepared subgrade which supports the liner, and resists pressure gradients above and below the liner, to prevent failure due to settlement, compression, or uplift.
  2. During construction or installation of a containment system, liners and cover systems shall be inspected for uniformity, damage, and imperfections. Immediately after construction or installation is completed, and prior to placement of PCS within the containment system, the systems shall be checked for both of the following:
    - a. Synthetic liners and covers shall be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters.
    - b. Concrete, asphalt, and soil-based liners and covers shall be inspected for imperfections including lenses, cracks, channels, root holes, or other structural non-uniformities that may cause an increase in the permeability of the liner or cover.
  3. The liner component shall consist of one of the following:
    - a. A synthetic liner which is compatible with the waste and which has a minimum 6" buffer layer of sand or soil between the liner and the PCS.
    - b. A compacted soil or admixed liner provided with a minimum 6" buffer layer of sand or soil between the liner and the PCS.
    - c. An asphalt or reinforced concrete liner which is not in the drainage area of a dry well and is free of unsealed cracks and seams.
  4. Aeration equipment shall be limited to the area above the buffer layers indicated in subsections (B)(2)(a) and (b).
  5. The owner or operator of the facility shall utilize protective measures to ensure containment system integrity during placement, treatment, or removal of the PCS.



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6. PCS stored at a treatment facility prior to treatment shall be stored in accordance with the requirements of R18-13-1611.

**Historical Note**

Recodified from R18-8-1609 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-13-1610. Temporary Treatment Facility**

- A. The owner or operator of a temporary treatment facility shall treat and remove all PCS from the temporary treatment facility within one year from the date of commencement of receipt of PCS for treatment. PCS shall not be diluted to meet any treatment requirement, except in accordance with the approved plan.
- B. A temporary treatment facility shall obtain approval from the Department prior to commencing construction or operation. In lieu of the requirements of R18-13-1607(C), an application for approval shall contain all of the following:
  1. An affidavit signed by the owner or operator of the temporary treatment facility which states that the facility will comply with the requirements of this Article;
  2. An affidavit that the proposed facility is in compliance with local zoning requirements in effect at the time the application is submitted;
  3. Application information required pursuant to A.R.S. § 49-762 for plan approval for temporary treatment facilities;
  4. A vicinity map, in a scale not over 1:24,000, which shows where the facility is located with respect to the surroundings, including an indication of the use of the adjacent properties;
  5. A site description which includes general information on the geology, hydrogeology, soils, and land use;
  6. A background soil sampling plan and results which characterize the site, including the rationale used to determine the locations, depths and number of samples;
  7. A site map, in a scale not to exceed 1:2,400, which clearly identifies where the PCS shall be deposited, containment berms, fencing and security measures, access roads, any improvements, wells, and location of surface water courses;
  8. An operational plan which includes all of the following:
    - a. General description of the daily operations of the facility and the processes, techniques, or methods to be employed;
    - b. The source, amount, concentration of contaminants, and any other relevant information concerning the PCS to be handled;
    - c. The schedule for sampling the PCS during treatment to evaluate treatment methods;
    - d. Description of plans for final use and disposal of PCS and remediated soil, liners, piping, carbon canisters, and any other contaminated equipment;
  9. A closure and post-closure care plan which includes both of the following:
    - a. A description of the steps necessary to close the facility, the specific proposed closure activities, and an implementation schedule;
    - b. A description of the sampling plan utilized to sample background soil beneath the site following closure.
- C. A temporary treatment facility shall not be operated for more than one year unless a one-time extension is granted by the Department. The Department may grant an extension of up to one additional year if all of the following are met:
  1. The inability to perform is caused by events beyond the control of the owner or operator, including acts of God,

which include flood, tornado, earthquake, and causes beyond the owner's or operator's control including fire, explosion, unforeseen strikes or work stoppages, riot, sabotage, public enemy, war, requirements established by courts of competent jurisdiction, and other governing law. Financial inability to perform shall not be justification for an extension.

2. The owner and operator submits to the Department verifiable documentation which includes all of the following:
  - a. A description of the circumstances causing any delay;
  - b. Evidence of the existence of the circumstance;
  - c. A description of past, present, and future measures taken or to be taken by the owner or operator to prevent or minimize any delay;
  - d. A timetable by which the owner and operator will resume and complete required performance.
3. The request is received at least 60 days prior to the expiration of the year in which the facility first received PCS. Where the Department grants an extension, that extension shall be granted prior to the expiration of the deadline and communicated to the owner or operator in writing.
- D. A temporary treatment facility shall meet the design criteria as specified in R18-13-1608 and R18-13-1609(B).
- E. PCS stored at a temporary treatment facility prior to treatment shall be stored in accordance with the requirements of R18-13-1611.
- F. In accordance with A.R.S. § 49-762(F), a temporary treatment facility shall be exempt from the notice and public hearing requirements set forth in A.R.S. § 49-762(L).

**Historical Note**

Recodified from R18-8-1610 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-13-1611. Storage Facility**

- A. A shipment of PCS shall not be stored for a period exceeding one year from the date the PCS is received.
- B. Each shipment of contaminated soil shall be identified by source and stored in a manner which does not allow commingling of different shipments until all sampling results have been obtained. PCS shall be stored within an approved containment system and shall not be commingled with treated soils.
- C. A PCS storage facility shall obtain approval from the Department prior to commencement of construction or operation. A PCS storage facility designed in accordance with R18-13-1608(B)(1) shall comply with either of the following:
  1. The containment system shall meet the requirements of R18-13-1609(B).
  2. The PCS shall be stored in tanks or containers which meet the requirements of subsection (E) of this Section.
- D. A PCS storage area or each tank or container used for storage shall be marked as follows:
 

CAUTION: CONTAINS PETROLEUM-CONTAMINATED SOIL  
GENERATOR NAME:  
GENERATOR ID#:  
ACCUMULATION START DATE:

The owner or operator of the storage facility shall fill in the accumulation start date at the time the PCS is placed into storage. The letters shall be legible, not obstructed from view, on a high contrast background, and sufficiently durable to equal or exceed the duration of storage. Lettering size shall be 2.5 cm (1 inch) and in Sans Serif, Gothic, or Block style.
- E. A tank or container used to store PCS shall meet all of the following requirements:

1. Prevent leakage of PCS and any free liquids from the tank or container;
  2. Be made of, or lined with, materials which will not react with the PCS;
  3. Be kept closed during storage except to add or remove PCS;
  4. Not be opened, handled, or stored in a manner which may rupture the tank or container or cause it to leak;
  5. Shall be inspected monthly by the owner or operator of the storage facility for leaks and for deterioration. A written record of the inspection shall be prepared at the time of the inspection and shall document corrective action, if any, taken as a result of the inspection.
- F.** A PCS storage facility at which PCS is stored in piles shall comply with both of the following:
1. All storage piles shall be covered or otherwise managed to control wind dispersal of the PCS.
  2. Storage piles of PCS shall be inspected weekly and a written record of the inspection shall be prepared at the time of the inspection which documents any corrective action taken as a result of the inspection. The record shall document detection of any of the following:
    - a. Deterioration, malfunctions, or improper operation of run-on and run-off control systems;
    - b. Malfunctioning of wind dispersal control systems;
    - c. The presence of leachate in and the malfunctioning of any leachate collection and removal systems.

**Historical Note**

Recodified from R18-8-1611 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-13-1612. Accumulation Sites**

- A.** PCS from one or more points of generation under the control of a single generator may be accumulated in an accumulation site under the control of that generator for up to 90 days prior to shipment of the PCS to a storage, disposal, or treatment facility.
- B.** An accumulation site shall comply with the storage facility requirements set forth in R18-13-1611, except subsection (A) of that Section. An accumulation site shall not be required to comply with the requirements in R18-13-1607.
- C.** While PCS is at an accumulation site, the owner or operator shall control public access and prevent unauthorized vehicular traffic and illegal dumping. PCS shall be managed to prevent the PCS from being exposed to storm water run-on or run-off.

**Historical Note**

Recodified from R18-8-1612 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-13-1613. Disposal**

- A.** PCS shall be disposed at a special waste receiving facility which has been approved for the disposal of PCS, or at a hazardous waste management facility as defined in R18-13-260(E)(13).
- B.** A PCS disposal facility designed in accordance with R18-13-1608(B)(1) shall comply with the following specific design criteria:
1. The disposal facility shall be designed with a composite liner, as defined in subsection (B)(2), and a leachate collection system that is designed and constructed to maintain less than a 12-inch depth of leachate over the liner.
  2. For purposes of this Section, "composite liner" means a system consisting of two components: the upper component shall consist of a minimum 30-mil flexible membrane liner (FML) and the lower component shall consist of at least a two-foot layer of compacted soil with a

hydraulic conductivity of no more than  $1 \times 10^{-7}$  cm/sec. FML components consisting of high density polyethylene (HDPE) shall be at least 60 mil thick. The FML component shall be installed in direct and uniform contact with the compacted soil component.

**Historical Note**

Recodified from R18-8-1613 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**R18-13-1614. Records**

Records required to be kept pursuant to this Article shall be maintained by the owner or operator and made available for inspection by the Director for a period of three years or longer during the course of an enforcement action or litigation.

**Historical Note**

Recodified from R18-8-1614 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

**ARTICLE 17. RESERVED****ARTICLE 18. RESERVED****ARTICLE 19. RESERVED****ARTICLE 20. RESERVED****ARTICLE 21. SOLID WASTE LANDFILL REGISTRATION FEES**

*Article 21, consisting of Sections R18-13-2101 through R18-13-2103, made by final rulemaking at 9 A.A.R. 1770, effective July 14, 2003 (Supp. 03-2).*

**R18-13-2101. Definitions**

In addition to the definitions in A.R.S. §§ 49-701 and 49-701.01, for the purpose of this Article, the terms used in this Article have the following meanings:

1. "Defined time period" means the 12-month period that begins on July 1 of a calendar year and ends on June 30 of the following calendar year and consists of the actual number of calendar days in that 12-month period.
2. "Disposal fee invoice" means the quarterly landfill disposal fee invoice the Department mails to a landfill operator, on which the landfill operator indicates the amount of waste received and the amount of the disposal fees owed to the Department as required under A.R.S. § 49-836.
3. "Full quarter" means any of the standard fiscal quarters of the defined time period for which a municipal solid waste landfill accepted waste on or before the first day of the quarter and on or after the last day of that quarter.

**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 1770, effective July 14, 2003 (Supp. 03-2). Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

**R18-13-2102. Annual Registration Fee for an Existing Solid Waste Landfill**

- A.** An existing solid waste landfill, except those described in subsection (C), shall pay an annual registration fee within 30 days of receipt of an invoice from the Department according to the following:
1. For municipal solid waste landfills that received less than 12,000 tons during the defined time period, \$1,250.
  2. For municipal solid waste landfills that received at least 12,000 tons but less than 60,000 tons during the defined time period, \$2,500.

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3. For municipal solid waste landfills that received at least 60,000 tons but less than 225,000 tons during the defined time period, \$7,500.
  4. For municipal solid waste landfills that received 225,000 tons or more during the defined time period, \$12,500.
  5. Non-municipal solid waste landfills shall pay a flat fee of \$3,750.
  6. Solid waste landfills that are closed to the public and that accept nonhazardous waste only shall pay a flat fee of \$3,750.
- B.** The Department shall determine the amount of waste received by a municipal solid waste landfill by one of the following methods:
1. For a municipal solid waste landfill that accepted waste over the entire defined time period:
    - a. As the reported tons of solid waste received on the disposal fee invoice; or
    - b. As the reported units of compacted or uncompacted solid waste received on the disposal fee invoice and reported under A.R.S. § 49-836(A)(1); or
  2. For a municipal solid waste landfill that accepted waste for only a portion of the defined time period, but no less than a full quarter, the Department shall project the total amount of waste that would have been received by the landfill over the entire defined time period, using one of the following methods:
    - a. For a municipal solid waste landfill that reported receiving waste for at least a full three quarters but less than the entire defined period, the amount of waste for the remaining quarter is the total amount of the waste reported for the full three quarters divided by three;
    - b. For a municipal solid waste landfill that reported receiving waste for at least a full two quarters but less than three quarters, the amount of waste for the remaining two quarters is the same as the total amount of waste reported for the two full quarters; or
    - c. For a municipal solid waste landfill that reported receiving waste for at least one full quarter but less than two quarters, the amount of waste for the remaining three quarters is the total of the amount of the waste reported for the full quarter multiplied by three.
- C.** For a municipal solid waste landfill that accepted waste for less than a full quarter, the annual landfill registration fee is \$1,250.

annual landfill registration requirement as specified in subsection (C).

3. The annual registration fee remains \$1,250 until the first annual registration period after the first full quarter of the defined time period.
- B.** After the first full quarter, the Department shall calculate the annual registration fee according to R18-13-2102, and specify the fee on the Department's annual landfill registration invoice for the solid waste landfill. The Department shall calculate and the solid waste landfill shall pay the annual landfill registration fee until the first registration period after the solid waste landfill stops accepting waste during a fiscal quarter of the defined time period.
- C.** From the time a solid waste landfill stops accepting waste as specified in subsection (B), until the owner or operator of the solid waste landfill is released from its obligation to provide financial assurance for closure as required by A.R.S. §§ 49-761 or 49-770, the annual registration fee is \$1,250.

**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 1770, effective July 14, 2003 (Supp. 03-2). Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

**ARTICLE 22. RESERVED****ARTICLE 23. RESERVED****ARTICLE 24. RESERVED****ARTICLE 25. RECYCLING****R18-13-2501. Recycling Emblem Description and Usage**

- A.** The Department's official state recycling emblem wraps the three arrows of the universal recycling symbol around a saguaro cactus. A double oval frame surrounds the emblem and bears the slogan, Arizona Cares -- Reduce -- Reuse -- Recycle.
- B.** The purpose of the emblem is to increase public awareness of recycling programs and the potential for reducing waste. Any organization or person that is interested in promoting recycling may use the emblem without receiving approval from the Department. An organization or person can obtain either a printed copy or electronic version of the emblem from the Department by calling the Recycling and Data Management Unit at 1-800-234-5677, ext. 4133, or (602) 207-4133.
- C.** The emblem may be used in any variety of sizes and colors including black and white. The preferred colors are a green cactus on a white background with a blue double oval frame and lettering. The emblem appears as follows:

**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 1770, effective July 14, 2003 (Supp. 03-2). Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

**R18-13-2103. Annual Landfill Registration: Due Date and Fees**

- A.** An operator of a new solid waste landfill shall register the solid waste landfill and pay the landfill registration fee as follows:
1. The operator shall pay the initial landfill registration fee within 30 days of the date that the Department approves the facility plan. The initial landfill registration fee is \$1,250.
  2. Registration is valid for one year, except if the landfill is initially registered during October, November, or December of a calendar year, the next landfill registration due date is December 31 of the following calendar year and each calendar year thereafter unless released from the

**Historical Note**

Section adopted by final rulemaking at 5 A.A.R. 4654, effective November 15, 1999 (Supp. 99-4).

**ARTICLE 26. EXPIRED****R18-13-2601. Expired****Historical Note**

Section made by exempt rulemaking at 14 A.A.R. 4258, effective October 20, 2008 (Supp. 08-4). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 705, effective April 6, 2010 (Supp. 10-2).

**R18-13-2602. Expired****Historical Note**

Section made by exempt rulemaking at 14 A.A.R. 4258, effective October 20, 2008 (Supp. 08-4). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 705, effective April 6, 2010 (Supp. 10-2).

**R18-13-2603. Expired****Historical Note**

Section made by exempt rulemaking at 14 A.A.R. 4258, effective October 20, 2008 (Supp. 08-4). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 705, effective April 6, 2010 (Supp. 10-2).

**R18-13-2604. Expired****Historical Note**

Section made by exempt rulemaking at 14 A.A.R. 4258, effective October 20, 2008 (Supp. 08-4). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 705, effective April 6, 2010 (Supp. 10-2).

**ARTICLE 27. SOLID WASTE FEES FOR FY 2011****R18-13-2701. Special Waste Management Fees for Fiscal Year 2011**

Beginning on July 1, 2010 and until June 30, 2011, the director shall collect a fee of \$5 per ton, not more than \$50,000 per generator site per year, for special waste that is transported to a facility in this state for treatment, storage, or disposal. This fee increases and supersedes the per ton fee listed in A.R.S. § 49-855, R18-13-1307(F), and R18-13-1606 and the maximum fee listed in A.R.S. § 49-855 for the period of July 1, 2010 through June 30, 2011. The payor shall remit the fee in accordance with A.R.S. § 49-863. For special waste that is shredder residue, the owner or operator of a special waste facility may pay a special waste management fee of \$1.65 per cubic yard of uncompacted shredder residue or \$3.75 per

cubic yard of compacted shredder residue received in lieu of the \$5 per ton fee.

**Historical Note**

New Section made by exempt rulemaking at 16 A.A.R. 848, effective July 1, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1503, effective July 1, 2010 (Supp. 10-3).

**R18-13-2702. Increased Landfill Registration Fees for Fiscal Year 2011**

In addition to the landfill registration fees required under A.R.S. § 49-747 for Calendar Year 2010, a one-time landfill registration fee shall be due within 30 days of the invoice postmark date for the increased fee as follows:

1. For solid waste landfills that serve fewer than 10,000 people, \$2,000;
2. For solid waste landfills that serve at least 10,000 people but less than 25,000 people, \$3,000;
3. For solid waste landfills that serve at least 25,000 people but less than 50,000 people, \$4,000;
4. For solid waste landfills that serve at least 50,000 people but less than 100,000 people, \$8,000;
5. For solid waste landfills that serve at least 100,000 people but less than 200,000 people, \$12,000;
6. For solid waste landfills that serve 200,000 people or more, \$20,000;
7. For solid waste landfills that are open to the public and that accept demolition waste, \$6,000; and
8. For solid waste landfills that are closed to the public and that accept nonhazardous waste, \$6,000.

**Historical Note**

New Section made by exempt rulemaking at 16 A.A.R. 848, effective July 1, 2010 (Supp. 10-2).

**R18-13-2703. Solid Waste Facility Plan Review Fees for Fiscal Year 2011**

A. Beginning July 1, 2010 and until June 30, 2011, the initial and maximum fees for the review of a solid waste facility plan, a modification of an approved facility plan, and a financial assurance plan are listed in the following table. These fees increase and supersede the initial and maximum fees listed in R18-13-702(A) for the period of July 1, 2010 through June 2011. The applicant shall remit the fees in accordance with R18-13-702.

Fee Table

Fees for Plan Review of New Solid Waste Facilities		
	Initial	Maximum
Solid Waste Landfills	\$15,000	\$150,000
Other Solid Waste Facilities Subject to Plan Approval	\$10,000	\$100,000

Fees for Modifications to Solid Waste Facility Plans		
	Initial	Maximum
Solid Waste Landfills - Type IV	\$15,000	\$150,000
Solid Waste Landfills - Type III	\$2,000	\$75,000
Other Solid Waste Facilities Subject to Plan Approval - Type IV	\$10,000	\$100,000

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Other Solid Waste Facilities Subject to Plan Approval - Type III	\$500	\$50,000
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Fees for Review of Financial Responsibility Plans for Solid Waste Facilities		
	Initial	Maximum
Annual Review for Solid Waste Landfills	\$500	\$5,000

- B.** Beginning July 1, 2010 and until June 30, 2011, when determining reasonable cost under A.R.S. § 49-762.03, the Department shall use an hourly billing rate of \$127.49 for all direct labor spent working on the review of a solid waste facility plan, a modification of an approved facility plan, and a financial assurance plan. This fee increases and supersedes the hourly billing rate listed in R18-13-702(F) for the period of July 1, 2010 through June 30, 2011. The applicant shall remit the fees in accordance with R18-13-702.

**Historical Note**

New Section made by exempt rulemaking at 16 A.A.R. 848, effective July 1, 2010 (Supp. 10-2).

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**Supplement to the**

**Arizona Administrative Code**

The official compilation of Arizona Rules

**Arizona Secretary of State's Office**

Public Services Division

1700 W. Washington Street, Fl 7.

Phoenix, AZ 85007

***Replacement Check List***

For rules filed within the

Third

July 1, 2014 - September 30, 2014

**Code Release Number: Supp. 14-3**

Within the stated calendar quarter, this Title contains all rules made, amended, repealed, renumbered, and recodified; or rules that have expired or were terminated due to an agency being eliminated under sunset law. These rules were either certified by the Governor's Regulatory Review Council or the Attorney General's Office; or exempt from the rulemaking process, and filed with the Office of the Secretary of State. Refer to the historical notes for more information. Please note that some rules you are about to remove may still be in effect after the publication date of this Supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

**Follow the instructions to replace the updated Chapters.**

**TITLE 20. Commerce Banking and Insurance**

**Chapter 01. Arizona Commerce Authority**

Sections, Parts, Exhibits, Tables or Appendices modified

Articles 2 and 7

REMOVE Supp. 12-2

Pages: 1 - 16

REPLACE with Supp. 14-3

Pages: 1 - 8

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## TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

## CHAPTER 1. ARIZONA COMMERCE AUTHORITY

Authority: A.R.S. § 41-1505.05

**Editor's Note:** Title 20, formerly Commerce, Banking, and Insurance, is now Commerce, Financial Institutions, and Insurance. This change became effective when the Banking Department underwent a name change (now Department of Financial Institutions) under the authority of A.R.S. § 6-110, originally enacted as Laws 2004, Ch. 188, effective January 1, 2006 (Supp. 06-1).

20 A.A.C. 1, transferred from the Department of Commerce to the Arizona Commerce Authority under Laws 2011, 2nd Spec. Sess., Ch. 1 (Supp. 12-1).

20 A.A.C. 1, consisting of R20-1-101 through R20-1-106 recodified from 4 A.A.C. 47, consisting of R4-47-101 through R4-47-106 pursuant to R1-1-102 (Supp. 95-1).

Title 4, Chapter 47 transferred from Title 2, Chapter 14 pursuant to Laws 1984, Ch. 318, §§ 12, 13, and 15 (Letter from the Department of Commerce requesting this transfer received by the Secretary of State's Office, June 24, 1994) (Supp. 94-2).

## ARTICLE 1. ADMINISTRATION

Section	
R20-1-101.	Renumbered
R20-1-102.	Renumbered
R20-1-103.	Renumbered
R20-1-104.	Renumbered
R20-1-105.	Renumbered
R20-1-106.	Renumbered
R20-1-107.	Repealed
R20-1-108.	Renumbered
R20-1-109.	Renumbered
R20-1-110.	Renumbered
R20-1-111.	Renumbered
R20-1-112.	Repealed
R20-1-113.	Repealed
R20-1-114.	Repealed
R20-1-115.	Repealed
R20-1-116.	Renumbered
R20-1-117.	Renumbered
R20-1-118.	Renumbered
R20-1-119.	Renumbered
R20-1-120.	Repealed

## ARTICLE 2. EXPIRED

Article 2, consisting of Sections R20-1-201 through R20-1-214, expired under A.R.S. § 41-1056(J), at 20 A.A.R. 2043, effective June 30, 2014 (Supp. 14-3).

Article 2, consisting of Sections R20-1-201 through R20-1-206, repealed effective October 15, 1998 (Supp. 98-4).

Article 2, consisting of Sections R20-1-201 through R20-1-206, renumbered from Article 1, Sections R20-1-101 through R20-1-106 (Supp. 95-4).

Section	
R20-1-201.	Expired
R20-1-202.	Expired
R20-1-203.	Expired
R20-1-204.	Expired
R20-1-205.	Expired
R20-1-206.	Expired
R20-1-207.	Expired
R20-1-208.	Expired
R20-1-209.	Expired
R20-1-210.	Expired
R20-1-211.	Expired
R20-1-212.	Expired
R20-1-213.	Expired
R20-1-214.	Expired

## ARTICLE 3. EMERGENCY EXPIRED

Article 3, consisting of Sections R20-1-301 through R20-1-310, expired under A.R.S. 41-1026(D), effective August 6, 2010 (Supp. 12-1).

Article 3, consisting of Sections R20-1-301 through R20-1-310, made by emergency rulemaking at 16 A.A.R. 388, effective February 8, 2010 for 180 days (Supp. 10-1).

Article 3, consisting of Sections R20-1-301 through R20-1-309, expired February 5, 2002 after being in effect 180 days under A.R.S. § 41-1026(D) (Supp. 03-3).

Article 3, consisting of Sections R20-1-301 through R20-1-309, made by emergency rulemaking at 7 A.A.R. 3836, effective August 10, 2001 for 180 days (Supp. 01-3).

Section	
R20-1-301.	Emergency Expired
R20-1-302.	Emergency Expired
R20-1-303.	Emergency Expired
R20-1-304.	Emergency Expired
R20-1-305.	Emergency Expired
R20-1-306.	Emergency Expired
R20-1-307.	Emergency Expired
R20-1-308.	Emergency Expired
R20-1-309.	Emergency Expired
R20-1-310.	Emergency Expired

## ARTICLE 4. EXPIRED

Article 4, consisting of Sections R20-1-401 through R20-1-406, expired under A.R.S. § 41-1056(E) at 12 A.A.R. 880, effective February 28, 2006 (Supp. 06-1).

Article 4, consisting of Sections R20-1-401 through R20-1-406, made by final rulemaking at 7 A.A.R. 1771, effective April 6, 2001 (Supp. 01-2).

Section	
R20-1-401.	Expired
R20-1-402.	Expired
R20-1-403.	Expired
R20-1-404.	Expired
R20-1-405.	Expired
R20-1-406.	Expired

## ARTICLE 5. RECODIFIED

Article 5, consisting of Sections R20-1-501 through R20-1-514, recodified to 8 A.A.C. 3, Article 1 under Laws 2010, Ch. 208, at 18 A.A.C. 848, effective March 15, 2012 (Supp. 12-1).

Article 5, consisting of Sections R20-1-501 through R20-1-514, made by final rulemaking at 11 A.A.R. 2957, effective July 12,

2005 (Supp. 05-3).

*Article 5, consisting of Sections R20-1-501 through R20-1-507, expired August 26, 2001 after 180 days under A.R.S. § 41-1026(D) (Supp. 01-3).*

*Article 5, consisting of Sections R20-1-501 through R20-1-507, adopted by emergency rulemaking under A.R.S. § 41-1026 at 7 A.A.R. 1311, effective February 27, 2001 (Supp. 01-1).*

#### Section

R20-1-501.	Recodified
R20-1-502.	Recodified
R20-1-503.	Recodified
R20-1-504.	Recodified
R20-1-505.	Recodified
R20-1-506.	Recodified
R20-1-507.	Recodified
R20-1-508.	Recodified
R20-1-509.	Recodified
R20-1-510.	Recodified
R20-1-511.	Recodified
R20-1-512.	Recodified
R20-1-513.	Recodified
R20-1-514.	Recodified

### ARTICLE 6. RESERVED

### ARTICLE 7. EXPIRED

*Article 7, consisting of Sections R20-1-701 through R20-1-712, expired under A.R.S. § 41-1056(J), at 20 A.A.R. 2043, effective June 30, 2014 (Supp. 14-3).*

#### Section

R20-1-701.	Expired
R20-1-702.	Expired
R20-1-703.	Expired
R20-1-704.	Expired
R20-1-705.	Expired
R20-1-706.	Expired
R20-1-707.	Expired
R20-1-708.	Expired
R20-1-709.	Expired
R20-1-710.	Expired
R20-1-711.	Expired
R20-1-712.	Expired

### ARTICLE 8. EXPIRED

*Article 8, consisting of Sections R20-1-801 through R20-1-812, expired under A.R.S. § 41-1056(E) at 18 A.A.R. 975, effective March 31, 2012 (Supp. 12-2).*

*Article 8, consisting of Sections R20-1-801 through R20-1-812, made by final rulemaking at 13 A.A.R. 1038, effective May 5, 2007 (Supp. 07-1).*

#### Section

R20-1-801.	Expired
R20-1-802.	Expired
R20-1-803.	Expired
R20-1-804.	Expired
R20-1-805.	Expired
R20-1-806.	Expired
R20-1-807.	Expired
R20-1-808.	Expired
R20-1-809.	Expired
R20-1-810.	Expired
R20-1-811.	Expired
R20-1-812.	Expired

## ARTICLE 1. ADMINISTRATION

### R20-1-101. Renumbered

#### Historical Note

Adopted as an emergency effective December 22, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-6). Former emergency adoption now adopted effective March 18, 1981 (Supp. 81-2). Transferred from R2-14-101 (Supp. 94-2). R20-1-201 recodified from R4-47-101 (Supp. 95-1). Former Section R20-1-101 renumbered to R20-1-201, new Section adopted effective December 14, 1995 (Supp. 95-4). Amended by final rulemaking at 7 A.A.R. 3227, effective July 12, 2001 (Supp. 01-3). Section renumbered to R20-1-201 by final rulemaking at 10 A.A.R. 2681, effective June 8, 2004 (Supp. 04-2).

### R20-1-102. Renumbered

#### Historical Note

Adopted as an emergency effective December 22, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-6). Former emergency adoption now adopted effective March 18, 1981 (Supp. 81-2). Transferred from R2-14-102 and references to the Office of Economic Planning and Development changed to reflect the Department of Commerce (Supp. 94-2). R20-1-202 recodified from R4-47-102 (Supp. 95-1). Former Section R20-1-102 renumbered to R20-1-202, new Section adopted effective December 14, 1995 (Supp. 95-4). Amended by final rulemaking at 7 A.A.R. 3227, effective July 12, 2001 (Supp. 01-3). Section renumbered to R20-1-204 by final rulemaking at 10 A.A.R. 2681, effective June 8, 2004 (Supp. 04-2).

### R20-1-103. Renumbered

#### Historical Note

Adopted as an emergency effective December 22, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-6). Former emergency adoption now adopted effective March 18, 1981 (Supp. 81-2). Transferred from R2-14-103 (Supp. 94-2). R20-1-203 recodified from R4-47-103 (Supp. 95-1). Former Section R20-1-103 renumbered to R20-1-203, new Section adopted effective December 14, 1995 (Supp. 95-4). Section repealed; new Section renumbered from R20-1-104 and amended by final rulemaking at 7 A.A.R. 3227, effective July 12, 2001 (Supp. 01-3). Section renumbered to R20-1-202 by final rulemaking at 10 A.A.R. 2681, effective June 8, 2004 (Supp. 04-2).

### R20-1-104. Renumbered

#### Historical Note

Adopted as an emergency effective December 22, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-6). Former emergency adoption now adopted effective March 18, 1981 (Supp. 81-2). Transferred from R2-14-104 (Supp. 94-2). R20-1-204 recodified from R4-47-104 (Supp. 95-1). Former Section R20-1-104 renumbered to R20-1-204, new Section adopted effective December 14, 1995 (Supp. 95-4). Former Section R20-1-104 renumbered to R20-1-103; new Section R20-1-104 made by final rulemaking at 7 A.A.R. 3227, effective July 12, 2001 (Supp. 01-3). Section renumbered to R20-1-206 by final rulemaking at 10 A.A.R. 2681, effective June 8, 2004 (Supp. 04-2).

**R20-1-105. Renumbered**

**Historical Note**

Adopted as an emergency effective December 22, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-6). Former emergency adoption now adopted effective March 18, 1981 (Supp. 81-2). Transferred from R2-14-105 (Supp. 94-2). R20-1-205 recodified from R4-47-105 (Supp. 95-1). Former Section R20-1-105 renumbered to R20-1-205, new Section adopted effective December 14, 1995 (Supp. 95-4). Section repealed; new Section renumbered from R20-1-106 and amended by final rulemaking at 7 A.A.R. 3227, effective July 12, 2001 (Supp. 01-3). Section renumbered to R20-1-208 by final rulemaking at 10 A.A.R. 2681, effective June 8, 2004 (Supp. 04-2).

**R20-1-106. Renumbered**

**Historical Note**

Adopted as an emergency effective December 22, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-6). Former emergency adoption now adopted effective March 18, 1981 (Supp. 81-2). Transferred from R2-14-106 (Supp. 94-2). R20-1-206 recodified from R4-47-106 (Supp. 95-1). Former Section R20-1-106 renumbered to R20-1-206, new Section adopted effective December 14, 1995 (Supp. 95-4). Former Section R20-1-106 renumbered to R20-1-105; new Section R20-1-106 renumbered from R20-1-109 and amended by final rulemaking at 7 A.A.R. 3227, effective July 12, 2001 (Supp. 01-3). Section renumbered to R20-1-209 by final rulemaking at 10 A.A.R. 2681, effective June 8, 2004 (Supp. 04-2).

**R20-1-107. Repealed**

**Historical Note**

Adopted effective December 14, 1995 (Supp. 95-4). Section repealed; new Section made by final rulemaking at 7 A.A.R. 3227, effective July 12, 2001 (Supp. 01-3). Section repealed by final rulemaking at 10 A.A.R. 2681, effective June 8, 2004 (Supp. 04-2).

**R20-1-108. Renumbered**

**Historical Note**

Adopted effective December 14, 1995 (Supp. 95-4). Section repealed; new Section renumbered from R20-1-116 and amended by final rulemaking at 7 A.A.R. 3227, effective July 12, 2001 (Supp. 01-3). Section renumbered to R20-1-210 by final rulemaking at 10 A.A.R. 2681, effective June 8, 2004 (Supp. 04-2).

**R20-1-109. Renumbered**

**Historical Note**

Adopted effective December 14, 1995 (Supp. 95-4). Former Section R20-1-109 renumbered to R20-1-106; new Section R20-1-109 renumbered from R20-1-117 and amended by final rulemaking at 7 A.A.R. 3227, effective July 12, 2001 (Supp. 01-3). Section renumbered to R20-1-211 by final rulemaking at 10 A.A.R. 2681, effective June 8, 2004 (Supp. 04-2).

**R20-1-110. Renumbered**

**Historical Note**

Adopted effective December 14, 1995 (Supp. 95-4). Section repealed; new Section renumbered from R20-1-118 and amended by final rulemaking at 7 A.A.R. 3227, effective July 12, 2001 (Supp. 01-3). Section renumbered

to R20-1-212 by final rulemaking at 10 A.A.R. 2681, effective June 8, 2004 (Supp. 04-2).

**R20-1-111. Renumbered**

**Historical Note**

Adopted effective December 14, 1995 (Supp. 95-4). Section repealed; new Section renumbered from R20-1-119 and amended by final rulemaking at 7 A.A.R. 3227, effective July 12, 2001 (Supp. 01-3). Section renumbered to R20-1-213 by final rulemaking at 10 A.A.R. 2681, effective June 8, 2004 (Supp. 04-2).

**R20-1-112. Repealed**

**Historical Note**

Adopted effective December 14, 1995 (Supp. 95-4). Section repealed by final rulemaking at 7 A.A.R. 3227, effective July 12, 2001 (Supp. 01-3).

**R20-1-113. Repealed**

**Historical Note**

Adopted effective December 14, 1995 (Supp. 95-4). Section repealed by final rulemaking at 7 A.A.R. 3227, effective July 12, 2001 (Supp. 01-3).

**R20-1-114. Repealed**

**Historical Note**

Adopted effective December 14, 1995 (Supp. 95-4). Section repealed by final rulemaking at 7 A.A.R. 3227, effective July 12, 2001 (Supp. 01-3).

**R20-1-115. Repealed**

**Historical Note**

Adopted effective December 14, 1995 (Supp. 95-4). Section repealed by final rulemaking at 7 A.A.R. 3227, effective July 12, 2001 (Supp. 01-3).

**R20-1-116. Renumbered**

**Historical Note**

Adopted effective December 14, 1995 (Supp. 95-4). Section renumbered to R20-1-108 by final rulemaking at 7 A.A.R. 3227, effective July 12, 2001 (Supp. 01-3).

**R20-1-117. Renumbered**

**Historical Note**

Adopted effective December 14, 1995 (Supp. 95-4). Section renumbered to R20-1-109 by final rulemaking at 7 A.A.R. 3227, effective July 12, 2001 (Supp. 01-3).

**R20-1-118. Renumbered**

**Historical Note**

Adopted effective December 14, 1995 (Supp. 95-4). Section renumbered to R20-1-110 by final rulemaking at 7 A.A.R. 3227, effective July 12, 2001 (Supp. 01-3).

**R20-1-119. Renumbered**

**Historical Note**

Adopted effective December 14, 1995 (Supp. 95-4). Section renumbered to R20-1-111 by final rulemaking at 7 A.A.R. 3227, effective July 12, 2001 (Supp. 01-3).

**R20-1-120. Repealed**

**Historical Note**

Adopted effective December 14, 1995 (Supp. 95-4). Section repealed by final rulemaking at 7 A.A.R. 3227, effective July 12, 2001 (Supp. 01-3).

**ARTICLE 2. EXPIRED****R20-1-201. Expired****Historical Note**

Renumbered from R20-1-101 effective December 14, 1995 (Supp. 95-4). Repealed effective October 15, 1998 (Supp. 98-4). New R20-1-201 renumbered from R20-1-101 and amended by final rulemaking at 10 A.A.R. 2681, effective June 8, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2043, effective June 30, 2014 (Supp. 14-3).

**R20-1-202. Expired****Historical Note**

Renumbered from R20-1-101 effective December 14, 1995 (Supp. 95-4). Repealed effective October 15, 1998 (Supp. 98-4). New R20-1-202 renumbered from R20-1-103 and amended by final rulemaking at 10 A.A.R. 2681, effective June 8, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2043, effective June 30, 2014 (Supp. 14-3).

**R20-1-203. Expired****Historical Note**

Renumbered from R20-1-101 effective December 14, 1995 (Supp. 95-4). Repealed effective October 15, 1998 (Supp. 98-4). New Section made by final rulemaking at 10 A.A.R. 2681, effective June 8, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2043, effective June 30, 2014 (Supp. 14-3).

**R20-1-204. Expired****Historical Note**

Renumbered from R20-1-101 effective December 14, 1995 (Supp. 95-4). Repealed effective October 15, 1998 (Supp. 98-4). New R20-1-204 renumbered from R20-1-102 and amended by final rulemaking at 10 A.A.R. 2681, effective June 8, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2043, effective June 30, 2014 (Supp. 14-3).

**R20-1-205. Expired****Historical Note**

Renumbered from R20-1-101 effective December 14, 1995 (Supp. 95-4). Repealed effective October 15, 1998 (Supp. 98-4). New Section made by final rulemaking at 10 A.A.R. 2681, effective June 8, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2043, effective June 30, 2014 (Supp. 14-3).

**R20-1-206. Expired****Historical Note**

Renumbered from R20-1-101 effective December 14, 1995 (Supp. 95-4). Repealed effective October 15, 1998 (Supp. 98-4). New R20-1-206 renumbered from R20-1-104 and amended by final rulemaking at 10 A.A.R. 2681, effective June 8, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2043, effective June 30, 2014 (Supp. 14-3).

**R20-1-207. Expired****Historical Note**

New Section made by final rulemaking at 10 A.A.R. 2681, effective June 8, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2043, effective June 30, 2014 (Supp. 14-3).

**R20-1-208. Expired****Historical Note**

New Section renumbered from R20-1-105 and amended by final rulemaking at 10 A.A.R. 2681, effective June 8, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2043, effective June 30, 2014 (Supp. 14-3).

**R20-1-209. Expired****Historical Note**

New Section renumbered from R20-1-106 and amended by final rulemaking at 10 A.A.R. 2681, effective June 8, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2043, effective June 30, 2014 (Supp. 14-3).

**R20-1-210. Expired****Historical Note**

New Section renumbered from R20-1-108 and amended by final rulemaking at 10 A.A.R. 2681, effective June 8, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2043, effective June 30, 2014 (Supp. 14-3).

**R20-1-211. Expired****Historical Note**

New Section renumbered from R20-1-109 and amended by final rulemaking at 10 A.A.R. 2681, effective June 8, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2043, effective June 30, 2014 (Supp. 14-3).

**R20-1-212. Expired****Historical Note**

New Section renumbered from R20-1-110 and amended by final rulemaking at 10 A.A.R. 2681, effective June 8, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2043, effective June 30, 2014 (Supp. 14-3).

**R20-1-213. Expired****Historical Note**

New Section renumbered from R20-1-111 and amended by final rulemaking at 10 A.A.R. 2681, effective June 8, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2043, effective June 30, 2014 (Supp. 14-3).

**R20-1-214. Expired****Historical Note**

New Section made by final rulemaking at 10 A.A.R. 2681, effective June 8, 2004 (Supp. 04-2). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2043, effective June 30, 2014 (Supp. 14-3).

**ARTICLE 3. EMERGENCY EXPIRED****R20-1-301. Emergency Expired****Historical Note**

New Section made by emergency rulemaking at 7 A.A.R. 3836, effective August 10, 2001 for 180 days (Supp. 01-3). Section expired February 5, 2002 (Supp. 03-3). New Section made by emergency rulemaking at 16 A.A.R. 388, effective February 8, 2010 for 180 days (Supp. 10-1). Section expired under A.R.S. § 41-1026(D), effective August 6, 2010 (Supp. 12-1).

**R20-1-302. Emergency Expired****Historical Note**

New Section made by emergency rulemaking at 7 A.A.R. 3836, effective August 10, 2001 for 180 days (Supp. 01-3). Section expired February 5, 2002 (Supp. 03-3). New Section made by emergency rulemaking at 16 A.A.R. 388, effective February 8, 2010 for 180 days (Supp. 10-1). Section expired under A.R.S. § 41-1026(D), effective August 6, 2010 (Supp. 12-1).

**R20-1-303. Emergency Expired****Historical Note**

New Section made by emergency rulemaking at 7 A.A.R. 3836, effective August 10, 2001 for 180 days (Supp. 01-3). Section expired February 5, 2002 (Supp. 03-3). New Section made by emergency rulemaking at 16 A.A.R. 388, effective February 8, 2010 for 180 days (Supp. 10-1). Section expired under A.R.S. § 41-1026(D), effective August 6, 2010 (Supp. 12-1).

**R20-1-304. Emergency Expired****Historical Note**

New Section made by emergency rulemaking at 7 A.A.R. 3836, effective August 10, 2001 for 180 days (Supp. 01-3). Section expired February 5, 2002 (Supp. 03-3). New Section made by emergency rulemaking at 16 A.A.R. 388, effective February 8, 2010 for 180 days (Supp. 10-1). Section expired under A.R.S. § 41-1026(D), effective August 6, 2010 (Supp. 12-1).

**R20-1-305. Emergency Expired****Historical Note**

New Section made by emergency rulemaking at 7 A.A.R. 3836, effective August 10, 2001 for 180 days (Supp. 01-3). Section expired February 5, 2002 (Supp. 03-3). New Section made by emergency rulemaking at 16 A.A.R. 388, effective February 8, 2010 for 180 days (Supp. 10-1). Section expired under A.R.S. § 41-1026(D), effective August 6, 2010 (Supp. 12-1).

**R20-1-306. Emergency Expired****Historical Note**

New Section made by emergency rulemaking at 7 A.A.R. 3836, effective August 10, 2001 for 180 days (Supp. 01-3). Section expired February 5, 2002 (Supp. 03-3). New Section made by emergency rulemaking at 16 A.A.R. 388, effective February 8, 2010 for 180 days (Supp. 10-1). Section expired under A.R.S. § 41-1026(D), effective August 6, 2010 (Supp. 12-1).

**R20-1-307. Emergency Expired****Historical Note**

New Section made by emergency rulemaking at 7 A.A.R. 3836, effective August 10, 2001 for 180 days (Supp. 01-3). Section expired February 5, 2002 (Supp. 03-3). New Section made by emergency rulemaking at 16 A.A.R. 388, effective February 8, 2010 for 180 days (Supp. 10-1). Section expired under A.R.S. § 41-1026(D), effective August 6, 2010 (Supp. 12-1).

**R20-1-308. Emergency Expired****Historical Note**

New Section made by emergency rulemaking at 7 A.A.R. 3836, effective August 10, 2001 for 180 days (Supp. 01-3). Section expired February 5, 2002 (Supp. 03-3). New Section made by emergency rulemaking at 16 A.A.R.

388, effective February 8, 2010 for 180 days (Supp. 10-1).

Section expired under A.R.S. § 41-1026(D), effective August 6, 2010 (Supp. 12-1).

**R20-1-309. Emergency Expired****Historical Note**

New Section made by emergency rulemaking at 7 A.A.R. 3836, effective August 10, 2001 for 180 days (Supp. 01-3). Section expired February 5, 2002 (Supp. 03-3). New Section made by emergency rulemaking at 16 A.A.R. 388, effective February 8, 2010 for 180 days (Supp. 10-1). Section expired under A.R.S. § 41-1026(D), effective August 6, 2010 (Supp. 12-1).

**R20-1-310. Emergency Expired****Historical Note**

New Section made by emergency rulemaking at 16 A.A.R. 388, effective February 8, 2010 for 180 days (Supp. 10-1). Section expired under A.R.S. § 41-1026(D), effective August 6, 2010 (Supp. 12-1).

**ARTICLE 4. EXPIRED****R20-1-401. Expired****Historical Note**

New Section made by final rulemaking at 7 A.A.R. 1771, effective April 6, 2001 (Supp. 01-2). Section expired under A.R.S. § 41-1056(E) at 12 A.A.R. 880, effective February 28, 2006 (Supp. 06-1).

**R20-1-402. Expired****Historical Note**

New Section made by final rulemaking at 7 A.A.R. 1771, effective April 6, 2001 (Supp. 01-2). Section expired under A.R.S. § 41-1056(E) at 12 A.A.R. 880, effective February 28, 2006 (Supp. 06-1).

**R20-1-403. Expired****Historical Note**

New Section made by final rulemaking at 7 A.A.R. 1771, effective April 6, 2001 (Supp. 01-2). Section expired under A.R.S. § 41-1056(E) at 12 A.A.R. 880, effective February 28, 2006 (Supp. 06-1).

**R20-1-404. Expired****Historical Note**

New Section made by final rulemaking at 7 A.A.R. 1771, effective April 6, 2001 (Supp. 01-2). Section expired under A.R.S. § 41-1056(E) at 12 A.A.R. 880, effective February 28, 2006 (Supp. 06-1).

**R20-1-405. Expired****Historical Note**

New Section made by final rulemaking at 7 A.A.R. 1771, effective April 6, 2001 (Supp. 01-2). Section expired under A.R.S. § 41-1056(E) at 12 A.A.R. 880, effective February 28, 2006 (Supp. 06-1).

**R20-1-406. Expired****Historical Note**

New Section made by final rulemaking at 7 A.A.R. 1771, effective April 6, 2001 (Supp. 01-2). Section expired under A.R.S. § 41-1056(E) at 12 A.A.R. 880, effective February 28, 2006 (Supp. 06-1).

**ARTICLE 5. RECODIFIED**

*Article 5, consisting of Sections R20-1-501 through R20-1-*

507, expired August 26, 2001 after 180 days under A.R.S. § 41-1026(D) (Supp. 01-3).

**R20-1-501. Recodified**

**Historical Note**

New Section adopted by emergency rulemaking at 7 A.A.R. 1311, effective February 27, 2001 (Supp. 01-1). Section expired August 26, 2001 under A.R.S. § 41-1026(D) (Supp. 01-3). New Section made by final rulemaking at 11 A.A.R. 2957, effective July 12, 2005 (Supp. 05-3). Section recodified to R8-3-101 under Laws 2010, Ch. 208 at 18 A.A.C. 848, effective March 15, 2012 (Supp. 12-1).

**R20-1-502. Recodified**

**Historical Note**

New Section adopted by emergency rulemaking at 7 A.A.R. 1311, effective February 27, 2001 (Supp. 01-1). Section expired August 26, 2001 under A.R.S. § 41-1026(D) (Supp. 01-3). New Section made by final rulemaking at 11 A.A.R. 2957, effective July 12, 2005 (Supp. 05-3). Section recodified to R8-3-102 under Laws 2010, Ch. 208 at 18 A.A.C. 848, effective March 15, 2012 (Supp. 12-1).

**R20-1-503. Recodified**

**Historical Note**

New Section adopted by emergency rulemaking at 7 A.A.R. 1311, effective February 27, 2001 (Supp. 01-1). Section expired August 26, 2001 under A.R.S. § 41-1026(D) (Supp. 01-3). New Section made by final rulemaking at 11 A.A.R. 2957, effective July 12, 2005 (Supp. 05-3). Section recodified to R8-3-103 under Laws 2010, Ch. 208 at 18 A.A.C. 848, effective March 15, 2012 (Supp. 12-1).

**R20-1-504. Recodified**

**Historical Note**

New Section adopted by emergency rulemaking at 7 A.A.R. 1311, effective February 27, 2001 (Supp. 01-1). Section expired August 26, 2001 under A.R.S. § 41-1026(D) (Supp. 01-3). New Section made by final rulemaking at 11 A.A.R. 2957, effective July 12, 2005 (Supp. 05-3). Section recodified to R8-3-104 under Laws 2010, Ch. 208 at 18 A.A.C. 848, effective March 15, 2012 (Supp. 12-1).

**R20-1-505. Recodified**

**Historical Note**

New Section adopted by emergency rulemaking at 7 A.A.R. 1311, effective February 27, 2001 (Supp. 01-1). Section expired August 26, 2001 under A.R.S. § 41-1026(D) (Supp. 01-3). New Section made by final rulemaking at 11 A.A.R. 2957, effective July 12, 2005 (Supp. 05-3). Section recodified to R8-3-105 under Laws 2010, Ch. 208 at 18 A.A.C. 848, effective March 15, 2012 (Supp. 12-1).

**R20-1-506. Recodified**

**Historical Note**

New Section adopted by emergency rulemaking at 7 A.A.R. 1311, effective February 27, 2001 (Supp. 01-1). Section expired August 26, 2001 under A.R.S. § 41-1026(D) (Supp. 01-3). New Section made by final rulemaking at 11 A.A.R. 2957, effective July 12, 2005 (Supp. 05-3). Section recodified to R8-3-106 under Laws

2010, Ch. 208 at 18 A.A.C. 848, effective March 15, 2012 (Supp. 12-1).

**R20-1-507. Recodified**

**Historical Note**

New Section adopted by emergency rulemaking at 7 A.A.R. 1311, effective February 27, 2001 (Supp. 01-1). Section expired August 26, 2001 under A.R.S. § 41-1026(D) (Supp. 01-3). New Section made by final rulemaking at 11 A.A.R. 2957, effective July 12, 2005 (Supp. 05-3). Section recodified to R8-3-107 under Laws 2010, Ch. 208 at 18 A.A.C. 848, effective March 15, 2012 (Supp. 12-1).

**R20-1-508. Recodified**

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2957, effective July 12, 2005 (Supp. 05-3). Section recodified to R8-3-108 under Laws 2010, Ch. 208 at 18 A.A.C. 848, effective March 15, 2012 (Supp. 12-1).

**R20-1-509. Recodified**

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2957, effective July 12, 2005 (Supp. 05-3). Section recodified to R8-3-109 under Laws 2010, Ch. 208 at 18 A.A.C. 848, effective March 15, 2012 (Supp. 12-1).

**R20-1-510. Recodified**

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2957, effective July 12, 2005 (Supp. 05-3). Section recodified to R8-3-110 under Laws 2010, Ch. 208 at 18 A.A.C. 848, effective March 15, 2012 (Supp. 12-1).

**R20-1-511. Recodified**

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2957, effective July 12, 2005 (Supp. 05-3). Section recodified to R8-3-111 under Laws 2010, Ch. 208 at 18 A.A.C. 848, effective March 15, 2012 (Supp. 12-1).

**R20-1-512. Recodified**

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2957, effective July 12, 2005 (Supp. 05-3). Section recodified to R8-3-112 under Laws 2010, Ch. 208 at 18 A.A.C. 848, effective March 15, 2012 (Supp. 12-1).

**R20-1-513. Recodified**

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2957, effective July 12, 2005 (Supp. 05-3). Section recodified to R8-3-113 under Laws 2010, Ch. 208 at 18 A.A.C. 848, effective March 15, 2012 (Supp. 12-1).

**R20-1-514. Recodified**

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2957, effective July 12, 2005 (Supp. 05-3). Section recodified to R8-3-114 under Laws 2010, Ch. 208 at 18 A.A.C. 848, effective March 15, 2012 (Supp. 12-1).

**ARTICLE 6. RESERVED****ARTICLE 7. EXPIRED****R20-1-701. Expired****Historical Note**

New Section made by final rulemaking at 13 A.A.R. 3031, effective October 6, 2007 (Supp. 07-3). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2043, effective June 30, 2014 (Supp. 14-3).

**R20-1-702. Expired****Historical Note**

New Section made by final rulemaking at 13 A.A.R. 3031, effective October 6, 2007 (Supp. 07-3). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2043, effective June 30, 2014 (Supp. 14-3).

**R20-1-703. Expired****Historical Note**

New Section made by final rulemaking at 13 A.A.R. 3031, effective October 6, 2007 (Supp. 07-3). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2043, effective June 30, 2014 (Supp. 14-3).

**R20-1-704. Expired****Historical Note**

New Section made by final rulemaking at 13 A.A.R. 3031, effective October 6, 2007 (Supp. 07-3). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2043, effective June 30, 2014 (Supp. 14-3).

**R20-1-705. Expired****Historical Note**

New Section made by final rulemaking at 13 A.A.R. 3031, effective October 6, 2007 (Supp. 07-3). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2043, effective June 30, 2014 (Supp. 14-3).

**R20-1-706. Expired****Historical Note**

New Section made by final rulemaking at 13 A.A.R. 3031, effective October 6, 2007 (Supp. 07-3). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2043, effective June 30, 2014 (Supp. 14-3).

**R20-1-707. Expired****Historical Note**

New Section made by final rulemaking at 13 A.A.R. 3031, effective October 6, 2007 (Supp. 07-3). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2043, effective June 30, 2014 (Supp. 14-3).

**R20-1-708. Expired****Historical Note**

New Section made by final rulemaking at 13 A.A.R. 3031, effective October 6, 2007 (Supp. 07-3). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2043, effective June 30, 2014 (Supp. 14-3).

**R20-1-709. Expired****Historical Note**

New Section made by final rulemaking at 13 A.A.R. 3031, effective October 6, 2007 (Supp. 07-3). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2043, effective June 30, 2014 (Supp. 14-3).

**R20-1-710. Expired****Historical Note**

New Section made by final rulemaking at 13 A.A.R. 3031, effective October 6, 2007 (Supp. 07-3). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2043, effective June 30, 2014 (Supp. 14-3).

**R20-1-711. Expired****Historical Note**

New Section made by final rulemaking at 13 A.A.R. 3031, effective October 6, 2007 (Supp. 07-3). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2043, effective June 30, 2014 (Supp. 14-3).

**R20-1-712. Expired****Historical Note**

New Section made by final rulemaking at 13 A.A.R. 3031, effective October 6, 2007 (Supp. 07-3). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 2043, effective June 30, 2014 (Supp. 14-3).

**ARTICLE 8. EXPIRED****R20-1-801. Expired****Historical Note**

New Section made by final rulemaking at 13 A.A.R. 1038, effective May 5, 2007 (Supp. 07-1). Section expired under A.R.S. § 41-1056(E) at 18 A.A.R. 975, effective March 31, 2012 (Supp. 12-2).

**R20-1-802. Expired****Historical Note**

New Section made by final rulemaking at 13 A.A.R. 1038, effective May 5, 2007 (Supp. 07-1). Section expired under A.R.S. § 41-1056(E) at 18 A.A.R. 975, effective March 31, 2012 (Supp. 12-2).

**R20-1-803. Expired****Historical Note**

New Section made by final rulemaking at 13 A.A.R. 1038, effective May 5, 2007 (Supp. 07-1). Section expired under A.R.S. § 41-1056(E) at 18 A.A.R. 975, effective March 31, 2012 (Supp. 12-2).

**R20-1-804. Expired****Historical Note**

New Section made by final rulemaking at 13 A.A.R. 1038, effective May 5, 2007 (Supp. 07-1). Section expired under A.R.S. § 41-1056(E) at 18 A.A.R. 975, effective March 31, 2012 (Supp. 12-2).

**R20-1-805. Expired****Historical Note**

New Section made by final rulemaking at 13 A.A.R. 1038, effective May 5, 2007 (Supp. 07-1). Section expired under A.R.S. § 41-1056(E) at 18 A.A.R. 975, effective March 31, 2012 (Supp. 12-2).

**R20-1-806. Expired****Historical Note**

New Section made by final rulemaking at 13 A.A.R. 1038, effective May 5, 2007 (Supp. 07-1). Section expired under A.R.S. § 41-1056(E) at 18 A.A.R. 975, effective March 31, 2012 (Supp. 12-2).

**R20-1-807. Expired****Historical Note**

New Section made by final rulemaking at 13 A.A.R. 1038, effective May 5, 2007 (Supp. 07-1). Section expired under A.R.S. § 41-1056(E) at 18 A.A.R. 975, effective March 31, 2012 (Supp. 12-2).

**R20-1-808. Expired****Historical Note**

New Section made by final rulemaking at 13 A.A.R. 1038, effective May 5, 2007 (Supp. 07-1). Section expired under A.R.S. § 41-1056(E) at 18 A.A.R. 975, effective March 31, 2012 (Supp. 12-2).

**R20-1-809. Expired****Historical Note**

New Section made by final rulemaking at 13 A.A.R. 1038, effective May 5, 2007 (Supp. 07-1). Section expired under A.R.S. § 41-1056(E) at 18 A.A.R. 975, effective March 31, 2012 (Supp. 12-2).

**R20-1-810. Expired****Historical Note**

New Section made by final rulemaking at 13 A.A.R. 1038, effective May 5, 2007 (Supp. 07-1). Section expired under A.R.S. § 41-1056(E) at 18 A.A.R. 975, effective March 31, 2012 (Supp. 12-2).

**R20-1-811. Expired****Historical Note**

New Section made by final rulemaking at 13 A.A.R. 1038, effective May 5, 2007 (Supp. 07-1). Section expired under A.R.S. § 41-1056(E) at 18 A.A.R. 975, effective March 31, 2012 (Supp. 12-2).

**R20-1-812. Expired****Historical Note**

New Section made by final rulemaking at 13 A.A.R. 1038, effective May 5, 2007 (Supp. 07-1). Section expired under A.R.S. § 41-1056(E) at 18 A.A.R. 975, effective March 31, 2012 (Supp. 12-2).



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